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PROMOTING ASIAN ECONOMIC DEVELOPMENT BY DESIGNING CULTURALLY CONSCIOUS ALTERNATIVE DISPUTE RESOLUTION (ADR)

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Abstract: It is critical to develop an Asian model of alternative conflict resolution that takes Asian traditions into account. Simply adopting Western standards will be less likely to accommodate Asians' distinctive approach to conflict resolution. If international business mediation or arbitration is sensitive to cultural requirements and expectations, culture-related issues may be avoided.

Keywords: Economic Development; Alternative Dispute Resolution; Asia.

1. Introduction

The growth of a market-oriented economy and the rise of cross-border business activity have necessitated a greater level of cooperation among Asian nations in resolving commercial disputes. Regardless of how hard the parties try to prevent it, a commercial partnership may end in conflict. When disagreements occur, the challenge of resolving them becomes a concern. Because the contractual parties originate from different nations with distinct legal systems, this is a complicated problem.

It's tough to choose which legal system to utilize since each nation has its own legal system that differs from others. When an Indonesian businessman develops a commercial connection with a Korean businessman, for example, a disagreement develops in the midst of the contract. To settle the disagreement, several legal problems must be resolved, including what kind of dispute resolution mechanism should be used, whether the dispute should be resolved in Indonesia or Korea, and

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how the judgment will be implemented. The Indonesian side is highly likely to select Indonesia as the location for the trial and Indonesian law as the applicable legislation for conflict settlement. The same may be said about North Korea's ruling party. This is because they are aware of how their country's legal system safeguards their rights.
Court litigation, as a means of settling disputes, entails the complexity of court procedures, which is incompatible with business requirements. The settlement of a disagreement may be delayed by a complicated procedure. It has a secondary effect: the longer it takes to settle a disagreement, the more money the party will spend. Furthermore, in certain nations, such as Indonesia, foreign court decisions are not always relevant. In the instance of the aforementioned example, because the Indonesian court does not recognize foreign decisions, if the matter is decided in a Korean court and the Korean side wins, the Indonesian court's ruling will not be enforced.
Furthermore, the adversarial nature of litigation may increase tensions between contracting parties. This is because, in litigation, each side would look for another party's error to use against them and persuade the court to support their viewpoint. As a consequence, once the disagreement is settled, the parties' relationship may come to an end, and they may be unwilling to engage in future economic operations together. Due to these issues, it is generally assumed that litigation is not the ideal method for resolving business disputes, particularly those involving international parties.
Discussion, mediation, conciliation, and arbitration are all examples of Alternative Dispute Resolution (ADR), which has long been seen to be a more successful method to settle international commercial disputes than litigation. Asians have a long legal tradition of using consensus-building methods like negotiation and mediation to resolve trade conflicts.
Negotiation and mediation not only offer a quick, easy, and cheap settlement procedure, but they also adhere to the Asian ethos of maintaining societal peace. This is because, when it comes to settling conflicts, discussion and mediation encourage mutual collaboration and understanding.
Recently, there has been a push to adopt the "international ADR system," which is based on a global perspective. This is common in mediation and arbitration, for example. “The Hong Kong Mediation Council, the Indonesian Mediation Centre, the China International Economic and Trade Arbitration Commission, the Hong Kong International Arbitration Centre, the Japan Commercial Arbitration Association, the Kuala Lumpur Regional Centre for Arbitration, the Indonesian Arbitration Centre, and the Singapore International Arbitration Centre” are among the Asian countries that have established mediation and arbitral institutions.
In general, however, Asia is not a popular location for alternative conflict resolution. Singapore and Hong Kong are the only Asian nations with a strong reputation for

settling international commercial disputes. Their mediation and arbitration center is well-known among business leaders all over the globe. Despite the fact that there are trained and experienced conflict resolution practitioners, Singapore and Hong Kong's ADR systems have a high reputation due to government and court backing.

To build a robust economy and attract foreign investment, Asian ADR systems need not only modernization but also cultural understanding. Modernizing the ADR system would certainly improve the security of international investors conducting business in Asia, while ADR that is culturally sensitive will benefit Asian parties. A good conflict resolution system balances the needs of both sides. As a result, each party to the disagreement may be certain that they will be handled impartially and that the legitimate rights shall be adequately safeguarded.

The study suggests that relying only on an international strategy for ADR would benefit Asian nations less. Rather, the ADR system should conform to Asian customs in order to best achieve a resolution and preserve commercial relationships. The main goal of this study is to create a model of ADR mechanism for Asia that respects Asian traditions while still meeting the security needs of Western investors. It also examines what Asian governments, ADR institutions, and legal academicians strongly encourage settling international business disputes through the exercise of ADR in Asia.

2. Dispute in Asian context

Dispute resolution organizations are typically established by each nation to represent their unique cultural ideas and traditions. As a result, it is essential for foreign investors to consider the cultural environment in which their companies operate. The cultural disparities between Asian and Western perspectives on conflict resolution pose significant problems for Asians. Misunderstandings between Asian parties and their foreign business counterparts often result in irreparable commercial relationships.

Despite the fact that each Asian nation has its unique culture, they all have one thing in common: they want to avoid confrontation. Confucianism, which underpins Chinese, Korean, Hong Kong, Singaporean, and Japanese views and beliefs, despises the impression of court fights since it prefers to reach an agreement while maintaining peace (Hampden-Turner, Peverelli & Trompenaars, 2021). Other Asian nations are influenced by Confucianism because they emphasize mutual understanding and strive for consensus-based solutions. Indonesia and Malaysia are examples of this. The indigenous cultures of these nations accept musyawarah, which is a consensually based dispute resolution process; many communities and institutions used this decision-making and dispute-resolution method (Bagshaw & Stud, 2017).

ADR has also been used in India for a long time. Many Hindu communities have a panchayat judicial system, which comprises a penal of five members that resolve and adjudicate issues concerning community welfare and complaints. Such a panchayat system is still in use in Nepal, Pakistan, and Bangladesh. The Nepalese have also created their own mediation system to deal with problems such as forest management, marriage, and economic transactions. Pakistan and Bangladesh, on the other hand, concentrate their mediation efforts on family and domestic conflicts (Jones, 2020).

Those Asian nations' lawful customs are diametrically opposed to the Western concept of the rule of law. When it comes to business conflicts, Westerners are considerably more litigious and claim-conscious. Furthermore, they think that the legal way of settling international business conflicts is a feasible choice because they are pleased with the concept of a solid legal system (Crane, Matten, Glozer & Spence, 2019). As a result, the adversarial approach to conflict resolution is a widely utilized technique. Unlike Westerners, Asians did not consider legislation to apply to the private realm of trade, which was left to the discretion of the persons concerned (Tamney, 2017). As a result, when it comes to business conflicts, they prefer to use a voluntary and consultative dispute settlement process built on synchronization, suppleness, and common gain (Amsler, Martinez & Smith, 2020). These characteristics represent traditional Asian ideals.

A statement of intent to utilize legal action to settle a disagreement is seen as a declaration of war by Asians (Fravel, 2011). Using legal action to settle a commercial disagreement will be seen as an effort to sever the connection. From the perspective of Asians, the side that takes a dispute to court to resolve it does not want reconciliation; rather, it is just. The use of alternative dispute resolution (ADR) rather than judicial litigation is seen to be beneficial in developing strong commercial relationships with business partners from Asia. This is in contrast to Western thought which prioritizes justice and truth above concord via judicial litigation.

Alternative Conflict Settlement, or ADR, is a word that is mostly named to cover a broad range of disagreement determination mechanisms that are considered to be out of court. The purpose of the ADR process is to decrease or eliminate tautness among opposing revelries whereas their issues are being resolved. ADR also seeks to aid community development by enabling members of the community to settle conflicts via two-way conversation. Negotiation, conciliation, mediation, and arbitration are the four types of ADR systems.

The ADR system is intended to achieve a broad range of goals. Some of these objectives are directly linked to enhancing the administration of justice and resolving specific conflicts. This may be used, for example, to establish a less expensive and faster dispute settlement procedure. This aims to make the system more cost-effective and dependable.

3. Defining Alternative Dispute Resolution

The ADR system is intended to achieve a broad range of goals. Some of these objectives are directly linked to enhancing the administration of justice and resolving specific conflicts. This may be used, for example, to establish a less expensive and faster dispute settlement procedure. This aims to make the system more cost-effective and dependable. As a result, the accessibility of an ADR structure seeks to lower the amount of resolving conflicts while also producing more gratifying and long-lasting outcomes. It's critical to build a system that caters to the interests of its users.

Other development objectives are connected to other goals, such as economic restructuring or community stress and conflict management. Effective dispute resolution processes are required to fulfill economic development objectives when court delays or corruption obstruct foreign investment and economic restructuring.

3.1 Alternative Dispute Resolution (ADR) in Asia

Some argue that "Asian and Western" trade dispute resolutions are comparable in that they both aim to fulfill the opposing party's "expected interests". This implies they place a strong emphasis on the case's predictability. There is, however, a difference to be made in terms of what constitutes predictability. For Asians, predictability implies that the disagreement will be resolved. In most cases, the conclusion will serve as a foundation for maintaining the commercial partnership. For Westerners, predictability entails legally valid results that benefit the winning side, independent of the parties' future relationship.

Asian conflict resolution methods and processes vary from those used by Westerners as a result of this difference. For example, mediation, negotiation and conciliation have long been used to resolve disputes.

For Asians, arbitration or other forms of forced adjudication are highly favored for resolving business conflicts. This is because, if successful, they are more likely to create a foundation for the business relationship to continue (Donà, 2019). Nonetheless, for the sake of satisfying universal expectations, negotiation is increasingly widely accepted throughout Asia as a means of resolving disputes. Negotiation, mediation, conciliation, and arbitration are the four options for settling conflicts in Asia today. Each of these techniques for resolving disputes may be implemented by government programmes, rules, or non-governmental groups (NGOs).

3.1.1 Negotiation

Negotiation is a kind of out-of-court conflict settlement in which opposing parties or their representatives assemble and discuss to determine their issues having no

participation of a third party. This technique establishes a framework for encouraging and facilitating dialogue among groups. The outcome of a successful negotiation is referred to as an agreement. The agreement binds both parties on a moral level.

3.1.2 Reconciliation

Conciliation is a form of conflict resolution in which two disputing parties enlist the help of a third party who acts like an arbitrator. The arbitrator acts as a mediator and adviser in the conflict resolution process. The arbitrator may offer settlement terms recommendations and provide advice on the issues. The function of the conciliation may be used to urge the parties to achieve an agreement. If necessary, the conciliator may be asked to submit legal information. This is advantageous in ensuring that the agreement made adheres to the laws and lawful structure. Court-linked mediation is an out-of-court conflict resolution process that may be initiated by a party to a lawsuit or a judge's recommendation (Andrews, 2018).

3.1.3 Mediation

Mediation is described as "the voluntary involvement of an acceptable third person who has limited or no authoritative decision-making authority but who assists the concerned parties in achieving a mutually acceptable resolution of matters in dispute" in a negotiation or a conflict. Mediation is a basic process that attempts to resolve a civil dispute by a mutual compromise between parties.

The third-party (mediator) is only a facilitator, assisting both sides in communicating and coming to an agreement. There are two types of mediation programmes for family and civil disputes: independent and court-based mediation. Asia recognizes court-linked mediation, in which the court intervenes and controls the mediation process in addition to voluntary mediation agreed upon by the parties. The participation of courts in the mediation process, as well as the framework of the mediation agreement, are two of the most significant elements of mediation technology in Asia. The court will not interfere in the great majority of mediation proceedings. The court, on the other hand, may sometimes interfere in the civil mediation process. It also has a significant role for you to perform.

The function of the mediator is the second distinction. It is a widespread misconception that the parties must achieve agreements on their own in mediation procedures. In Asia, however, when the parties are unable to reach an agreement, a mediator has the power to make a decision. Furthermore, the mediator has the power to examine the agreement, and if they deem it inappropriate, the mediator may either end the mediation process, treating the case as if no agreement was made, or issue a judgment in place of an agreement.

A mixture of mediation and arbitration may be characterized as the Asian mediation system (med-arb). This is because if the parties are unable to reach an agreement, the mediator must make a decision that is not binding on both parties. This job is comparable to that of an arbitrator.

3.1.4 Arbitration

Arbitration is a process in which a dispute is resolved by the judgment of an arbitrator or panel of arbitrators selected by the disputants via a transcribed contract known as a negotiation section. Contracting parties may regulate the arbitral venue, arbitrators, processes, and relevant legislation via an arbitration provision. Once the parties have signed a formal arbitration agreement, they do not have the right to pursue a resolution via the courts, unless the court is obliged by national laws to refuse to settle the dispute in extremely restricted circumstances.

Arbitration has grown in popularity over the past decade, although being less preferred than other ADR procedures. "Korean Commercial Arbitration Board (KCAB), Badan Arbitrase Nasional Indonesia: Indonesian Arbitration Institution (BANI), Japanese Arbitration Association (JCAA)," and others have been formed throughout Asia.

Arbitration is advantageous because it produces a legally binding judgment with the same impact as a court decision but without the formalities of a court case. Furthermore, since the parties may decide when the arbitrator must deliver a judgment, time and expenses can be reduced. Furthermore, unlike in a trial, when the judge has complete authority over courts proceedings, the disputants in negotiation are free to choose their own arbitration venue, arbitrators, and even tailor the arbitration procedures to their particular requirements.

Arbitration may be used to settle commercial investments, joint ventures, construction, advertising, transportation, shipping, real estate recruiting, intellectual property, and insurance issues, to name a few. In comparison to court action, the time it takes to reach a judgment in arbitration is far shorter. Domestic arbitration in Korea often takes four months to complete, whereas foreign arbitration typically takes five months. 9 In contrast, resolving a disagreement in court usually takes two to three years. Furthermore, there is still time to file an appeal against the court's judgment. As a consequence, the time it takes to enforce the judgment will be lengthier and more difficult. In comparison to litigation, it is clear that resolving a disagreement via arbitration is not only quicker but also simpler.

3.2. ADR's Challenges in Asia

It is undeniable that significant disparities between Asian and Western nations might cause an imbalanced stance when it comes to resolving conflicts. Asian nations,

which are mainly emerging economies, are naturally at a detriment in comparison to their industrialized counterparts. In terms of finance and experience, commercial organizations and corporations n advanced nations are competent in various ways. Both sides of a dispute must be treated equally under ADR processes. However, there is a disparity between Asian and Western nations. This is why, in the age of globalization, it is critical for commercial conflict practitioners to consider national socioeconomic characteristics when resolving disputes (Crane, Matten, Glozer, & Spence, 2019).

Foreign investors in many Asian nations are still concerned about dispute resolution and the implementation of arbitral decisions. China, Indonesia, Thailand, and Vietnam are examples of this. Vietnam has tried to create a conflict resolution mechanism where there was none a decade ago. The fact that the kind of enforcement available under Vietnamese law is unclear and may not be feasible is nevertheless a source of concern for international investors (Saenger, Torero, & Qaim, 2014).

In China, one of the most challenging and unpredictable elements is the execution of arbitral judgments. Local courts are often unable to enforce arbitral judgments due to the intense burden from local administrative authorities. When the Court fails to aggressively enforce the judgment, even though enforcement is not explicitly refused, the practical impact is the same. Even when the Court issues judgments mandating the implementation of arbitrarily verdicts, such decrees are just a working paper that rely on the sometimes elusive cooperation of local authorities to be carried out (Soloch, 2020). In Indonesia, excessive court participation is also an issue. Domestic protectionism, corruption and manipulation by local parties to conflicts, non-cooperative tendencies, domestic courts' failure to comprehend the spirit of private international dispute settlement, ineptitude in handling cases, and danger are all possible reasons, unable to understand international arbitration procedures and treaties, such as the "New York Convention" (Chowdhury & Rahman, 2019).

The wide reviewability of arbitral judgments by Thai courts, according to Thailand's current arbitration laws, becomes a significant issue. This is because such policies force the disagreement to go to court, which was intended to be avoided. This goes against the aim of removing ambiguity from the effect of national laws and policies by choosing a provision in the legislation. As a result, Thai courts will examine the matter in line with Thai law.

Furthermore, the arbitration system of Thailand forbids several foreigners from taking part in the proceedings. Because of the worldwide consistency of its processes and the freedom to choose their own attorneys to fight on their behalf anywhere in the globe, international arbitration is very appealing to foreign investors. This appealing aspect is lost due to the unavailability of foreign attorneys to participate in the arbitration procedure. As a result, deciding to adjudicate in Thailand must be taken lightly. It necessitates that investors from foreign countries evaluate the

importance of different variables and balance the possible advantages against the dangers (Blessing & Onoja, 2015).

The main mediator in court-annexed mediation is typically a judge. In a framework comparable to a judicial settlement conference, judges may act as mediators for cases they handled in court. They may also form a three-member mediation committee (made up of non-judicial commissioners with subject-matter expertise and a presiding judge); but, they will maintain a close watch on the case regardless.

The detail that judges are the primary arbitrator poses many questions. First, a judge is unsuitable as a mediator since a judge's primary responsibility is to determine cases by applying the law to the facts, not to mediate. A mediator's function is comparable to that of a facilitator or negotiator. The mediator's function evolves during the mediation process; whether anyone serves as an administrator, instructor, clarifier, promoter, facilitator, and interpreter. Secondly, the judges in Asia have limited chances to study or be educated in the responsibilities and abilities of a mediator. The mediation commissioner's position is substandard. This is due to the fact that in Asia, the criteria for selecting a mediator commissioner are too amorphous.

4. Alternative Dispute Resolution and Foreign Investors

Despite Asia's present economic crisis, more foreign (mainly Western) investors have promised to invest in the area during the last decade (Renard, 2015). Such indication demonstrates the importance of Asia to Westerners. Due to Asia's economic significance, it is certain that Asia has negotiating power with international companions.

Some Asian nations recognize different types of foreign investments that a foreigner may make in the region. Contractual joint ventures, equity joint ventures, and wholly-owned foreign businesses are examples of common foreign investments. A fully foreign-owned business is one in which foreign investors control 100% of the company.

Foreign investors who contract with state-owned and collectively-owned businesses may form a joint venture. State-owned companies are businesses that are owned by government agencies such as ministers and commissioners. Their funds are provided by the central government in order to profit financially. Government agencies run state-owned businesses, which are separate legal entities (Wang, 2014).

Number of things to consider; impact whether or not foreign investors make investment choices this includes things like whether or not the selected country's dispute settlement system is reliable. One of the criteria is if the selected country is a signatory to a treaty or convention on dispute settlement procedures. The significance of this is to guarantee that the rights of foreign investors are properly

safeguarded. This implies that foreign investors may choose a venue or method via which they will resolve future issues.

Arbitration may have an impact on investment decisions. This is due to the fact that arbitration offers a neutral venue for stockholders to administer the legal norms devoid of having to go through a domestic court. As a result, a nation seeking foreign investment should have strong arbitration rules, as well as an arbitration organization and arbitrators. This implies that having a good alternative dispute resolution system is a good way to attract international investment. It is clear that investment levels and conflict resolution procedures are linked.

Furthermore, international investors are concerned about the arbitral award's enforcement (decision). As a result, it is essential to ratify international treaties like the "New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)". The contract guarantees the forum's fairness and impartiality, which promotes adherence to the rule of law. The treaty expects that stockholders to become increasingly aware of the advantages that treaty arbitration may provide, both when structuring initial investments and when dealing with issues that emerge afterwards.

The involvement of the domestic court system is another consideration. The integrity of the investment treaty arbitration procedure may be aided by the domestic judicial system. This connection is critical in boosting investor confidence in making investment decisions in a certain nation. This is because, under the New York Convention, a local court has the authority to determine whether an arbitral judgment may be executed in that nation. This is dependent on whether the reward is in violation of the country's national policy. According to the agreement, if the district court determines that the decision is not in the public interest, it will not be imposed (Greenberg & Goldstein, 2017).

An excellent inducement for foreign investment is an "Investment Dispute Settlement Treaty"; as a result, Asian nations must continue to weigh the advantages and disadvantages of this new approach to dispute resolution in order to guarantee that it promotes economic, social, political, and legal development.

4.1 Do Asian countries meet such criteria?

In light of the aforementioned criteria, this section of the study will examine whether the Asian ADR system has addressed them. Since the 1990s, as Singapore and Hong Kong acquired enviable problems and reputations, they have been excluded from this section's debate.

4.1.1 Model Law Adoption into National Law

Various Asian nations have created and designed ADR institutions and systems by themself. These initiatives demonstrate a growing understanding of international

business dispute resolution as a way of boosting trade and investment in Asia. India and Japan are both developing countries. Many other countries, including Vietnam, have enacted new commercial arbitration laws based on the "UNCITRAL Model Arbitration Law". These new rules offer parties greater flexibility and allow for less judicial intervention in international arbitration than in domestic arbitration, thus improving international business mediation and arbitration (Ribeiro, & Teh, 2017).
Though many Asian nations have not fallen behind as a result of adopting the model legislation, there are still certain problems in the area of arbitration. Various reasons, including cultural, legal, institutional, educational, and infrastructural, may be blamed for such problems.

4.1.2 Treaty Ratification

The "New York Convention" and other international arbitration accords have been adopted by several nations, including Indonesia, Malaysia, China, and South Korea (Bermann, 2017). These states agree to enforce arbitral judgments issued beyond their boundaries if the state issuing the award is also a signatory to the "New York Convention". As a result, any arbitration decision rendered in one of these nations may be implemented in any other country that has signed the agreement.
The New York Convention addresses two key aspects of international commercial arbitration: the parties' independence, which allows parties to international commercial transactions to devise dispute resolution procedures, and mechanisms that are inconsistent with national law and practice, and the basis for arbitral awards to be based on these procedures and mechanisms. It is widely accepted and implemented in nearly all of the world's main trade nations (Moses, 2017).
Despite the fact that significant efforts have been made to update ADR laws and organizations, dispute resolution in certain Asian nations continues to be problematic. For example, several "New York Convention" signatory states have failed to endorse the Convention via independent regulation. A systematic mechanism to direct courts in enforcing international arbitral judgments has been the most frequent cause (Zeynalova, 2013). This situation demonstrates that just modernizing international ADR rules does not guarantee that Asia will become a desirable location for resolving cross-border business disputes. As a result, Indonesia's, Japan's, Vietnam's, Thailand's, and Malaysia's international business partners still choose to resolve their issues outside of those nations.
Some changes, such as the creation of a proper infrastructure consisting of educated, trained, and experienced ADR specialists and professional judges, should be implemented to address these issues. These specialists must be aware of the conflict culture. Many Asian nations, however, continue to fall behind in these areas. Furthermore, an utmost Western depositor does not consider Asian customs while

establishing a business or resolving disputes with Asian competitors. As a consequence, the disagreement is intensifying, the business connection is shattered, and a solution is impossible to reach.

In the worldwide business sector, knowing and understanding a country's culture will pay off well. No society can expect development and success from cross-border economic operations unless its cultures are enlightened. On the other hand, no worldwide business community confidence can be anticipated without the development of effective dispute resolution procedures that match international standards. As a result, a country's economic growth prospects, particularly in emerging countries, are bleak.

5. Improve Asian ADR by developing culturally conscious dispute resolution

If Asian nations want to resolve conflicts with international business partners in their own countries, they must strengthen their ADR system. Despite Asian nations' efforts to modernize ADR laws and sign treaties, international investors should be aware of the culture in which their company is conducted as well as the culture in which disputes arise and are handled. Those joint efforts would be mutually beneficial to both sides.

5.1 What is Culturally Conscious Dispute Resolution, and how does it work?

"A collection of shared and lasting meanings, values, and beliefs that characterise national, ethnic, and other groups and guide their behaviour" is how culture is defined (Lucena & Popadiuk, 2020). Because a significant percentage of possible cross-border agreement failures are caused by negotiators or mediators who are unable to collaborate and communicate effectively across cultural differences, knowing culture is important for dealing with disputes (Apollon, 2014). As a result, foreign organizations working with Asians must be aware of Confucianism's roles in China, Korea, and Japan, as well as the functions of musyawarah in Malaysia and Indonesia and Panchayats in India.

Asian nations seem to have transitioned from informal dispute resolution traditions to formal Western norms and principles such as “UNCITRAL Model Law” and the validation of the “New York Convention and the International Center for Settlement of Investment Disputes Convention”. It should be emphasized, however, that many Asian nations still adhere to their traditional traditions when it comes to conflict resolution (Ramsbotham, Miall & Woodhouse, 2011).

Practitioners of alternative dispute resolution must not only be familiar with international norms of conflict settlement but also understand and respect the cultures of the parties and the jurisdiction in which the issue will be handled. Simply understanding international laws will aid in the search for a solution. The settlement procedure and its result, however, may not provide the final advantage if the local

legal culture is not understood. Every conflict resolution practitioner must understand that no lawful philosophy operates in a similar perspective from one state to other. As a result, practitioners must research how disputes are characterized, interpreted, handled, and resolved across different legal cultures. If the local legal culture is acknowledged, a suitable conflict resolution strategy that is effective and efficient for the community will be implemented quickly.

The similarities that the parties share will become apparent by examining the cultural differences among them. As a consequence, those engaged in resolving the conflict will find a mutual base to be able to create a robust structure of ADR to achieve the best possible outcome for all sides. In a cultural setting, the benefit of alternative conflict resolution is that it analyses the benefits that underpin the disputant's views to be able to assess each side's needs, worries, and aspirations.

5.2 What Are the Differences Between Asians and Westerners in Certain Aspects?

Asians see commercial relationships with partners as a social connection, whereas Westerners perceive them as a lawful partnership. As a result, while writing a contract, indistinguishable wording is often required for Asians to guarantee agreement on sensitive topics. Ambiguity is seen as a helpful tool for explaining conflict while also fostering common ground and trust. For Westerners, on the other hand, uncertainty is seen as a sign of weakness. Westerners may utilize ambiguity as a weapon against the other side. Asians value flexibility, while Westerners value firm agreements. Westerners are prone to focusing on processes and seeing conflicts and discussions as normal, unavoidable, and even helpful. Asians are more likely to eschew legalism in favor of community "harmony" and agreement (Ma & Tsui, 2015).

In Asia, the prevailing legal culture is one of avoiding formal and legalistic processes. Every disagreement will be addressed in a group setting, with the ultimate goal of reaching a consensus. Asians despise confrontation and often threaten the other side in a disagreement. As a result, winning the lawsuit isn't the most important goal. Rather, preserving business relationships and reaching an agreement are the primary objectives. As a result, mediation and conciliation are favored over arbitration since they may help to build agreement and preserve the working relationship (Deason, 2015).

On the contrary, Western business partners, operate on totally diverse ideas. "Start with legally enforceable promises encompassing a broad variety of problems," for example, is the American method (Kraakman, 2017). The adversarial approach, which takes the shape of a court fight, is widely recognized. The primary goal of this

approach is to win the lawsuit and reclaim legal rights. It makes no difference that the result is the termination of the commercial partnership.

Privacy is an important element of Asian commercial dispute resolution customs because of their relationships with their business partners. Even while Westerners appreciate privacy, Asians place a higher value on it. A disagreement that is publicly proclaimed may be considered a combat. It is regarded improper to express one's differences in public since it is considered a breach of one's personal dignity.

A difficulty may emerge if foreign business partners do not regard Asian culture. Most of the businessmen from Asia are well-versed in Western business techniques. Furthermore, they are aware of what their business rivals anticipate in terms of legal and contractual functions. This does not, however, imply that Asians embrace all Western organizations' techniques and standards without reservation. This implies that Western business procedures and expectations need to be adapted to Asian practices and expectations to some degree.

In order to match worldwide norms, Asian nations have updated and modified their ADR laws. In return, Asia needs alternative conflict resolution methods to the Western model. Complete secrecy, flexible notions of importance and proof, imprecise and flexible process design, considerable flexibility and change in performance, and predictability are all requirements for trade disputes in Asia.

Efforts to satisfy Asian and Western standards will result in different ADR models depending on the transaction and industry. Furthermore, the desire of commercial partners to investigate the potential of bridging the gap between legal certainty and business continuity is considered. As a result, procedural changes are necessary in order to establish mutual understanding.

6. Conclusions

Asia offers a lot of opportunities for the ADR business to grow. This is due not just to Asian traditional beliefs, which make Asians wary of taking their issues to court, but also to the country's increasing number of foreign investors and fast economic development. Even if the avoidance of conflicts is usually the first goal in a commercial transaction, it is critical to establish efficient and cost-effective dispute resolution solutions. The technique used to settle disputes in a business contract should aim to establish agreements between conflicting parties to end the issue by mutual concession. Because keeping in contact with people engaged in the business or organization is the most essential thing. In negotiation and mediation, the parties' autonomy and self-determination enable the other side to decide what it will agree to on its own. Allows parties to discuss their concerns and create options that may lead to a settlement of the dispute.

Despite Asian nations' attempts to strengthen the ADR system by upgrading their ADR legislation, the Asian ADR system still has severe deficiencies. When dealing

with Asians, some ADR practitioners and Western corporate actors fail to consider Asian customs and values.

Transnational commercial conflicts are most often seen in the setting of complicated, long-term, and frequently multiparty interactions. Two or more multinational companies form joint ventures in a third country for research and development, marketing, or manufacturing; this is the relationship between private investors and state-owned enterprises in developing countries for the development of giant industrial and agricultural parks. The intricacy of international commercial transactions indicates the parties' desire to establish and maintain an inclusive, longer period of efforts in the hope of common monetary gain. Certainly, maintaining such commercial connections requires avoiding aggressive, adversarial conflict resolution.

The inapplicability of ADR decisions is a significant issue. Although the difficulties are inherent in Asian culture, such issues are more likely to be avoided if international business mediation or arbitration can be tailored to cultural needs and expectations. When there is a difference of opinion (especially a loser). If they understand that the resolution they have achieved is founded on their traditions and views, it is very probable that they will accept it willingly. The reason for this is because the losing party feels certain that the process was carried out "fairly" by taking into account the requirements and expectations.

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Author Contributions

Ms. Alina conceived the study and was responsible for the design and development of the data analysis. Dr. Malik was responsible for data collection and analysis and also for data interpretation as well as the literature review section.

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References

1. Amsler, L. B., Martinez, J., Smith, S. E., (2020). *Dispute system design*. Stanford University Press.
2. Andrews, N., (2018). Mediation in England. In *The Three Paths of Justice* (pp. 265-288). Springer, Cham.
3. Apollon, G., (2014). Cross-cultural deal mediation as a new ADR method for international business transactions. *Law & Bus. Rev. Am.*, *20*, pp. 255.
4. Bagshaw, D., Stud, D. S., (2017). The future of dispute resolution in the Asia-Pacific region. What has culture got to do with it?.
5. Bermann, G. A., (2017). Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts. In *Recognition and Enforcement of Foreign Arbitral Awards* (pp. 1-78). Springer, Cham.
6. Blessing, A., Onoja, E. E., (2015). The role of financial statements on investment decision making: a case of united bank for Africa PLC (2004-2013). *European Journal of Business, Economics and Accountancy*, *3*(2), pp. 12-37.
7. Chowdhury, M., Rahman, M., (2019). *Police Reform in Bangladesh: an Analysis of the Role of Selected Institutional Actors and Factors in its Implementation* (Doctoral dissertation, University of Dhaka).
8. Crane, A., Matten, D., Glozer, S., Spence, L., (2019). *Business ethics: Managing corporate citizenship and sustainability in the age of globalization*. Oxford University Press, USA.
9. Crane, A., Matten, D., Glozer, S., Spence, L., (2019). *Business ethics: Managing corporate citizenship and sustainability in the age of globalization*. Oxford University Press, USA.
10. Deason, E. E., (2015). Agreements in International Commercial Mediation: A New Legal Framework. *Disp. Resol. Mag.*, *22*, pp. 32.
11. Donà, A., (2019). Business internazionale e rispetto dei diritti umani: dal volontarismo alla regolamentazione delle multinazionali?. *Rivista Italiana di Politiche Pubbliche*, *14*(3), pp. 411-438.
12. Fravel, M. T., (2011). China's strategy in the South China Sea. *Contemporary Southeast Asia*, pp. 292-319.
13. Greenberg, Z., Goldstein, A., (2017). Baking common sense into the FERPA cake: How to meaningfully protect student rights and the public interest. *J. Legis.*, *44*, pp. 22.
14. Hampden-Turner, C., Peverelli, P., Trompenaars, F., (2021). *Has China Devised a Superior Path to Wealth Creation? The Role of Secular Values*. Cambridge Scholars Publishing.
15. Jones, J., (2020). Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain. *Journal of Muslim Minority Affairs*, *40*(1), pp. 48-66.
16. Kraakman, R. H., (2017). *The anatomy of corporate law: A comparative and functional approach*. Oxford University Press.
17. Lucena, F. D. O., Popadiuk, S., (2020). Tacit knowledge in unstructured decision process. *RAUSP Management Journal*, *55*, pp. 22-39.

18. Ma, L., Tsui, A. S., (2015). Traditional Chinese philosophies and contemporary leadership. *The Leadership Quarterly*, *26*(1), pp. 13-24.
19. Moses, M. L., (2017). Introduction to International Commercial Arbitration.
20. Ramsbotham, O., Miall, H., Woodhouse, T., (2011). *Contemporary conflict resolution*. Polity.
21. Renard, T., (2015). The Asian Infrastructure Investment Bank (AIIB): China's new multilateralism and the erosion of the West. Security Policy Brief No. 63, April 2015.
22. Ribeiro, J., Teh, S., (2017). The time for a new arbitration law in China: Comparing the arbitration law in China with the UNCITRAL model law. *Journal of International Arbitration*, *34*(3).
23. Saenger, C., Torero, M., Qaim, M., (2014). Impact of third-party contract enforcement in agricultural markets—A field experiment in Vietnam. *American Journal of Agricultural Economics*, *96*(4), pp. 1220-1238.
24. Soloch, B., (2020). International Investment Law: A Self-Proclaimed Ally in Commission's Rule of Law Endeavors. *Handbook of International Investment Law and Policy*, pp. 1-32.
25. Tamney, J. B., (2017). *The struggle over Singapore's soul*. de Gruyter.
26. Wang, J., (2014). The political logic of corporate governance in China's state-owned enterprises. *Cornell Int'l LJ*, *47*, pp. 631.
27. Zeynalova, Y., (2013). The law on recognition and enforcement of foreign judgments: is it broken and how do we fix it. *Berkeley J. Int'l L.*, *31*, pp. 150.