



ASIAN INSTITUTE OF  
ALTERNATIVE  
DISPUTE  
RESOLUTION  
Delivering Excellence in ADR

# ADR CENTURION

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Datuk Professor Sundra Rajoo

In conversation with Mr Pham Xuan Sang, the  
President of Vietnam Traders Arbitration Centre  
(VTA)

**"ADR IN THE AGE OF GLOBALIZATION: CHAL-  
LENGES AMIDST OPPORTUNITIES FOR SOUTH  
ASIA"**

*By: ADIL NAWAZ & MANAHIL IRFAN*

**Intern's View**

**December 2024  
Volume 5  
Issue 33**



The AIADR shall be a repertoire of global jurisprudence, formed by professional membership, recognized by international institutions, striving for the advancement of alternative dispute resolution methodologies, for amicable conflicts management and effective dispute resolution.

The ADR Centurion is the Bimonthly Newsletter of AIADR published six times per year by the Editorial Committee of AIADR for the members of the AIADR (the "Institute") and general readers interested in ADR subject and practices.

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Electronic Version Available at: <https://www.aiadr.world>

eISSN: 2735-0800

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***“All wars are follies, very  
mischievous ones. In  
was a good war or a  
mankind be convinced  
difficulties by***

***very expensive and very  
my opinion, there never  
bad peace. When will  
and agree to settle their  
y arbitration?”***

— Benjamin Franklin

## Announcements

# Join the spotlight - submit your profile to the AIADR Newsletter

2024



**Submission requirement:**

- 1. Profile Picture**
- 2. Biodata (150 - 200) words**

- **Available to AIADR members with active membership only**
- **Limited to 5 slots for each issue.**

**To submit, kindly email [aiadr.editor@aiadr.world](mailto:aiadr.editor@aiadr.world)**

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# Membership

### Collaborate with us!

Members are welcome to reach out to the Secretariat for assistance or collaboration in organizing webinars on ADR topics of their choice. No charges are levied. Do not miss out on this great opportunity to enhance your resume by delivering a webinar for the benefit of other members and the ADR fraternity. Email us to register your interest!

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Members can now upgrade their membership level or get accredited as a Certified Practitioner through our fast-track path by virtue of having comparable membership or accreditation from equivalent international ADR organisations (e.g. Chartered Arbitrator with CIArb).

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# PRESIDENT'S MESSAGE

*DATUK PROFESSOR SUNDRA RAJOO*

Dear Members,

Warm greetings from the Asian Institute of Alternative Dispute Resolution. It is with great pleasure that I introduce the 32nd Issue of the ADR Centurion. I extend sincere thanks to all individuals for their unwavering support and trust in our institute's mission to establish a global platform in alternative dispute resolution (ADR).

I would like to take this moment to express my gratitude to the Governance Council, Office Bearers, committee members, AIADR Secretariat, partner organizations, esteemed members, and our new subscribers for their dedication to advancing AIADR's objectives. We encourage you to stay tuned for our latest news and content across different social media platforms such as Facebook, LinkedIn, Twitter, YouTube, and Instagram.

I am pleased to take this opportunity to update all members of the Asian Institute of Alternative Dispute Resolution (AIADR) on our recent work and initiatives. Over the past couple of months, we have orchestrated a variety of engaging and multifaceted events, tailored to cater to a broad spectrum of interests within the realm of alternative dispute resolution (ADR). Whether you're an experienced professional or just starting in the field of ADR, there was something for everyone at AIADR's recent events:

1. Firstly, It was a true honor to moderate the opening panel at Istanbul Arbitration Week

2024, held at the Mandarin Oriental Bosphorus on October 1. The event brought together a distinguished group of experts from around the world, providing a great opportunity for discussion and knowledge sharing.

Our session, titled "Future Trends in International Arbitration: What to Expect," addressed a wide range of crucial topics shaping the landscape of international arbitration. Topics included the increasing influence of third-party funding, the multifaceted challenges faced by arbitrators, concerns about the potential misuse of arbitration processes, and the evolving trends in ICC case management.

These discussions were thought-provoking and essential in highlighting the future trajectory of global dispute resolution. They reinforced the importance of innovation and adaptability within the arbitration field to meet the demands of a dynamic global environment. I was deeply grateful to Istanbul Arbitration Week for offering this platform, which enabled us to contribute to the global discourse on arbitration. I eagerly anticipate future opportunities for collaboration aimed at advancing the arbitration community worldwide.

2. Next, AIADR was proud to be participate as a supporting organization in Asia ADR Week 2024, an event that underscored our commitment to the advancement of alternative dispute resolution (ADR) across the region.

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Held from October 17 to 19 at AIAC, Bangunan Sulaiman, the conference focused on the theme “SUPERNOVA: Igniting the Transformation of ADR.” This inspiring theme provided a framework for exploring the latest trends and developments shaping the ADR landscape today.

Over 60 distinguished speakers—including judges, academics, and leading practitioners—shared their expertise, creating a vibrant platform for dialogue, the exchange of insights, and professional growth. AIADR’s active involvement in this conference reaffirmed our dedication to supporting collaboration and supporting initiatives that contribute to the development of ADR practices. As we continue to support such transformative events, we remain committed to nurturing a robust ADR ecosystem in Asia and beyond.

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3. AIADR was pleased to be the supporting organization for the Game Changers: Legal Evolution in Sports Conference, organized by the Sports Law Association of Malaysia, which took place on October 24. This conference provided valuable insights into the evolving field of sports law, exploring current trends and challenges in this specialized area.

The event showcased a diverse range of speakers and thought-provoking discussions, providing attendees with a comprehensive understanding of key legal issues impacting the sports industry. For AIADR, this conference aligned perfectly with our mission to promote and support the growth of specialized legal fields. We look forward to observing and contributing to the continued evolution of sports law as it grows in prominence and importance globally.

4. Additionally, on October 19, AIADR participated in the Hainan Free Trade Port Arbitration Forum, reinforcing our dedication to advancing international arbitration practices. I had the privilege of delivering a keynote address on Ad Hoc Arbitration, discussing its evolving role in handling complex international disputes.

The forum also provided an opportunity to formalize our partnership with the Hainan

Arbitration Commission through a Memorandum of Understanding (MoU) signed with Mr. Liu Daojun, President of the Hainan Arbitration Association. This partnership marks the beginning of what we anticipate will be a fruitful and long-lasting partnership, with a shared vision of advancing arbitration practices and fostering international cooperation.

5. I had the honor of serving as a final-round judge at the Tun Zaki Moot Competition 2024, which concluded on October 26. This event brought together some of the brightest young legal minds, allowing them to refine their skills in legal research, writing, and oral advocacy. The competition also gave students the chance to engage with complex legal issues in a competitive environment.

AIADR was proud to support this competition, which plays an important role in shaping the future of legal advocacy. It is inspiring to see the next generation of legal professionals take shape, and we look forward to supporting more events that help develop young legal talent.

6. Lastly, AIADR was thrilled to announce the signing of a Memorandum of Understanding (MoU) with the International Arbitration Court “Chambers of Arbitrator at the Union of Lawyers” (Chamber of Arbitrators). This agreement represents a significant milestone in our mission to promote Alternative Dispute Resolution (ADR) on a global scale.

The MoU opens exciting new opportunities for knowledge sharing, collaboration, and the exchange of best practices. By fostering internationally recognized ADR methods, this partnership will strengthen both organizations and contribute positively to the global ADR community. We are optimistic about the mutual growth and long-term impact this collaboration will bring, furthering the vision of advancing ADR for the benefit of all.

In closing, I would like to extend my appreciation to all our members for their unwavering participation and support in our various activities and events. We are grateful for your continued engagement, as it is your involvement that fuels the success and impact of our endeavours.



# In conversation with Mr Pham Xuan Sang, the President of Vietnam Traders Arbitration Centre (VTA)



**Mr Pham Xuan Sang**

**Q: Could you share Vietnam's achievements after nearly 40 years of Đoi Moi (Renovation), and the role of the private sector in Vietnam's development?**

A: Well, after 40 years of Đoi Moi —also known as "Renovation"—Vietnam has truly transformed itself. Đoi Moi was a series of transformative economic and political reforms launched in 1986, aimed at transitioning from a centralized, state-controlled model to a socialist-oriented market economy. These reforms opened up the country to market mechanisms, encouraged private enterprise, and deepened Vietnam's integration into the global economy.

For perspective, GDP has risen from approximately \$26.3 billion in the early days of Đoi Moi to \$430 billion by 2023, with GDP per capita reaching around \$4,300. And you know, the private sector's been at the heart of this change. As of 2024, there are over 930,000 businesses operating across the country—that's more than 10 times the number back in 2004, when we had only about 92,000. The private sector now accounts for more than 40% of our GDP, employs 85% of the workforce, and contributes over 30% of total social investment. The government has supported this transformation by enacting legal reforms, simplifying procedures, and fostering a more transparent and fair business environment. Clearly, the private sector is driving innovation, boosting productivity, and creating jobs.

**Q: How has commercial arbitration developed in Vietnam, especially after the implementation of the Law on Commercial Arbitration?**

A: Arbitration in Vietnam actually goes way back, starting in the 1960s along with the economic contract regime. Back then, state-run arbitration not only resolved disputes but also managed economic contracts. But from 1994, as we entered the Đoi Moi era and opened up internationally, arbitration was redefined as a professional-social organization solely focused on dispute resolution—it no longer had any state management role.

The Ordinance on Commercial Arbitration in 2003 and the Law on Commercial Arbitration in 2010 were major milestones. These laws made arbitration a more attractive option for traders, enterprises, especially foreign investors. Joining the New York Convention in 1995 was a game-changer—it meant that arbitral awards made in Vietnam would be recognized internationally, which boosted trust and assurance for foreign investors.

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**Q: What principles from the UNCITRAL Model Law have been adopted in Vietnam’s Law on Commercial Arbitration, and how have they been applied in actual dispute resolution in Vietnam?**

A: Vietnam’s Law on Commercial Arbitration has incorporated many fundamental principles from the UNCITRAL Model Law. These include the legality of arbitration agreements, the requirement for courts to decline jurisdiction if there is a valid arbitration agreement, the doctrine of separability of the arbitration agreement from the main contract, the principle of competence-competence allowing arbitral tribunals to rule on their own jurisdiction, the parties’ freedom to select arbitrators, the independence and impartiality of arbitrators, and limited court intervention in arbitration proceedings. Notably, when considering the annulment of arbitral awards, courts do not re-evaluate the merits of the case but focus solely on procedural aspects.

The adoption of these principles in practice has improved transparency in arbitration proceedings in Vietnam, fostering trust among domestic businesses and creating a more favorable legal environment for foreign investment. However, certain challenges remain. One significant issue is the interpretation of the “fundamental principles of Vietnamese law.” The lack of clarity and consistency in how courts apply this concept when deciding on the annulment of arbitral awards or the recognition and enforcement of foreign arbitral awards does not align well with the concept of “public policy” as defined by the UNCITRAL Model Law. As a result, between 2012 and 2019, 36% of arbitral awards (30 out of 83) were refused recognition and enforcement in Vietnam. This inconsistency negatively affects the transparency and reputation of the investment environment, making investors feel less secure about choosing Vietnam as a place to resolve disputes.

To address this issue, the Draft Amended Law on Commercial Arbitration of Vietnam 2023 has been proposed, aiming to establish a fairer and more transparent dispute resolution mechanism. This amendment is also essential for Vietnam’s economy after nearly 40 years of *Đổi Mới* (Renovation).

**Q: The Draft Amended Law on Commercial Arbitration 2023 proposes many significant changes. Could you share the key points and their expected impact on the field of commercial arbitration?**

A: Sure, the draft amendment focuses on four main policy groups:

- 1. Expanding the scope of disputes:** It allows arbitration to handle disputes that are not prohibited or restricted by specialized laws.
- 2. Enhancing arbitration procedures:** The arbitration procedures will be improved to ensure transparency, fairness, and better optimization of the parties’ freedom to agree.
- 3. Extending the authority of arbitral tribunals:** Arbitral tribunals will be given more authority to rule on legal issues related to the case, strengthening their dispute resolution capacity.
- 4. Adjusting provisions on arbitral awards:** The grounds for annulment or non-recognition of awards will be clarified to ensure alignment with international standards. These changes should create a more stable and transparent legal framework, boost Vietnam’s competitiveness as an investment destination, and promote the sustainable growth of commercial arbitration here.

**Q: What role does VTA play in promoting trade activities & commercial arbitration in Vietnam?**

A: VTA was initiated by senior lawyers who have been deeply involved in the establishment and operation of leading private economic groups in Vietnam. During our legal consultations for major licensing and automobile assembly projects in Vietnam with brands such as Mazda, Peugeot, and BMW, we often encountered situations where our partners proposed choosing international arbitration centres like ICC or SIAC, or even their own country’s arbitration centres.

At that time, Vietnam did not have an arbitration centre of sufficient caliber that we could confidently propose and negotiate with our partners. This made us wonder why, despite the strong growth of Vietnamese private enterprises and their collaboration with major international corporations, there was still a lack of a competitive arbitration centre that could be considered in international transactions. This concern drove us to establish VTA, with the mission of “Providing a reliable, effective dispute resolution mechanism based on respect, legal compliance, and responsibility towards traders and society”.

Since its establishment, VTA has provided Vietnamese businesses with a trusted arbitration center they can rely on to resolve business disputes domestically, supported by a clear philosophy and mission. This has given Vietnamese companies greater confidence when negotiating contracts and engaging in partnerships with foreign investors. For international investors, VTA offers a transparent and effective dispute resolution process within Vietnam, which strengthens the credibility of Vietnamese businesses and facilitates smoother, more secure commercial transactions. By continually refining its arbitration procedures to meet international standards and align with the procedural rules of global arbitration centers, VTA not only enhances service quality but also affirms its competitive position. VTA is gradually becoming one of the worthy alternatives alongside regional arbitration centres, offering parties an additional reputable option right in Vietnam. The presence of a credible local arbitration center like VTA further enhances Vietnam’s reputation as a stable and reliable destination for international trade and investment.

**Q: What makes VTA an attractive choice for resolving commercial disputes for businesses and foreign investors?**

A: Besides the general advantages of arbitration as a dispute resolution method, VTA offers several specific strengths that make it a reliable centre for disputing parties, including:

- **RAPID Values:** VTA adheres to the core values of "RAPID," which stands for Respect, Alternative, Prestige, Intelligence, and Dedication. VTA manages and coordinates dispute resolution efficiently while embodying these values.

- **Cultural and business environment sensitivity:** VTA pays special attention to the cultural and business environment of each party, as well as of arbitrators and experts, to deliver the most suitable and optimal services during the arbitration process.

- **Arbitration rules:** VTA’s arbitration rules are continuously improved based on practical dispute resolution experiences and international standards. VTA encourages parties to apply the International Bar Association (IBA) guidelines, especially the Rules on the Taking of Evidence and the Guidelines on Conflicts of Interest.

- **Arbitrators:** VTA has a roster of arbitrators who are well-versed in production, business management, and Vietnamese law. Additionally, VTA has foreign arbitrators from various countries, covering multiple languages.

- **Strategic location:** As a member of ASEAN, Vietnam serves as a gateway connecting ASEAN with the world, sharing a border with China, making it a strategic hub for the arbitration community, lawyers, and legal experts from ASEAN and Asia.

- **Distinctive Rules of VTA:** VTA’s procedural rules are carefully crafted to ensure full compliance with the Vietnamese Commercial Arbitration Law while maximizing flexibility in the arbitration process. This approach respects the autonomy of the parties, allowing them to choose whether to apply part or all of VTA’s rules, or even to create a customized procedural framework tailored specifically to their dispute.

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To continually enhance the quality, consistency, and international compatibility of its dispute resolution process, VTA refines its procedural rules regularly to align closely with global arbitration standards. To enhance efficiency, VTA offers an expedited procedure that applies when parties agree to it. For example, disputes valued under 1 billion VND can be resolved swiftly, with an award issued within 7 days. Upon the parties' request, if the arbitral tribunal deems a hearing unnecessary, the dispute may be resolved based solely on submitted documentation and evidence, allowing for a prompt and cost-effective arbitration award.

## • Flexible and Competitive Fees

- **No Filing Fees:** At VTA, there is no separate filing or registration fee required to initiate arbitration, making the initial process more accessible and cost-effective. In contrast, some international arbitration centers impose an upfront filing or administrative fee, increasing initial costs for the parties involved.

- **Competitive Arbitration Fees:** VTA's arbitration fees are structured to align with the economic, investment, and business environment in Vietnam, offering a competitive advantage, particularly for foreign investors looking for a cost-effective arbitration solution in Vietnam.

- **Flexible Fee Structure:** VTA applies a flexible fee structure that considers not only the value of the dispute but also its complexity and nature, allowing it to accommodate a wide range of cases in terms of both scale and complexity.

## Q: Could you elaborate on VTA's initiatives to promote commercial arbitration?

A: VTA has taken several initiatives to promote commercial arbitration:

• **International cooperation:** Vietnam shares a common "arbitration language" with 170 countries under the New York Convention of 1958. This makes collaboration with member states a top priority for us. In 2024, VTA signed 10 Memoranda of Understanding (MOUs) with international arbitration organizations, particularly in China and India, to promote alternative dispute resolution (ADR) in

Vietnam and other member states, especially in Asia.

• **Empowering women:** Arbitration is a flexible dispute resolution mechanism that values parties' agreements, and women naturally excel as arbitrators with their listening skills, empathy, and conflict management capabilities. VTA is focusing on developing female arbitrators through professional projects and providing opportunities for them to play key roles in dispute resolution. We also plan to lead a regional project to connect female arbitrators, lawyers, and legal experts, creating a space for networking, development, and mutual support.

• **Enhancing arbitrator quality:** Currently, Vietnam has around 1,000 registered and recognized arbitrators, but this number is relatively modest compared to developed countries. VTA selectively recruits arbitrators based on clear criteria, including a requirement for candidates to be "dedicated to the profession of commercial arbitration and committed to contributing to its development in Vietnam." VTA encourages arbitrators to attend in-depth training courses both domestically and internationally, such as those offered by AIADR, as part of our strategy to ensure our team can handle disputes according to international standards.

• **Developing foreign arbitrators:** Developing foreign arbitrators: We aim to attract international arbitrators to join VTA's roster, which currently comprises 25% of our total arbitrators, hailing from various jurisdictions like the UK, Russia, China, South Korea, Kazakhstan, Hong Kong, Singapore, Malaysia, Thailand, Cambodia, among others. These foreign arbitrators are actively contributing to VTA's activities.



**Q: Thank you, Mr. Sang, for your detailed and insightful responses. What are your hopes for VTA and the development of commercial arbitration in Vietnam in the near future?**

A: Thank you, Sagar Kulkarni and AIADR for giving me the opportunity to share about commercial arbitration in Vietnam and VTA's role. In the coming years, VTA will continue to strengthen its position, becoming a trusted choice for the Vietnamese business community and international investors in ASEAN and China for dispute resolution through arbitration. Additionally, VTA aims to serve as a connecting point between arbitration centres and the arbitration community in Vietnam and other countries. Through these efforts, we hope to promote arbitration as a dispute resolution method in Vietnam, ASEAN, and China, contributing to economic stability and building trust among nations in the process of global integration.

**Interviewed by**

Mr. Sagar Kulkarni, FCIArb, FAIADR.  
Chairperson - ESC, AIADR





# "ADR IN THE AGE OF GLOBALIZATION: CHALLENGES AMIDST OPPORTUNITIES FOR SOUTH ASIA"

2024



**ADIL NAWAZ**  
University of Peshawar, Pakistan

Adil Nawaz is a final-year law student at the University of Peshawar. He has extensive experience in legal research, climate change law, human rights law, and alternative dispute resolution (ADR). He has written for various platforms, including GreenCampus, Pakistan Lawyer, Lawists-Den, and Reviving Pakistan. He serves as the Head of Legal Research at the university and is deeply involved in promoting legal discourse and awareness. His research focuses on judicial independence, climate change, and ADR. He has interned with the Public International Law & Policy Group (PILPG) in peace negotiations and worked with the Commercial Law Development Program in international commercial arbitration.

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**MANAHIL IRFAN**  
University of Peshawar, Pakistan

Manahil Irfan is a final-year law student at university of Peshawar, keenly interested in environmental law, arbitration, and women's law. She is currently a Green Campus Youth Climate and Education Fellowship Program member and works at the Sarosh ADR Centre. In addition, she serves as the Co-Head of Legal Research at the university, where she is deeply involved in promoting legal discourse and awareness among her peers. She is passionate about fostering a more sustainable and just legal framework, particularly in areas that affect

## Introduction

In today's globalized world, cross-border transactions and international trade have become commonplace, leading to an increase in disputes that transcend national boundaries. Traditional legal remedies in domestic courts often fail to provide timely and efficient relief for such disputes, prompting a rising demand for Alternative Dispute Resolution (ADR) techniques, such as arbitration, mediation, and conciliation. ADR offers a more flexible, private, and cost-effective approach to resolving

legal conflicts, particularly in commercial and civil matters.

Being one of the emerging fast-growing countries in the South Asian region with recently experiencing significant acceleration in the volume and pace of investments in cross-border activities, Pakistan has realized the utility of ADR in dealing with international disputes.

The country has attempted to encourage ADR through domestic statutes such as Arbitration Act 1940, and through its ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. However, Pakistan has a number of issues that may hinder the practice of ADR such as; archaic laws and regulation; a dearth of institutions for legal application and adherence; and societal prejudice towards structured ADR approaches.<sup>1</sup>

In the same way, other countries in South Asia have also integrated ADR into their legal frameworks, including the countries of India, Bangladesh, Sri Lanka, among others. Nevertheless, some overarching concerns, such as the role of judicial intervention, technological restraints, and weak ADR frameworks remain prevalent throughout the region. This article aims to identify the prospects of enhancing ADR systems in Pakistan and other parts of South Asia and assess important legal provisions, case laws, and trends that may determine the future of ADR in the region.

## Background

Even though ADR draws its origin from conventional conflict resolution techniques like the local Pakistan jirga, the incorporation of ADR in contemporary legal jurisdictions in the global attempt in handling international conflicts. As a party to the New York Convention, Pakistan is obliged to recognize and enforce foreign arbitral awards, contributing to the development of international arbitration as one of the most efficient means of resolving disputes for foreign investors and companies.

Nonetheless, the legal regulation of ADR in Pakistan is still a work in progress. Again, the Arbitration Act 1940 remains obsolete with regard to the

current dynamics of business relations and does not conform to modern international arbitration standards. Another feature of arbitration in Pakistan is the ability of judicial intervention in arbitration processes, which ultimately affects the stability and finality of the arbitral awards since the courts of Pakistan enjoy considerable discretionary powers to set aside or modify arbitration awards.<sup>2</sup>

To overcome such challenges, Pakistan has been set on the path of judicial reform and has also begun to look at the possibility of adopting ODR in the light of growing demands of the digital age. However, it is evident that there is much effort that is required to enhance the ADR region in the country both regionally and internationally. In this manner, Pakistan, based on priorities and top successful reforms, can establish itself as a leading country of the region in ADR and create conditions more conducive for national and foreign players.<sup>3</sup>

## Globalization and the Expansion of ADR

Globalization has drastically transformed the economic and legal environments, with trade and investment becoming new and complex arenas for conflict resolution. Arbitration has become one of the most used ADR procedures especially in international commercial disputes as they are easily enforceable and time effective procedures for the determination of disputes. The New York Convention under which Pakistan is a signatory has been instrumental in encouraging arbitration as the awards passed by such forums are easily recognized and enforced.

<sup>1</sup>Pakistan Arbitration Act 1940. Available at: [<https://pakistanlawsonline.com>](<https://pakistanlawsonline.com>)

<sup>2</sup>Hub Power Company Ltd v Pakistan WAPDA, Supreme Court of Pakistan (1997). Available at: [<https://supremecourt.gov.pk>](<https://supremecourt.gov.pk>)

<sup>3</sup>Khan A, 'Arbitration in Pakistan: An Outdated Legal Framework' (2019) Pakistan Arbitration Laws. Available at: [<https://www.pakistanarbitration.org>](<https://www.pakistanarbitration.org>)

Nevertheless, several hurdles exist in the way of Pakistan's legal system to conform to international dimensions of ADR. The case *Hub Power Company Ltd v Pakistan WAPDA* is one of the most unique and notorious that has involved international arbitration in Pakistan. In this case, there was a conflict of interest between Hubco, one of Pakistan's largest integrated energy businesses and the Pakistan Water and Power Development Authority (WAPDA) in regard to some contractual terms. Even though arbitration was recognized as the method of solving the disputes, Pakistani courts intervened becoming the cause of constant postponement of the execution of the arbitral award<sup>4</sup>. This case also depicts the problem of judicial interference in arbitration and demand for changes that could make the ADR functional in Pakistan.

One such country which has been very active in reforming its ADR laws is India, therefore setting the pace for Pakistan and other South Asian nations. India has adopted a modern Arbitration and Conciliation Act 1996; however, concerns on matters done by judicial interference persist. Nevertheless, the further changes to this Act in 2015 and 2019 have been aimed at minimizing the delays and making the process more effective.<sup>5</sup>

It is important not to overlook the increasing significance of ODR in addressing conflicts in the digital environment. Thus, with the development of new technologies, Pakistan is able to use platforms ODR to solve disputes more effectively. However, this will involve a strong capital investment in digitisation and extending the coverage of acceptable degrees of digital literacy to the countryside in particular to increase access to the ODR systems.<sup>6</sup>

### Comparison with International Arbitration

International arbitration, especially in places like Singapore, England, and Switzerland, has turned into a systematic, highly regulated, and predictable method for managing commercial disputes. These

jurisdictions offer a solid legal background with less judicial entanglement and effective enforcement of the arbitration award under the New York Convention

For example, the UK Arbitration Act 1996 recognizes the independence of arbitration processes and restricts the role of courts in interventions only in cases of fraud, or procedural and other violations. This is rather different from the Pakistan Arbitration Act of 1940, under which there is considerable scope for judicial interference, which even nullifies the arbitral process. Likewise, Singapore's International Arbitration Act, which has been widely considered as pro-arbitration, has played a major role in creating a perception about Singapore as an ideal venue for resolution of disputes.

Moreover, the enforcement of the arbitral awards in Pakistan often becomes an issue due to the absence of proper legal structures that are compatible with the international norms and law. Even though Pakistan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the enforcement of such awards is often met with judicial hesitation and procedural complexities. On the other hand, jurisdictions such as Singapore and the UK have well developed systems of enforcement of international arbitral awards and are therefore seen to have better images as arbitration destinations.

Other players like the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) also add more credibility to International arbitration. Such institutions offer a timely and orderly procedure for the redress of grievances, with laid down procedures; a list of competent arbitrators; and other physical tools for the execution of the process. They also handle virtually all types of disputes, including those persons out of investor state treaties under systems such as the International Centre for the Settlement of Investment Disputes (ICSID).

<sup>4</sup>Ibid

<sup>5</sup>*Hub Power Company Ltd v Pakistan WAPDA*, Supreme Court of Pakistan (1997). Available at: [<https://supremecourt.gov.pk>](<https://supremecourt.gov.pk>)

<sup>6</sup> India Arbitration and Conciliation (Amendment) Act 2015. Available at: [<https://indiankanoon.org>](<https://indiankanoon.org>)

<sup>7</sup>UK Arbitration Act 1996. Available at: [<https://www.legislation.gov.uk>](<https://www.legislation.gov.uk>)

Further, the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) have gained reputation for their reliable procedure rules, professional members, and sophisticated technologies in handling disputes. These institutions have come up with arrangements that accommodate eventualities arising from economic lawsuits and even investor-state lawsuits under arrangements like International Centre for Settlement of Investment Disputes (ICSID).

### **Case Law: International Arbitration vs. Domestic Arbitration in Pakistan**

In comparing international and domestic arbitration, a few key case law examples provide insights into how arbitration is practiced in different jurisdictions and the challenges faced in Pakistan: In comparing international and domestic arbitration, a few key case law examples provide insights into how arbitration is practiced in different jurisdictions and the challenges faced in Pakistan:

#### **Hub Power Company Ltd v Pakistan WAPDA (1997)<sup>8</sup>**

In this case, Pakistani energy company Hubco went to an international arbitrator to resolve a contractual dispute with Pakistani state entity Pakistan Water and Power Development Authority (WAPDA). Nonetheless, the Pakistani courts interfere, thereby prolonging the execution of the arbitral award despite the arbitration clause. This case shows how Pakistan continues to face difficulties in recognizing the last word of an arbitration process thanks to legal involvement.

#### **Fiona Trust & Holding Corporation v Privalov (UK House of Lords, 2007)<sup>9</sup>**

This was a leading UK case that addressed the principle of the separability of the arbitration clause, which means that the arbitration clause should be regarded as a distinct contract. This case is a typical

example of how the UK lacks judicial intervention, which confirms the enforceability of the arbitration agreement, even if the main contract is challenged. This decision has significantly influenced the field of international arbitration in terms of enhancing the independence of the arbitration clauses in the commercial contracts.

#### **Karkey Karadeniz Elektrik Uretim AS v Islamic Republic of Pakistan (ICSID Case No. ARB/13/1)**

This case concerned a Turkish company that brought an arbitration claim against Pakistan whereby the company claimed that Pakistan breached the investment protection under the virtually International Centre for the Settlement of Investment Disputes Convention. The ICSID tribunal decided the case in favor of Karkey and granted an adequate amount of damages. This case clearly underlines Pakistan's compliance with international standards of arbitration and the necessity of a strong framework in connection with investment treaty disputes.

#### **BG Group v Republic of Argentina (US Supreme Court, 2014)<sup>11</sup>**

To illustrate this, the US Supreme Court affirmed an award in favor of a British company, BG Group, against Argentina showing a commitment to international arbitration awards by the US judiciary. This decision demonstrated how international courts defer to the enforcement of arbitration awards and minimize judicial oversight and interference—something that holds less currency in South Asia, where local courts meddle in arbitration cases.

<sup>8</sup>Hub Power Company Ltd v Pakistan WAPDA, PLD 1997 SC 641

<sup>9</sup>Fiona Trust & Holding Corporation v Privalov [2007] UKHL 40

<sup>10</sup>Karkey Karadeniz Elektrik Uretim AS v Islamic Republic of Pakistan (ICSID Case No. ARB/13/1).

<sup>11</sup>BG Group v Republic of Argentina, 572 U.S. 25 (2014).

## Challenges Facing ADR in South Asia

South Asia and Pakistan in particular, experience numerous challenges that limit the expansion of ADR in the region. The most prominent problem is the relatively obsolete Arbitration Act 1940 in Pakistan, which does not allow for efficient resolution of modern commercial disputes. Moreover, the courts frequently intervene in arbitral procedures, which contradicts the purpose of arbitration—the delivery of a final and non-appealable decision made beyond the courts.

The same situation exists in Bangladesh where the legal system is even more archaic and arbitration is considered more or less corrupt. The country under discussion is India, and while the adjustments in the Arbitration and Conciliation Act have occurred rather recently, the problem of judicial interference remains an issue. The *Shin-Etsu Chemical Co Ltd v Aksh Optifibre Ltd* is a case that illustrates this problem, where the Supreme Court of India maintained the importance of not interfering with arbitration.<sup>12</sup>

Technological constraints are the other issue that cuts across the region in the development of ICT solutions. Lack of facilities to support the ODR platforms remains widespread, especially in many rural regions where the traffic is relatively low. In addition, the low levels of accessed digital literacy continue to hinder the use and efficiency of ODR.

Lack of support towards formalized ADR processes is an additional cultural barrier experienced in the various organizational structures. In Pakistan, traditional forms of justice, particularly *jirgas*, remain the major sources of resolving the disputes especially in the rural areas. Although these mechanisms may prove efficient in offering prompt solutions, they do not offer procedural fairness and protection as applied in formal ADR procedures.<sup>13</sup>

## Opportunities for Strengthening ADR in Pakistan

Despite these challenges, there are numerous opportunities to strengthen ADR in Pakistan. One critical area for improvement is the modernization of the legal framework. For this purpose, a draft bill called Arbitration Bill 2024 has been proposed by the Parliament of Pakistan which has not yet been approved, however it contains many such provisions which would boot the ADR system in Pakistan the goal of the proposed bill, is to harmonize Pakistan's arbitration laws with international norms, particularly the UNCITRAL Model Law. It better call guy sitting in the shop maybe yeah higives parties more authority over arbitrator selection and procedural norms by improving party autonomy. Separating from the current reliance on court aid, the bill also introduces interim measures that arbitral tribunals can issue with limited judicial interference. Moreover, by limiting the expansive interpretation of public policy, the measure facilitates the implementation of arbitral rulings and increases the difficulty of contesting them. In addition, the proposed changes mandate that arbitrators disclose conflicts of interest and meet certain standards. By updating its arbitration laws, Pakistan can enhance the credibility and efficiency of ADR within its jurisdiction.<sup>14</sup>

Additionally, investing in digital infrastructure to support ODR platforms will be crucial for the future of ADR in Pakistan, particularly as the country moves toward greater digitalization in the legal sector.

By combining official ADR procedures with traditional conflict resolution techniques like *panchayats* and *jirgas*, cultural adaptation of ADR processes presents Pakistan with a significant opportunity

<sup>12</sup>Sen S, 'Cultural Challenges to ADR in South Asia' (2020) Asian Dispute Resolution Journal. Available at: [<https://www.asiandrjournal.com>] (<https://www.asiandrjournal.com>)

<sup>13</sup>Pakistan Arbitration Act 1940. Available at: [<https://pakistanlawsonline.com>](<https://pakistanlawsonline.com>)

<sup>14</sup>Khan A, 'Arbitration in Pakistan: An Outdated Legal Framework' (2019) Pakistan Arbitration Laws. Available at: [<https://www.pakistanarbitration.org>](<https://www.pakistanarbitration.org>)



Because they're easy to get and well-known, these regional customs, which have strong roots in Pakistani culture, are preferred in many rural communities. Pakistan can establish a system that is both procedurally sound and culturally appropriate by incorporating them with formal procedures such as arbitration and mediation. ADR's use will be further encouraged by raising awareness of it and making it more accessible, particularly in rural areas. This will guarantee that communities have access to reliable, efficient, and successful conflict resolution methods.

### Conclusion

Globalization has made it imperative to develop efficient dispute resolution mechanisms, especially for resolving cross-border conflicts. ADR, particularly arbitration and ODR, has emerged as a critical tool in this regard. However, Pakistan, like many other South Asian countries, faces several challenges in implementing ADR effectively, including outdated legal frameworks, judicial interference, technological barriers, and cultural resistance. By addressing these obstacles through legal reforms, technological advancements, and cultural adaptations, Pakistan has the potential to significantly improve its ADR framework. This would position the country as a regional leader in cross-border dispute resolution, attracting both domestic and international business interests. Pakistan must seize these opportunities to ensure the availability of efficient and reliable dispute resolution mechanisms, which are increasingly essential in today's global economy. Reforms to the Arbitration Act, investment in digital infrastructure, and the blending of traditional and formal ADR methods will be critical steps toward achieving this goal.



## Intern's View

### Yuzheng Guo (Jennifer)

Time has passed in the blink of an eye, and it's hard to grasp that my three-month internship at the Asian Institute of Alternative Dispute Resolution (AIADR) has come to a close. The thought of leaving behind such an enriching experience and parting ways with the incredible people I've had the privilege to work with fills me with deep gratitude and a heavy heart. I am sincerely thankful to all my colleagues for their unwavering support and kindness throughout this journey.

First and foremost, I would like to extend my deepest gratitude to Datuk Professor Sundra Rajoo, President of AIADR, for offering me the invaluable opportunity to intern with the AIADR Secretariat. I am especially thankful to Ms. Cheng Wan Yng, who not only gave me the chance to thoroughly explore ADR-related procedures but also helped me gain a deeper understanding of the rules governing expert witnesses. My sincere appreciation also goes to Mr. Jashveenjit Singh, whose professional guidance and invaluable advice on legal research, drafting, and writing have been instrumental to my growth. Moreover, I am truly grateful to Mr. Jonathan for providing me with hands-on experience in procedural work and involving me in intellectually stimulating moments, such as assisting in AIADR's mediation competition. These experiences have not only equipped me with invaluable practical skills but have also left a lasting impact that I will carry forward in all my future endeavors.

During my internship at AIADR, I was entrusted with diverse tasks and responsibilities that signifi-

cantly broadened my skill set and enhanced my personal growth. At the outset, I was tasked with translating the AIADR ADR Training Course Module. Before this, my knowledge of ADR was only confined to competitions and theoretical courses. The translation process not only significantly sharpened my English skills, but also steadily immersed me in the intricate world of ADR. I acquired substantial knowledge of both the procedural and substantive dimensions, further enriching my understanding of arbitration and mediation through comparative analysis.

Additionally, I had the chance to draft a speech on preparing Extension of Time (EoT) Claims and the importance of the SCL Delay and Disruption Protocol. At first, this was a completely unfamiliar area to me, and I found it quite challenging due to the scarcity of online resources and the complexity of the subject. However, by carefully breaking down the issues, conducting a thorough analysis, and engaging in extensive research, I gradually developed a solid understanding of the topic and was able to complete the task successfully. What touched me the most was that, despite feeling I hadn't performed as well as I hoped, however, Mr. Jashveenjit Singh encouraged me when receiving the draft. His encouragement gave me the motivation to keep pushing myself and working harder

Besides drafting legal documents and speeches, I also helped organize the AIADR Mediation Competition 2024. Before this, whether in the CIETAC Cup or Jessup, I always participated as a competitor, with little insight into the behind-the-scenes work. The numerous pre-competition trainings revealed the staff's meticulousness and dedication, which deeply influenced me. Moreover, this was my first time being part of a competition's organizing team, and the experience significantly improved my English communication and organizational skills through interactions with participants and judges. I also learned how to manage unexpected situations and emergencies. Observing each round and hearing the judges' feedback reminded me of my own shortcomings as a competitor, giving me the opportunity to reflect and improve continuously. The most memorable part for me was the warmth during the group photos after each round, when everyone exchanged friendly greetings, creating a truly heartwarming atmosphere.

To summarize, my three-month internship at AIADR has opened doors to the world of law and ADR, providing me with invaluable knowledge and practical experience that will significantly shape my academic and career paths. This irreplaceable experience has played a pivotal role in my personal and professional growth. I will always cherish the care and support I received here. With sincere gratitude to AIADR and its wonderful team, I wish them continued success and even greater accomplishments in the future.



# Upcoming Events.

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## **18 February 2025**

Bridging Arbitration Practices Between Uzbekistan and Malaysia:  
Navigating Frameworks and Emerging Opportunities

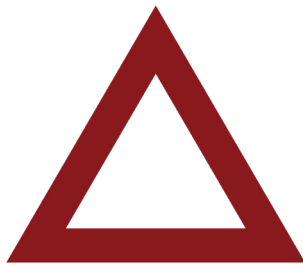
## **February 2025 (TBA)**

AIADR & UNGCMYB Legal Sustainability Practitioner Training Course



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Next Cut-off Date for Submission of Contributions:

Newsletter: 1st January 2025

Journal : 30th December 2024

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eISSN 2735-0800

