DISSERTATION

The Facilitation and Accommodation of Alternative Dispute Resolution and Arbitration in resolving Commercial Disputes in Pakistan

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ABSTRACT

With the increase in trade liberalisation, commercial disputes have also emerged. Countries are considering measures to address the issue of unprecedented trade disputes and they have come up with regulations intended to monitor the trade disputes and provide adequate settlement mechanisms. Alternate Dispute Resolution (ADR), has become the prime choice for the countries, which are involved in commercial disputes of various types. This paper presents the significance, application, and use of alternate dispute resolution for the settlement of trade disputes within Pakistan. The first chapter provides an introduction to the topic, including historical background of ADR. The scope of this particular study is limited to Pakistan only. The second chapter deals with the literature review of the topic, highlighting the judicial system and the role of judiciary in implementing the ADR mechanism within the country. The third chapter covers the qualitative methodology, followed by an analytical discussion on the legal aspects and advantages of ADR rules. A discussion on the Model Law for the Settlement of Trade Disputes and The New York Convention on Arbitral Awards, (1958) is also presented. The dissertation covers with the fifth chapter that includes summary and judicial reforms and finally on concluding in chapter six with recommendations and conclusion.

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CHAPTER 1: INTRODUCTION

1.1 Background of the study

The idea of using alternative dispute resolution and mediation is not new. It has got a long history attached to it. The first examples of alternative dispute resolution were recorded in early years of ancient Roman Empire during the period 535 to 540 BC. Greeks, Indians, and First Nations of Americas also contributed towards the development of ADR mechanisms for use in economic and business duels.

It was during the Middle Ages that spread so identifying what came to be the commercial law of the former Roman civil law. For the first time, and serving as a precedent, it gave the trade fair value, derivative, however, by the exponential growth of trade relations among all the medieval villages. Different products, different currencies, and various forms of trade fair deserved study and regulation in an undivided outside the old Roman civil law.

It is believed that commercial law was born among the associations of guilds and merchants flooded medieval towns. Both buyers and sellers were interested in reaching the right price, well worth both payments. Therefore, justice was the virtue par excellence that characterized the trade.

During the Middle Ages, highlight some treaties, provided maritime trade-related laws, such as the famous laws of Wisby settled over Scandinavia, or even the work of French in origin and author unknown, concretized numerous regulations regarding marine trade. All these regulations were intended to maintain order on fair trade, but had no binding force and their offenders were prosecuted by governments.

Mediation as an alternative to judicial proceedings is not new concept. The intervention of a third person who helps the disputants to resolve their conflicts and make their own decisions has been produced in various cultures since ancient times.

There is a rich tradition of mediation in the New Testament when Paul addressed the Corinthian congregation asking them not to settle their differences in court, but to nominate people from their own community to reconcile (1 Corinthians 6: 1-4). Mediation is consistent with biblical values of forgiveness, reconciliation, and community.

In many cultures, family and kinship relations have become an important resource for mediation, with the institution of the family head or patriarch as a figure respected by the families for their wisdom and expertise to help resolve personal disputes between members. Ethnic and religious groups have historically established their own alternative systems for dispute resolution.

The resolution of interpersonal conflicts and trade among members of a subgroup with the assistance of third parties respected the same group was a way of preserving independence and establish standards. Trade guilds, merchants, and so on, felt the need to resolve their disputes without the imposition of external authority, so that mediation and arbitration to some extent represented the ideal formula to preserve that independence.

In ancient Pakistan, conciliation and mediation were the main resources to resolve disagreements. Mediation continues to exert on the Islamic Republic of Pakistan through the popular committees of conciliation. In Japan, a country with a rich mediator in their laws and customs, the leader of a population stood a mediator to help its members resolve their differences. Over time laws were passed to the Japanese courts employ conciliation as usual.

In the United States, the early Quakers exercised both mediation and arbitration to resolve their disagreements trade without resorting to litigation. However, the background and best-known models of mediation in the United States come from the

procedures for resolving commercial disputes. According to Kressel and others, some of the earliest writings proposing the adaptation of alternative techniques to resolve interpersonal conflicts were based precisely on this background. Although previously noted, is the late 60's when American society expressed a strong interest in alternative forms of resolving disputes, or Alternative Dispute Resolution (ADR), i.e. mechanisms that attempt to solve disputes, mostly outside the courts, or through non-judicial means. Legal scholars as L. Fuller, F. Sander, Roger Fisher, all from Harvard Law School, or the noted author Howard Raiffa, have contributed significantly to the formation of theoretical thinking about the application procedures and techniques for solving conflict out of court.

It was in 1960s that the alternative dispute resolution was put into use in the American society. The Civil Rights Movement in 1964 provided an impetus to the cause of implementation of ADR for commercial disputes. After that period, the Supreme Court and other statuary courts of the United States were overburdened with the huge number of commercial lawsuits; forcing unprecedented delays in the promulgation of decisions. This was the prime reason, why parties faced up with commercial disputes opted for the need of an alternative system and mechanism of dispute resolution.

Pakistan recognises the mechanism of alternative dispute resolution by law as a legitimate method for resolving conflict, used both in domestic and international operations. However, foreign investors often complain of a lack of 'sanctity of contracts'. Critics say liquidate a bankrupt company may take extended to 20 years.

The Arbitration and Conciliation Act, 1996 is based on the legal model of UNCITRAL (United Nations Commission on International Trade Law) on arbitration in international trade. Conformity to international arbitration laws Member of the New York Convention on Enforcement of Foreign Arbitral Awards.

Arbitration is an alternative means of dispute resolution, whereby one or more persons, called arbitrators or arbitral tribunal, definitely resolve a dispute raised by others that have previously committed to accept his decision. Internationally, arbitration is the means of resolving commercial disputes accepted by the business community. An estimated 90% of international contracts contain an arbitration clause.

The international commercial arbitration has grown and expanded a lot and gained great importance for his role in easing the burden on the courts and the speed of resolving trade disputes, taking into account that the majority of countries, including in particular Pakistan has passed legislation for the parties to resort to arbitration in order to facilitate them and to save time In order to avoid the slow pace of proceedings before the ordinary courts, which are reflected on the negative aspects of conflicts.

As one of the fundamental objectives of recourse to arbitration is the speed of resolving the dispute between the two ends by the arbitrators specialists is the decisive and binding on the arbitrators 'decision is closely linked to the applicable law, and where some of the legislation requires the approval of the competent court of the arbitrators' decision before giving the formula of the Executive pursuant to the right of the court in monitoring the arbitrators' award, which is essentially in the verification of the safety procedures followed by the arbitrator in the eyes of the conflict in a ruling and observance of the procedural aspects of the legally required and to verify the integrity of the findings of the arbitrator in his being the approval of the rule of law without any issues where the arbitrator authority report and penalties.Therefore, taking into account these aspects is very important to avoid anything that would get any delay in the implementation of the arbitrator's award to complement one of the main objectives to resort to arbitration which is to achieve relative speed in the passing of sentences and in resolving the dispute between the parties and to allow the implementation of a facilitator of these provisions.

Complementing the role of arbitration in resolving commercial disputes, it is also important to note that it is also necessary that so they can be to distinguish between domestic arbitration, international arbitration and specificity of each of them to be taken into account by the arbitrator (or arbitrators) at the sentencing up to the rule of the founder of a well away from any gaps may delay its implementation.

In Pakistan, the commercial arbitration remains unexplored, both in theory and in practice. This is mainly due to the hostility that historically has been saved to the institution of arbitration reflected in the inadequate domestic legislation and unjustified mistrust of the courts and tribunals. It has also been crucial in this environment the lack of knowledge about the figure of arbitration by practicing lawyers and the business community. To realize this fact we can see the statistics of the International Court of Arbitration of the Chamber of Commerce ("ICC")-one of the most recognized arbitration centres worldwide, which between 1993 and 2002 recorded only one arbitration court in Pakistan.

1.3 Purpose of the Study

The purpose of this study is to highlight the benefits of international arbitration with regards to conflict resolution that are accepted by the international community. As we know, Pakistan requires clear legal rules and dispute settlement mechanisms to provide legal certainty for investors. Within this scenario, the arbitration, the considerations in this paper, we present the mechanism for resolving international disputes with the most appropriate.

1.4 Rationale of the Study

The clear tendency to resort to arbitration can be explained by several reasons, including the development of international business and the consequent need for a uniform global system of dispute resolution. Working with ordinary courts and arbitration, the only options for resolving issues in dispute a compulsory basis, the business community has decided that the uniform system, the advantages it offers, is arbitration. Pakistani law welcomes and encourages international arbitration, recognizing the validity of the agreements and arbitral awards and claiming their obligation to execute them. This thus leaves aside the mistrust that existed for many years by competition from foreign courts in connection with issues involving our country.

Pakistan has a modern and appropriate legal framework in international arbitration that provides legal certainty to the parties to an arbitration involving our country. Pakistan has signed major conventions on the subject: the New York Convention of 1958 and the Panama Convention of 1975, which allows us to be in the system of recognition and enforcement of foreign arbitral awards that governs today's business throughout the world.

1.5 Aims and Objectives

The aims and objectives of this study are to:

- Highlight the importance of ADR and arbitration in commercial disputes
- Explain the applicability of ADR in the current environment prevailing in Pakistan.
- Elaborate the role of Pakistan's judiciary in implementing the provisions of ADR
- Discuss the problems faced by Pakistan with regards to ADR mechanism for facilitating dispute resolution.

1.6 Scope and Significance of the Study

Notwithstanding the foregoing, the international scene has changed dramatically in recent years. International arbitration practice has expanded significantly, an increase in cases

involving international parties. For example, in 2005 nearly 11% of cases administered by the ICC relate to parts of Pakistan, in contrast to 3% in 1993. Under Pakistani law on arbitration cannot fail to mention the American Convention on International Commercial Arbitration adopted in Panama City in 1975, it has been signed and ratified so far by 17 countries in the Americas. The Panama Convention is almost identical to that of New York. Both pursue the same goals and establish the same precepts, because the first was conceived precisely in order to apply it in the American countries in harmony with the second. As we can see, Pakistani law supports the execution of foreign arbitral awards. Conventions signed by Pakistan on the issue part of its domestic legal system, the wording of the provisions of Article 163 of the Constitution of Pakistan.

1.7 Reliability and Validity

We can only determine the value of a research by judging its ability to address questions of internal and external validity and reliability. All the legal documents were analysed without any biasness. Ultimately, the researcher has reflected rigorously and consistently on the places and ways that values insert themselves into this study and how other contradictions were treated within the research. The observations and methods used in this particular study are valid and reliable; thus making it a useful contribution on the part of the researcher.

CHAPTER 2: LITERATURE REVIEW

2.1 Legal History of Pakistan

Pakistan's legal system is complex, mixed, due to the peculiarities of historical development, and ethno-confessional composition of the country. Most industries are based on English common law which has become established here during the British colonial rule. Matters of personal status, many issues are regulated by criminal law as codified by Islamic law. The population of the federally controlled tribal bands is largely governed by customary law.

The law in Pakistan is codified and is largely determined by legislation enacted prior to independence in 1947 Thus, a legacy of British rule, Pakistan has received the Criminal Code of British India in 1860, Code of Criminal Procedure, 1898, Laws of Evidence (1872), the application of Muslim Personal Law (1937) and the Dissolution of Muslim Marriage (1939).

The main sources of law in Pakistan are the law, judicial precedent and Islamic legal doctrine. In Pakistan, as in other federal states, there is a separation of legislative powers between the centre and the federation. In the exclusive domain of the centre are important national issues such as defence, foreign affairs, currency, foreign trade, many taxes, planning and coordination, communications, interprovincial trade, etc. In case of discrepancy of any act of the provincial assembly law issued by the Parliament within its jurisdiction (exclusive or shared with the provinces), this act shall be deemed null and void.

Adjusting to need of the hour, Pakistan realized the importance of ADR. But the process of implementation was particularly complex for several reasons, except the United Kingdom, which is the country of the European Union for its legal and cultural affinity with the United States has welcomed more intensely ADR techniques in areas as diverse as commercial law, medical liability and the right sport. In countries like West Germany, which is characterized especially by the bargaining culture characteristic of the common-law systems, the use of mediation has increased considerably in recent years, as a mechanism of so-called Alternative in matters such as the resolution of conflicts affecting the environment, economic, commercial disputes, leases, disputes between neighbours, or issues that affect consumers.

In 1995 it entered into force in Pakistan, the Law on Mediation Procedure, amending Article 131 of the Code of Civil Procedure and explicitly introduces mediation. In addition to the conciliation process required prior before starting the trial, the mediator establishes, inspired by the Swedish ombudsman, whose function is to make recommendations to management on how the dispute would be resolved without

authority to bind the company.

In Pakistan there is some delay in the uptake of ADR techniques, not belonging to those countries that have strengthened from the University, from the judiciary or the legislature, the use of these alternative formulas, although recently seen a movement on the rise, especially in the field of family mediation. In the last decade has seen a strengthening however, from various forums, the technique of mediation, having developed several initiatives, both in Catalonia and the rest of Pakistan, to promote and disseminate the mediation through education and training programmes.

2.2 Judicial System in Pakistan

Pakistan Bar Council is the supreme statutory organisation responsible for safeguarding the rights, interests and privileges of practicing lawyers, regulating their conduct and helping in the administration of justice. The four provinces and AJK have subordinate Bar Councils. The districts also have Bar Associations of lawyers. The division of lawyers in Barristers and Solicitors cannot be seen in Pakistan. All the lawyers are competent to appear in courts, after obtaining a licence from a Bar Council, which is the licensing authority of lawyers in Pakistan.

The lawyers are also called Advocates. A lawyer is initially enrolled as an Advocate of District Courts and after practicing two years elevated to appear in the High Courts. After ten years of experience at the level of High Courts, an Advocate becomes competent to enroll on the panel of Advocates of the Supreme Court of Pakistan. The judges are appointed from among Advocates on the basis of competitive examination and those of superior courts from subordinate judiciary and Advocates with profound experience, exceptional record and merit.

2.3 Litigation and Dispute Resolution

The most common and widely used method of dispute resolution in Pakistan is litigation. Litigation is the submission of a dispute for decision before a government appointed judge. The requirement of consent of all the disputing parties is not needed to take up a matter for litigation and any party can do so. The main features of litigation are that it is not party controlled because the rules of procedure and working are prescribed by law and are subject to court's discretion. The appointment of the adjudicator is done by the Executive Department of a Government, usually the Ministry. The judgment of the adjudicator is binding on the parties and is final.

The aim of litigation is deciding the issue and not necessarily settling the dispute. Litigation follows a formal and inflexible procedure. The adjudicator decides the issues according to law and on the basis of evidence presented by the parties. Another feature of litigation is that in order to maintain impartiality and fairness, the proceedings are open and not confidential. It is adversarial in nature as it creates a win or lose situation. Each party attacks the other in order to win and the battle continues until the judgment is announced. The parties have a right of appeal against the decision and the process continues in the higher forums till the rights of appeal are fully exhausted. The decision of the adjudicator is enforceable and final. Litigation is considerably a lengthy process and costly as well.

CPC lays down the rules governing the procedure of courts and proceedings. A claimant or Plaintiff submits a matter in which a judgment is sought, before a court in the form of Suit.7 The court, if satisfied that a claim is made out and jurisdiction is established, summons the Defendant. The Defendant may accept or defend the claim of the Plaintiff and can also counter-claim. After the defendant submits his reply, the judge prepares the points of disagreements between the parties. This stage is called Framing of Issues. The evidence is then collected on the basis of the framed issues. The parties can present evidence in the form of documents and witnesses according to the laws of evidence as illustrated in CPC and Qanun-e-Shahadat Order 1984. The witnesses are subject to cross-examination. Expert evidence is also permissible if necessary. Once the stage of evidence is complete, both parties are given an opportunity to conclude their positions. The Decree

2.4 Commercial Disputes in Pakistan

Pakistan, like other developing countries, suffers from limited resources which puts certain restraints on the rate of growth of the complete system. Judiciary, being a crucial and a very huge organ of the state, is also a victim of such restraints. Limited judges and judicial staff are appointed by the Government because of lack of funds but we see no decrease in the number of cases. As a result, the proceedings are subjected to excessive delays and the judges become inefficient. In case of a commercial dispute, it is in the interest of all the parties that the matter is prevented from aggravating and the differences are resolved without exposing and attacking each other in public. Secondly, it is unlikely that the parties will sustain and continue their business once they face each other in court. Thirdly, the investors and business minded people want their issues resolved as rapidly and as cheaply as possible, which the courts in Pakistan are incapable to offer at present. Another important factor that makes litigation unfavourable is the absence of confidentiality during the proceedings. Any party or member of the public can attend the proceedings and thus a party can get severe damage from loss of very important and undisclosed information.

2.5 Arbitration in Pakistan

Pakistan still has a long way to go in arbitration. For example, there is still a pending reform of the Arbitration Act 1940, which is the same law of 1940 in Pakistan before Pakistan became independent. Much has been made on the reform of this law, but has not materialized to date. On October 12, 2005, Pakistan promulgated the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Naturally, the ordinance is a simpler drafting a new arbitration law, while Pakistan has expressed its intention of drafting a new arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration of 1985.

The Ordinance No. 20 of 2005 on the Recognition and Enforcement of Foreign Arbitral Awards in Pakistan came into force on March 15 2006 after final approval in the Senate, but its effect is retroactive. The Ordinance applies to all arbitration agreements entered into before or since, on July 14, 2005, the date of ratification of the Convention. However, the Ordinance shall not apply to foreign arbitral awards issued before July 14, 2005.

This Ordinance repeals the 1937 Convention and Protocol of Pakistan (which is not of Pakistan but in Pakistan), although many old laws are still laws Indies in Pakistan, but Pakistan with the word replaced by the word Pakistan. This is also the reason that Pakistan has an arbitration law of 1940 which is prior to the very existence of Pakistan as a sovereign state. There is nothing extraordinary in the Ordinance except that it is definitely the Act obliges courts to execute and acknowledge Pakistani Foreign Arbitral Awards in Pakistan.

The Arbitration Act of Pakistan bears the official name "Conciliation and Arbitration Act." In the speech delivered by Justice Shah argued that in an effort to attack the agreements reached between the parties, sometimes they attack their own agreements on the basis of whether what happened was, mediation or conciliation. They are different things. So, Judge Shah proposed that the text of the Act allows the use of both terms interchangeably because their purpose is essentially the same and the differences too subtle to make the conceptualization of these processes itself in litigation.

It is proposed to delete from the Law the word "company - company" (clause ii, Sec 2 (-1), for "incorporated entity - body corporate" in order that any company established in Pakistan regardless of the location of your parent if any. Thus it is intended that the concept of "control and management outside Pakistan" ceases to have meaning for "entities incorporated" in Pakistan. In this way the international arbitration could be between companies based in Pakistan, which is what the amendment seeks to support his thesis on "Section 202 of the American Arbitration Act (1925) considers 'American' to

any company incorporated in the United States of America."

The report proposes that pre-jurisdictional issues, the validity of the arbitration agreement and even the existence of a dispute between the parties can be settled by the courts and it based on an "adaptation of the eighth section of the Model Law United Nations."Next, it proposes a series of circumstances that would obviate the need for judicial intervention preliminary to arbitration.

The 1996 Arbitration Act does not expressly allow courts to refer parties to arbitration. The text of the law reform will allow greater flexibility in this aspect that so far the law is silent.

To avoid procedural delays is proposed that the parties cannot agree on dates to appear before the arbitrators, and they are guided to set them a regulation that will develop the high court. Thus, it is proposed that the courts regulate how many hours of hearing may be held and for how many days if they were followed. To achieve this uniformity and minimal criterion is proposed that the Chairman of the Judiciary (Chief Justice) to develop a standard for further development by the high court.

It aims to increase the power of arbitrators to implement precautionary measures on the model of the British Arbitration Act 1996. Under current law any arbitration may exceed one year, failing which the courts in this circumstance monitor the arbitration. In essence, it proposes the same formula but allow the parties may agree that the arbitration be extended for an additional year. Completed the second year, the arbitration shall be automatically suspended.

The processes of annulment of awards may not exceed six months. To the pleas on one side adds another. It may cancel the award by law enforcement issues if the parties have proposed questions of law to the arbitrators and these are specifically mentioned in the award. This provision would not apply to international arbitrations.

Under current law, the mere processing of the cancellation of the award automatically suspends execution. The amendment proposes that the award can be enforced unless the Court decides otherwise expressly without suspension of execution during the court's decision on the suspension or enforcement.

Under the proposed amendment and to "strengthen confidence in its proceedings," the President of the Supreme Judicial Council of Pakistan (Chief Justice) may propose panels of arbitrators and procedural regulations applicable to arbitrations.

Overall, the proposed amendment is based partly on the British Arbitration Act 1996, part of the Model Law on International Arbitration of the United Nations, 1985. While clearly seeking greater international arbitration in Pakistan, the proposed amendments contain many elements that seem destined to heal certain practices of procedure. The level of judicial involvement is very high, as is contemplated to enable the arbitration to take two years instead of one to avoid damage arising from the processing time for matters relating to the arbitration court. Additionally, the proposed amendment appears to favour international arbitration as the concept is not defined but not even passively, that is, defines "domestic" to define what is not international. So, and even with the rank equivalent to Bill, the Arbitration Act in force in Pakistan is still in 1996.

2.6 Arbitrating Commercial Disputes in Pakistan

The concept of arbitration is not new in Pakistan. The tribal areas have been using the process in family and other matters within members of a tribe but it is quite different from modern arbitration proceedings in many aspects. The main law relating to arbitration in Pakistan is the Arbitration Act, 1940. It is silent about the nature of disputes that could be referred to arbitration. The parties can refer present and future disputes to arbitration with or without intervention of Court. The arbitration agreement need not be signed or in a contractual form and a mere arbitration clause or reference to arbitration during correspondence between the parties is enough. The appointment is by the parties or the parties may also nominate a third party to appoint an arbitrator. A sole arbitrator is to be appointed if the agreement is silent about the number of arbitrators but parties may appoint as many arbitrators as they agree upon. The arbitrator has the powers to

administer oath, refer a question for the opinion of a court and even issue conditional and interim awards. Reference to arbitration can be compelled by the court if any party to the arbitration agreement is reluctant to go to arbitration. The Arbitration Act 1940 does not provide the complete procedure of proceedings but it follows almost the same procedure as that in International Arbitration and ordinary Civil Suits like claims and counter-claims or defence in written form, followed by evidence and conclude on the announcement of awards. Arbitration proceedings are considered expedited and in the absence of any contrary agreement, proceedings must conclude within four months which limit may be exceeded by a court.

Litigants who are caught up in the courts of Pakistan at present will definitely prefer such means which remain un-affected from political and legal instabilities. Arbitration and ADR are most suitable in this situation. As discussed earlier, the Arbitration Act in Pakistan provides for numerous instances where a court may intervene in arbitration proceedings and thereby disrupting the process but there are no such restrictions in case of ADRs. Measures to decrease the role of courts and increase in the use of arbitration and ADR can help to reduce the workload of courts and reclaim competence. A very important step in order to encourage the use of alternate means of dispute settlement is the training of lawyers and parties of such processes. The lawyers can be trained by the Bar Councils and Associations or by establishing Dispute Resolution Institutions in the country like AAA23, CEDR24 and CIArb25. A lawyer is duty-bound by his profession to give the best possible advice to a client and educate him about all the options available before proceeding any further. Dispute resolution clauses could be envisaged in contracts so that recourse to ADR and arbitration can be made compulsory.

2.7 Alternate Dispute Resolution in Pakistan

The arbitration process requires the parties to submit a dispute to one or more impartial persons who, between the parties by their decision, put a final end to the conflict. Arbitrators may be lawyers can be chosen from among persons of the business community with special experience in a certain area. The parties retain control, both in the context of the dispute submitted to arbitration on the claims on which it must be acted, and most of the procedural steps. Arbitration has a less stringent than the process that takes place in court. The hearing was held in private. Few sentences are overturned by the courts because of what it is the parties themselves who decided to submit to the decision of the referee. In some cases, the parties agree in advance that the arbitrators will issue a single opinion.

Litigation and Arbitration are considered adjudicative and judicial means of dispute resolution which have a strict and compulsive nature. There are numerous alternate means which have evolved in order to overcome the disadvantages attached to litigation and arbitration. “The different ADR methods…have in common the aims of blunting the adversarial attitude and encouraging more openness and better communication between the parties to a dispute”.

These mechanisms are more informal, speedier, cost-effective and consensual. Parties are sometimes not even bound by the outcome of such processes. Mediation, negotiation, conciliation, expert determination, mini-trials, inquiry are some of the examples of these mechanisms. Mediation and negotiation are more frequently used in commercial disputes and expert determination is more preferred when a specialist’s opinion is sought to resolve a dispute. Parties while drafting a contract may bind themselves to exhaust such means in case of disputes. Negotiation is a means which is not only used to resolve disputes but also used to avoid them. Parties negotiate in innumerable matters regularly. There is no fixed procedure that needs to be followed except intent to negotiate. “Any method of negotiation may be fairly judged by three criteria: it should produce a wise agreement if agreement is possible, it should be efficient and it should improve or at least not damage the relationship between the parties.” If the parties come to negotiate with a give-and-take approach, fruits of negotiation are not far away. Clauses as to negotiations etc. for amicable resolutions disputes are finding a place in almost all commercial contracts.

The courts are also expected to encourage the parties to adopt such modes. It is now a universally accepted method being followed as a less expensive, less time consuming, less cumbersome and ultimately a fruitful and beneficial mode." Mediation is also a consensual process where a dispute is referred to a third party referred to as a mediator. The mediator is not an adjudicator and does not decide a matter rather he assists the parties to arrive at a settlement proposal. A mediator may be termed as a negotiation facilitator. A mediator may give his opinion on an issue but he is incapable to enforce the same and parties are not bind by it. A mediator helps willing parties craft an agreement that looks to the future, satisfies their needs, and meets their own standards of fairness. The advantages of ADRs are that they do not have strict procedure and formal rules and regulations so the parties are completely independent. They are more focused towards settling disputes and create a friendly atmosphere and prevent parties to picture each other as adversaries. They are speedier and have the least cost. The proceedings in ADRs are private and confidentiality is not shattered. The main disadvantage of ADRs is the lack of binding force because sometimes there are issues and behaviour of parties that require a compulsive approach. A non-serious party can easily disrupt such proceedings and make it worthless.

The popularity of international arbitration is mainly due to the advantages it provides over the courts. Among them, the best known are the neutrality and flexibility of the process, international recognition of awards, unappeasable arbitration decisions, suitability of the arbitrators, confidentiality of the process, speed and economy and resource savings for the state.

International recognition of arbitral awards is another important advantage of arbitration. The awards made by arbitral tribunals are generally easier to implement than the judgments of courts. You can identify at least two fundamental problems in the execution of the latter.

First, the process is complicated and not very expeditious. State courts are generally jealous of their jurisdiction and enforcement of judgments it is consistently rejected for lack of jurisdiction of the foreign court. Although there are international conventions on the subject, the procedure remains difficult. For example, under with the Sanchez de Bustamante Code and the Montevideo Convention of 1979, the party seeking enforcement of a sentence in a particular country must first obtain a ruling by the judge in the country of origin to certify the enforceability and status of the jeopardy cause. That is, the applicant must obtain two exequatur, one of the courts of the country where the sentencing judge and one of the countries where it intends to execute, subject to compliance with various requirements of the conventions and domestic law the countries involved.

Second, the scope of the ADR mechanism on the enforcement of foreign judgments is not global, which is explained by the inability to sign international instruments that apply to different legal systems in the world. In fact, the conventions that Pakistan has signed on enforcement of foreign judgments are applicable only within a block of American countries, left out of this regime most of the world. These difficulties have shown unequivocally that no litigation in traditional courts the best alternative to resolve international conflicts. The speed of business requires flexible means to resolve conflicts and reliable.

Arbitration, on the other hand, has the appropriate legal framework for the enforcement of arbitral awards abroad. The burden of proof lies entirely on the party opposing the recognition or enforcement of the award and therefore, if any of the grounds for refusing the enforcement order, it belongs only to prove it. The party interested in the enforcement of an award is limited to present to judge the original or certified copy of the agreement and arbitral award. The judge receiving the petition, you should verify on its own if the cause is arbitrable, and if not contrary to international public policy of their country, and not being the case, has no choice but to order the enforcement order. This is precisely one of the main contributions of the New York Convention: to establish that the burden of proof on the opponent, so that the party seeking enforcement of the award does not require the enforceability of the award show and get the enforceability of the judge in the

country where it is issued.
The advantages of arbitration such as the neutrality of the forum, international recognition of awards, unappeasable arbitration decisions, qualifications and experience of the arbitrators, confidentiality of the process, speed and economy and resource savings for the State, have determined that the recent decades, arbitration becomes the means to resolve conflict more effective and reliable to achieve international business.
In terms of public international law mediation is a method widely used conflict resolution. Used in conjunction with the good offices of international conventions and the difference between both methods we can say that is one of degree. Its characteristic is given by the level of intervention of a third state in the negotiations directed, or proposing guidelines for conciliation between the parties.

2.8 Problems with International Arbitration

Some impediments in the development of arbitration are the requirements of drafting increasingly complicated agreements between the parties for prescribing procedural rules to ensure the orderly conduct of proceedings…secondly no party could be forced to accept arbitration and thirdly, for arbitration to be an effective form of dispute settlement it is necessary that there should be an agreement between states on the manner in which each State's legal system would treat foreign arbitrations.
Pakistan is a signatory of the New York Convention and is also a party to numerous Investment Treaties. These treaties include mechanisms of dispute resolution between the host country and foreign investors. The reference of disputes may be to litigation in the host country or International Arbitration before institutions like LCIA12, ICC13 and PCA14 etc. Apart from treaties, individual contracts may also provide dispute resolution clauses. "These mechanisms provide transparent, inexpensive, speedy and accessible dispute resolution to foreign investors.
The International Centre for the Settlement of Investment Disputes (ICSID) also provides facilities for conciliation and arbitration of investment disputes between contracting states and nationals of other states under the Convention for the Settlement of Investment Disputes and Pakistan is a member of the Centre." An Ordinance has recently been promulgated called "Recognition and enforcement (Arbitration Agreements and Foreign Arbitral) Awards Ordinance, 2005", to give legislative effect to the New York Convention which gives security to foreign investors and significantly decreases intervening powers to local courts in case of foreign arbitral agreements and awards. "In a recent case decided by the Karachi High Court reported in 2006 CLD 497 it has been held, provision of section 4(2) of the Ordinance, 2005 has taken away any discretion of the court whether or not to stay proceedings in terms of the arbitration agreement on any ground including the ground of inconvenience, except where the arbitration agreement itself is null and void, inoperative or incapable of being performed. The Court, while considering the enforcement of a foreign award, merely acts as an executing court and while doing so it cannot go behind the award and sit as an appellate court and make reappraisal of evidence.
The ADR is characterized by the fact that the parties are to varying degrees a Master of the expected result. In negotiation, the parties reach the result they stopped by mutual agreement without the intervention of third. The strategy is, as is the case when you create an association, to avoid a conflict for this purpose, an independent third party intervenes to assist the parties to foresee, to prevent the sticking point that may subsequently arise. In the case of mediation, we still use a third party when the conflict has already been born. The mediator is expected to help the parties define the rules that they have even stopped. In the case of arbitration, the arbitrator makes a binding decision after both parties had argued its claim.
Although the degree of control left to each party varies from one method to another, in all, they retain the direction of the trial. They will have to agree both on the progress of the procedure, the designation of those who will assist them in resolving their dispute. The parties may agree to adopt a type of procedure, as they can choose a combination of various methods they deem best suited to the dispute between them.

The international business world resort to arbitration to resolve commercial disputes arising in the global market. There is supporting legislation. The New York Convention of 1958 has been ratified by a large number of countries and this has created a favourable legislative climate, which ensures the effective enforcement of arbitration clauses. Awards made in international commercial arbitration are recognized by national courts in most of the world, even at higher rates than the judgments of foreign courts. Essential to the successful resolution of an international trade dispute is the role of the administering institution. The International Centre for Dispute Resolution (ICDR) is the international division of the American Arbitration Association (AAA) and is in charges, exclusively, the administration of all the affairs of the AAA. ICDR's experience, his international expertise and multilingual staff are integral to the process of dispute resolution.

The ICDR's international system is based on its ability to make the arbitration process progresses efficiently, facilitate communications, ensure the appointment of arbitrators and mediators adequate control costs, understand cultural uniqueness, resolving procedural obstacles and interpret and correctly apply its International Regulations Mediation and Arbitration. In addition, the ICDR has signed numerous cooperation agreements with arbitral institutions around the world to facilitate the management of their international cases.

The parties may consider submitting the dispute to mediation before resorting to international arbitration. In mediation, an impartial and independent mediator assists the parties to reach an agreement. However, the mediator is not empowered to issue a binding decision or award. Mediation is administered by the ICDR under its International Mediation Rules. The IHRC does not charge additional administrative fee where parties to arbitration ongoing attempt to mediate their dispute under the auspices of the ICDR.

If the parties want to adopt mediation as part of the procedure for resolving contractual disputes, may be incorporated into the contract, together with a model arbitration clause, the following mediation clause: "If there is a controversy arising under this Agreement (or relevant to him or his non-compliance) cannot be resolved by negotiation, the parties, before resorting to arbitration, litigation or other dispute resolution procedure will attempt to reach an agreement through mediation is conducted in accordance with the provisions of the International Mediation Rules of the International Centre for Dispute Resolution."

If the parties want a mediator to intervene to resolve a controversy existing agreement can conclude the following mediation: "The parties submit the following dispute to mediation administered by the International Centre for Dispute Resolution in accordance with International Mediation Rules. (The clause may also establish the characteristics of (the) mediator (s), method of payment place of meetings and other matters of interest to the parties.) " Arbitration is considered a much speedier and cost-effective dispute resolution mechanism but this may not be the case in International Arbitration because of some of the following reasons: the nature of disputes may be complex; the arbitrators may order documents or witnesses which may take time; the arbitrators may have a busy routine and load of work which may cause the proceedings to suffer; conflict of laws sometimes creates difficulties; and international Arbitration is extremely costly as compared to domestic arbitration and litigation in Pakistan.

The Convention seeks to eliminate the reluctance of states to provide good offices and mediation, which in previous centuries such intervention was considered as a possible restraint and intervention in the internal affairs of states. However, the Convention does not prescribe any obligation to the warring parties to accept the offer of good offices or mediation.

The mediation of distinguished individuals or representatives of international institutions, can sometimes be more acceptable to the parties that the heads of state or government, since there would be less fear that the mediator take the opportunity to protect the interests of their own state. Mediation may be requested or offered, with the rarest cases that have occurred in the first case, the position pays all the political nature of the mediation.

Unlike what happens in Pakistani courts where judgments can be appealed and contested by ordinary and extraordinary means, in arbitration decisions are final. The arbitration is

by nature a single instance, the decisions of the arbitrators is final, irrevocable and binding on the parties.

Internationally, most modern legislation, have embraced the principle of arbitration awards final, in short, dictates that a court can not retry the matter already decided by an arbitral tribunal. A court can not come to reconsider the merits of the case judged by the referees even when it is presumed that they have made mistakes in judicial contexts.

This does not mean, however, that there are mechanisms to control the conduct of referees and their decisions. An award may be challenged before the competent court of the place where it was issued, and in the country where you intend to run or country under whose law the arbitration was conducted under the grounds set out in domestic law and applicable international conventions. These grounds for revocation generally relate to the procedural regularity of the arbitration and compliance with the rules of public order, but not refer to the substantive part of the award.

As a rule, international treaties determine the grounds for refusal of enforcement of arbitral awards in a country other than where it was issued, while a country's domestic laws provide grounds to nullify the award made in its territory. It is noteworthy that in accordance with the Convention of New York and Panama, an award has been annulled by the courts of the country of origin can not be performed elsewhere. Therefore, if an award in Pakistan is nullified by their courts, it can not be executed in another country.

Thus in International Trade Law of conciliation as a method of conflict resolution, it displays its activity to a third chosen by the parties as an alternative to formal litigation before and aims to achieve a fair settlement to end the conflict legal interests, which may take place before a public body or to a particular. Various international institutions such as the Chamber of Commerce (ICC), the American Arbitration Association (AAA) or the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules are pre-arbitration.

This is how in the realm of modern international trade law, in an era when globalization imposed hiring very widespread international mediation is widely used, which often appears as a preliminary step to arbitration institutional. In the international doctrine of conciliation and mediation do not clearly distinguish their differences. It is so in the long-term contract in which aims to aircraft or ships included in the same or mediation renegotiation clause requiring the buyer to negotiate or mediate prior to the commencement of any arbitration.

In the context of international commercial law in situations of fact and law that must be neatly addressed, in order to avoid conflicts either in the order of interpretation of contracts or the execution of these it became necessary to create a system conflict resolution that would allow a short period of time and at a lower cost than would produce access dispute with the intervention of the courts.

Thus, in addition to the conciliation and mediation are methods such as good offices of the Chambers of Commerce or the diplomatic efforts, and possible ways of use. The Chamber of Commerce (ICC) for his career body and antiquity appears as a leading institution on the issues of conflict resolution means states in international trade regulations, the existence of other instruments to avoid or diminish the impact of a conflict. Technical expertise pre-arbitration, the adaptation of contracts and the mediation of the BICC 4 are these other instruments. Another method is the Mini-Trial, widely used in the Anglo world and that an arbitration agreement is atypical, informal and with its own characteristics that can be signed between the directors of the corporate parties. It is very similar to the private agreements between shareholders, its characteristics are that it is optional and has its own strength that the signers assigned.

CHAPTER 3: METHODOLOGY

3.1 Research Approach

For this particular dissertation, the use of qualitative research approach is the most appropriate choice. It provides a means of gaining deeper understandings of the subject matter especially in reports that require lengthy analysis regarding legal and financial concepts. Therefore, qualitative methodology offers multiple means of inquiry that are flexible and adaptable within a more adaptive research protocol. The broad range of qualitative data dictates that qualitative research use descriptive analysis in order to limit the scope of a study and allow the inquiry to focus more deeply on the phenomena of the topic. Unlike quantitative research, qualitative research is often subjective in nature, relying on the depth of analysis of findings regarding a topic. Qualitative data have descriptive qualities, and one can collect qualitative data through extensive literature search. Instead of using statistical analysis techniques, the qualitative researcher investigates patterns and common themes within the data. Study results are in narrative form, using inductive reasoning to present findings.

3.2 Data Collection

For this paper, the researcher used extensive literature search to collect information regarding the subject. For this purpose libraries have been approached to get maximum material on the related topics. The libraries are one of the best places for gathering data on a certain topic. The data is analyzed on the basis of material collected from books, articles and journals. The researcher also used digital libraries such as Ebsco, Phoenix, Proquest, Lexis-Nexis, and Westlaw etc. for this purpose.

3.3 Analyzing Data

Because understanding the nature and application of Alternative Dispute Resolution and Commercial Arbitration law in Pakistan is the goal of the research, the qualitative descriptive mechanism is the most ideal means of collecting and analyzing data due to the flexibility, adaptiveness, and immediacy of the topic. This brings inherent biases, but another characteristic of such research is to identify and monitor these biases, thus including their influence on data collection and analysis rather than trying to eliminate them. Finally, data analysis in an interpretive qualitative research design is an inductive process. Data are richly descriptive and contribute significantly to this research.

CHAPTER 4: DISCUSSION

4.1 Pakistan's Trade Policy

Pakistan is a staunch supporter of the multilateral trading system open, transparent and based standards. Almost all trade is conducted on an MFN basis. However, Pakistan believes that the current trading system suffers from several distortions that affect negatively to the trade opportunities for developing countries. The early completion of Doha Development allowed Pakistan and other developing countries better achieve the Millennium Development Goals by 2015, the date fixed by the United Nations.

Pakistan actively participates in all negotiations of the Doha Development Agenda, but his interests are linked to key areas of access markets and standards. Since 2003, has taken part in all meetings at the ministerial. Pakistan has presented numerous papers, both on their own as cooperation with other countries. His main objective in these negotiations is to ensure elimination of tariff peaks and high tariffs on products of export interest to Pakistan. To this end, Pakistan has participated diligently in the negotiations on market

access for products agriculture. Believes that its proposal to reduce tariffs by applying a simple Swiss formula with two coefficients based on current averages tariff of developed and developing countries, and with adequate flexibilities for developing countries, could be a fair solution for both parties. As a founding member of the World Trade Organisation, Pakistan is obliged to support all initiatives taken by the body to address the issue of bilateral commercial and trade disputes in all its forms and manifestations.

According to the provisions of Pakistan's recent trade policy, Pakistan is a strong advocate of the need to improve and clarify rules for the use of trade defence measures and subsidies (Including fisheries subsidies). Consider that most of the measures trade remedies are used for protectionist purposes and are subject to disciplines rigorous. Pakistan has been making important contributions to the negotiations on facilitation of trade since its inception. It has sponsored and cosponsored several documents in collaboration with developed and developing countries, in order to clarify and improve the current standards.

Pakistan has also shared with other members of the WTO of its national experience to the computerization of customs clearance, which has substantially transformed its clearance procedures. Pakistan is also actively involved in negotiations aimed at improving the dispute settlement system, in particular with regard to issues such as treatment special and differential treatment for developing countries, improved transparency, reduced court costs, strengthening the rights of WTO Members as third and clarification of existing rules on *amicus* participation *curiae.* These reforms would facilitate the access of developing countries and country Members to the dispute settlement system, which in turn improve the integrity and soundness of a multilateral rules-based discipline.

4.2 Legal aspects of ADR

The phenomenon of Alternate Dispute Resolution, (ADR) can be applied by a judge, entrusted by him to a third party in judicial proceedings or used by private parties in order to find a consensus response to the conflict generated by a contract, especially when litigation has character borders.

Its distinguishing feature is its flexibility: in principle the parties can decide on its implementation, who will take over the process, either an individual or an organization will develop the procedure and if they are to appear in person or be represented by third during the development of the cause. As regards the cost as it is commonly borne by the parties. It may happen that the organization responsible for the procedure, especially in the event that has a public character, to bear the costs inherent in its management, or IT professionals responsible for the ADR are not paid at all. The problem arising from this form of dispute resolution is that countries such as Pakistan do not have a legal framework that can deal in detail, and evenly all legal aspects relating to the ADR. Currently, the Commission intends to create a global status as a point of reference to the resolution of conflicts arising from the contract within the legal system of Pakistan but, despite a number of countries have taken the initiative by setting the figure the advisory authority in this area, progress has been very little.

In regard to the ADR, the laws of civil procedure allow proper consultation to the judge in order to reach conciliation between the parties, or rather; they establish that reconciliation as a mandatory element of the procedure. As you can see the role of the judge is far from the functions normally assigned to the law.

ADRs entrusted to third parties by the judge if they have specific regulations of general application, even in some countries includes the obligation to resort to ADR before going to sue, either by a decision of the judge or by law. The choice of someone designated to resolve the dispute stems from a number of criteria: it may be an official requirement in some cases. According to the law in Pakistan, in conciliation court requires the intermediary to meet the requirements of morality and professionalism) or, finally, be chosen by reason of the case in which it will intervene.

The conventional ADR does not have any rules or general or specific, being governed by provisions of contract law and general principles for inspiring all legal relationships,

though some countries such as Pakistan have established sectoral laws of the Creation specific services to administer justice by this instrument.

One of the issues rose to resolve the conflict assumes the failure of his procedure and prescribe the time for going to court. Some states have expressly established that the use of ADR involve the automatic suspension of the limitation period of the claim at issue, but this would force all member countries to reform the law of civil procedure, an issue difficult to apply legislative practice today.

If the parties reach a settlement, especially since not all countries will receive the same force and effect. It is then to find a common denominator, and this is that any form of ADR is a form of transaction. The agreements are possible provided that it is an order for enforcement, because the judge's approval or because the parties resort to a public deed. In some countries such as Pakistan, the acts of an authorized instance of ADR are enforceable.

Given the difficulties of conventional justice to deal with a number of causes arising from court-based ADR constitute a basic tool to strengthen the dispute resolution arising from the signing of a contract? Its consensual nature and flexibility of the form allows the parties, by including a specific clause, binding, provide for the possible disagreement related to the implementation phase of the contract, opening an alternative procedure to resolve disputes generated. Even on the assumption that actors do not have foreseen this formula, they may use it at the time in which litigation has been generated.

4.3 New York Convention and its Application in Pakistan

The International Court of Arbitration of the International Chamber of Commerce was the instigator and the driving force of the movement that led to the adoption of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Arbitral Foreign Awards, the main multilateral treaty on international arbitration. The New York Convention imposes essentially the courts of each Contracting State: Recognising arbitration agreements in writing and in the presence of a contractual term in this sense, to refer the parties to arbitration and recognize and enforce foreign arbitral awards.

It is recommended to any party to check before entering into an international arbitration if the state of the other party and, where applicable, the place of arbitration, has ratified the New York Convention or has signed other multilateral or bilateral treaties offering the same guarantees.

The legislative ratification by Pakistan of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York June 10, 1958, was enacted on July 14, 2005. The order shall come into force October 12, 2005 for a period of six months, pending Parliament's vote at its next session which will give the text as a law. Recall that the New York Convention, which governs the enforcement of foreign awards, applies to Pakistan only to the recognition and enforcement of awards made in the territory of another contracting state.

4.4 The maturity of international commercial arbitration of foreign awards and international awards

The problem to be addressed revolves around the debate on the possibility of recognize and enforce an award in accordance with the United Nations Convention for the Recognition and Enforcement of Foreign Judgments in 1958 - or Convention New York - even if it was annulled in its country of origin. Thus, it is recommended that "all States give due consideration to the Model Law on international commercial arbitration, taking into account the desirability of uniformity of law of arbitral procedures and the specific needs of the practice of commercial arbitration international. Finally, it is important to stress the desirability of adhering to the greatest extent possible model, since this will contribute to the desired harmonization and inure to the interests of that resort to international commercial arbitration as a means of settling disputes.

It is recognized that it is not enough to report rights if there was no system can be the owner of the right to force those who violate this right to be respected, and if this is true

for all transactions of humanity, it is incredible - especially on international trade relations, as it varies among States vary considerably in terms of the size of the internal market as you can with the major countries expanding their market to use this feature as a pressure on the trading partner's narrow commercial market to accept something less than his rights under the International Convention concerned.

Perhaps that was a major weakness in the system (1947 GATT) concerning the settlement of disputes, it was the principle upon which the system is to resolve conflicts diplomatic negotiations of any introduction of the principle of compromise and not litigation is reflected clearly the provisions of Articles 22 and 23, which represent, as stated in the system for the settlement of disputes.

Article (22) is limited to confirmation of "the right of one of the Contracting Parties to require the other party to enter into consultations concerning the implementation of the Convention. Article (23) to provide a written objection to another party in order to reach a mutually acceptable settlement, if the parties could not access within a reasonable time to an acceptable settlement of them, to refer his complaint to the Contracting Parties to investigate and make recommendations, if no posts have complained in the right implementation of these recommendations may Contracting Parties in the case of grave breaches allowed by the complainant to stop some of the concessions that had previously been provided that the Party complained against him, which did not accept that this suspension had the right to withdraw from the (GATT).

4.5 Current-Balance of Mediation

Mediation requires the parties to resolve their differences themselves with the assistance of an independent third party. The mediator's role is that of a mediator Council. The can make suggestions but the solution of the dispute is finally the work of the parties themselves Mediation takes place outside the presence of others and remains the matter of the parties.

What these techniques have in common Control? It should consider the resolution of a dispute to be comprehensive, with the parties on one side, a maximum power of initiative, while the other side they can only have the freedom to act. The maximum power is what characterizes the situation of all human relationships are no obstacles when it rises (which is not often). The minimum initiative of the parties takes place in the position they are imposed by a solution tribunal.

About 90 percent of cases in which parties to a conflict take the negotiations to end a conflict, the result are a negotiated settlement satisfactory to both parties. The vast majority of negotiated settlements are met by the parties. The reconciliation is becoming an option promoted by laws and courts to resolve disputes and government agencies in the community, work, family and business.

4.6 Why Implement Model Law on ADR in Pakistan?

Pakistan has distinguished itself in the international forum for interest in promoting alternative means of dispute resolution in the commercial arbitration. The adoption, almost complete, the UNCITRAL Model Law on International Commercial Arbitration in the fourth section, Book V of the Code of Commerce in 1992, gives a boost to the mechanism at the legislative level and strengthens the practice of arbitration law in Pakistan. A positive and enriching experience we must add another having the same direction. The challenge is to incorporate the Model Law on International Commercial Conciliation our domestic law. This is a set of principles that lead to an alternative way of resolving disputes out of court.

With regard to facilitating commercial disputes through ADR, it is very important for the party, in whose favour the decision was, the issue - execution, there is a need to note the following. The decision marks the arbitration voluntarily within a specified period of decision. Owing to the nature of arbitration, the disputing parties agree in advance with any decision made by the court. But if the solution is not voluntarily performed, the collector must apply to the arbitration court at the place of arbitration with an application

of issuing writs of execution to enforce the arbitration court.
The application is considered by the arbitral tribunal within a period not exceeding one month from the date of receipt to the court. This situation is somewhat prolongs the execution of the arbitral tribunal and, moreover, is likely to refuse issuance of a writ of execution the court of arbitration - if the court finds that the dispute, the arbitration court cannot be subject to arbitration in accordance with federal law, any decision of the arbitration Court violates the fundamental principles of Russian law, or violated the basic rules of arbitration.
These are the main points that distinguish the arbitration and the arbitration proceedings, and summary, it can be concluded that entrepreneurs make their choice in favour of arbitration shall be guided by the principle of "competence - quickly - the least expensive", which is justified in the present conditions of business. At the same time I would like to recommend the choice of the competent authority to settle the dispute really appreciate the dispute, read the relevant legislation and regulations of the arbitration court elected to contemporary conditions, when a sufficient number of arbitration courts, courts give preference, reputation which is well known that use well-deserved reputation.
By the relative situation of Pakistan's judicial system in regard to speed with satisfying to litigants, no one is aware that put at the disposal of citizens new channels through which to resolve their conflicts simple as civil and commercial, would be a breakthrough for the reinforcement social peace and market relations, which are the basis of prosperity, growth and job creation. The systems of alternative dispute resolution, which we refer to as ADR (Alternative Dispute Resolution), offer this type of added value to conventional court ruling on the Rule of Law. In short, objective of ADR is estimated to avoid using the courts as far as possible. The advantages are many, since the parties save time and money in a substantial and would enhance the softening of the positions faced, avoiding confrontation at issue, which is usually a bitter case. The mere fact that parties resort to mediation or conciliation as do so voluntarily, favours the amicable settlement of the conflict and rapprochement of views.
In ADR systems the parties are in an environment free of formalities and open to their particular needs. Thus, those who resort to conciliation or mediation have ample opportunities to exercise some control over the length and procedures for the realization of the process. This contrasts with the usual litigation, where the parties would be subject to rigid rules argument and turns of speech, timing and evidence and so many others aspects that will greatly restrict their freedom of autonomy. This will encourages resolution independent (not heteronymous) of conflicts, because they are parties themselves, with the assistance of an impartial third party, which negotiated an agreement through an act or contract bargaining, which will be binding on them. However, this does not mean that ADR systems are free of guarantees users, although the regulation of such guarantees is at the expense of each entity acting as a conciliator or mediator. In short, in an increasingly complex society in terms of relations trade and services provided, it is normal to increase the number of situations where two parties disagree on a point that concerns them about their rights as users, customers, suppliers, contractors general and a long list of possibilities. In this context, to respond agile, fast and economic citizens, that does not compromise too much, or halt expectations of activities, and offering them reasonable legal guarantees protection of their interests, ADR systems have a great role to play for society.
In Pakistan, the law, regulating consumer arbitration system, allows the mediation to the Consumer Arbitration Boards. It states: "Consumer Arbitration Boards perform the following functions: .... b) Performances of mediation for disputes arising complaints or complaints from consumers and users ..." It is understood that the profile of mediator in consumption must be a licensed right, with knowledge of the laws of consumption, sectoral legislation of the various business activities (cars, telephony, tourism, construction, etc.), as well as knowledge of civil law, administrative, procedural, commercial, community law, etc".

4.7 Uniformity

The model law would respond to the vision of having similar legal rules to resolve international legal disputes through conciliation in different countries. A model law uniformity and creates favourable legal certainty and confidence. Common rules for flexible handling of conflicts facilitate the sharing of wealth to international service providers, international traders and foreign investors. One of the initial strictly the legal advisers to foreign investors are asking is about the regulations on the ADR in the country. Are there commercial arbitration? Are there commercial conciliation? Does the internal regulation of these figures is adapted to international trends and principles? Not having answers can become a trade barrier.

4.8 Systematization

In Pakistan a law is necessary to develop systematically the issue of reconciliation. Pakistani law contemplates are ancillary and multiple approaches, sometimes exclusive, and without consistency. Without rising an excess of regulations, and the settlement is in itself an instrument of flexibility for a facilitated negotiation to resolve conflicts, follow the basic principles that comprise the model fills a gap law without inventing the black wire as the model law is the result of a universal subject matter experts. Would provide a legal framework to establish the principles upon which states could regulate.

If there exists an intensively developed between businesses then it can be said that the greater the likelihood of legal conflicts between them. Therefore, in such circumstances, it is important that the society existed legal mechanisms to ensure rapid, fair and lawful resolution of disputes and protection of rights.

However, market reforms in the country led to recognition of the need to develop parallel non-jurisdictional dispute settlement systems that have received the most fully developed in foreign countries with a developed economic system.

At the same time one of the main lines of development of the arbitration is to allow the business (commercial) disputes. However, despite taking place in the recent trend of an increasing number of applications for business commercial disputes by arbitration courts, it should be noted also that the potential of arbitration is used by domestic entrepreneurs is not enough. This situation is partly a consequence of the absence of both the entrepreneurs and for individual lawyers about the possibility of commercial disputes by arbitral tribunals, their advantages in comparison with the traditional mechanism to resolve disputes through arbitration proceedings.

Consider the differences between commercial disputes by arbitration and arbitral tribunals. Arbitration Court - State Court, part of the judicial system of the Russian Federation shall administer justice in the sphere of entrepreneurial and other economic activities according to the rules established by the legislation on legal proceedings in courts of arbitration.

Court of Arbitration - the non-state court, not part of the judicial system of the Russian Federation, authorized by the resolution of disputes arising from civil law, which considers a dispute has arisen between the parties solely because of the voluntary consent of both parties to submit the dispute to this court.

The possibility of applying to the state court of arbitration of a person whose right is violated, established by law. Recourse to resolve the dispute to arbitration may be appropriate to the inclusion in the contract on which to build relations between the parties, ad hoc arbitration clause or the conclusion of a separate agreement to refer the dispute to arbitration. That is, in any case the agreement of the parties, based on which arbitration occurs competence.

Arbitration procedure is not regulated by numerous procedural rules, it is quite simple, and the parties themselves have the right to determine part or all of the very procedure of arbitration of any dispute by arbitration is more democratic. The arbitration proceedings over arbitration proceedings expeditiously, the period of the case are reduced by more than two times.

In addition, in the arbitration proceedings, there is no possibility of appealing the decision on appeal, cassation and supervisory. Decision of the arbitrator shall be final, except for

the possibility of challenging the decision, unless the parties have not provided otherwise, the arbitral tribunal when tested compliance requirements for arbitration in the resolution of the particular case, but did not check that decision.

The speed and finality of dispute resolution by an arbitral tribunal removes some delay in the execution of the decision, and legal uncertainty in the position of the parties, taking place in the arbitration proceedings with the possibility of reviewing the decision the higher courts. The specified speed in a dispute is certainly an advantage of arbitration, but it should be noted at this and its other hand - in the sacrifice of speed of the dispute brought by the party's due process of arbitration.

Commercial practice in modern conditions has created quite complicated disputes whose resolution requires a corresponding specialization of judges, which is not always feasible in arbitration practice. To participate in the arbitration courts attracted the most authoritative experts in law, specializing in certain issues of law, as well as specialists in a specific area of the dispute. Further, unlike state court, one of the principles of which is the publicity of proceedings, the arbitral tribunal to the parties creates a condition of confidentiality: hearing of disputes takes place in closed meetings, any unauthorized persons are allowed to participate only with the consent of both parties, the publication of decisions of the arbitral tribunal without the consent of the parties prohibited.

The next difference is that the costs of arbitration, in many cases are lower than the cost of legal proceedings in state court of arbitration - the size of the arbitration fee, usually less than the size of the state fee.

4.9 Conciliation Mediation as a mechanism

The conciliation-mediation as a mechanism and prior to arbitration or the courts has a long tradition in Pakistan. The Code of Civil Procedure, the Federal District (CPCDF) 1932, still in force, stipulates in Article 272-A that "once answered the complaint, and if the counterclaim, the judge shall immediately fix a date and time holding a preliminary hearing and conciliation within the next few days." The same device shows that if they attended (the audience) the two parties, the judge "shall seek reconciliation" to be in charge of the conciliator assigned to the court. The latter propose alternatives to the parties to the dispute, if the parties reach an agreement (transaction) the judge must approve if legal proceedings.

While the Federal Code of Civil Procedure (FCCP) contains no provision on settlement (or arbitration), other federal laws if the contemplated commercial matters (Law on the Protection and Defence of Financial Services Users, Law Federal Consumer Protection, Law on Securities Market, among many others). The reality, however, is that so far, the Commercial Code does not provide for conciliation or mediation as an independent action or prior to proceedings before arbitrators or courts. Being an alternative to arbitration before and in some ways linked to the ultimate purpose resolving court could be considered the inclusion of a new chapter in the fourth section and are called "conciliation and arbitration of trade." The (new) Chapter I, Section I, contain those key provisions of the Model Law on Commercial Conciliation procedures.

Upon entry into force of the WTO Agreement on 1 January 1995, negotiators in Marrakech had planned to open a review period of the MRD. The goal was for countries like Pakistan to decide whether to maintain, amend or delete the MRD. As part of this review, countries like Pakistan reaffirmed their commitment to the mechanism established in Marrakech, stressing, by proposals for amendment to the original, it was appropriate to clarify the operation.

4.10 Current Situation in Pakistan

It is currently being processed by the Pakistani Parliament a Bill on the Commercial Conflicts Proximity, which aims at creating a new kind of courts (the Courts proximity) who will occupy the first link in the judicial system. Proximity Judges would be responsible for addressing issues of relative low complexity, but it appears that affect a very remarkable daily interaction of citizens, especially in large cities. The meaning of

this reform is currently suffering overload the Courts of First Instance and Instruction, as it is assumed that the new figure introduced in the judiciary will ease the job that support so far primary courts. It remains to be seen to what extent this initiative really impact on the streamlining of civil proceedings, since it is has tried to emphasize that proximity will only implant in the large cities and some provincial capitals, so that not all judicial districts that will enjoy improved service.

This is not the first major judicial reform has been undertaken in recent years, as also recently amended the Procedure Civil to accommodate so-called speedy trials and payment procedures, and designed to give a more agile response to simple questions submitted to the judicial authorities. Despite good intentions, judicial system is still too slow and tortuous, not because we have equipped with a procedural right easier and faster, but because in general all judges and courts suffer from a very large workload. That is, procedural reforms are most useful to the extent that the human with which accounts are a sufficient number to provide efficient processing all matters. In short, not enough with the introduction of speedy trial and payment procedures, but needed more judges, or create another avenue of escape to respond satisfactorily to the demands of justice for citizens in civil matters.

In a report by the General Council of the Judiciary in April 2006 based on a survey of all judges and magistrates Pakistani active, highlighted that 71% of them think they are doing to work. But this fact speaks for all echelons of the judiciary. If observe the data of the judges serving in more contact directly with citizens, the Courts of First Instance, the conclusions are even more overwhelming, reaching 81.5% of judges who believe their workload is excessive.

Similarly, in a 2003 survey conducted by the same agency users to of justice, i.e. the citizens, they are saying 41% of the cases the Pakistan's judicial system works badly or very badly, while 27% think that works well or very well. In conclusion, it may be concluded that, although efforts are being made very positive to improve the quality of public service that represents justice still has not reached the optimal situation in which citizens get legal protection and effective fast enough, all mainly a workload of members of the judiciary.

4.11 Advantages of Implementing ADR for Resolving Commercial Disputes

The popularity of international arbitration is mainly due to the advantages it provides over the courts. Among them, the best known are the neutrality and flexibility of the process, international recognition of awards, unappeasable arbitration decisions, suitability of the arbitrators, confidentiality of the process, speed and economy and resource savings for the state. We discuss each of them.

Neutrality and Flexibility

When a trade dispute arises between parties in different countries, they have a legitimate desire to have his case resolved in a neutral, equal opportunities and the same process. But the ordinary courts rarely meet these expectations. If an international dispute is submitted to the decision of the courts of a country, we can hardly speak of equality between the foreign and local. While the former is forced to litigate in an unfamiliar legal environment under a foreign legal system, and sometimes in another language, the second has the advantage of knowledge and experience in the judicial system of a particular country. In addition to this fear, foreign investors are wary of the neutrality of the local courts. It is believed, and sometimes rightly so that judges are inclined to rule in favour of the local part, especially if the state or its institutions.

For these reasons, international trade players almost unanimously have chosen to resolve their disputes through arbitration. The flexibility of this alternative means of dispute resolution allows parties to structure a process according to their specific needs and circumstances of the dispute, in order to achieve desired neutrality. The parties are free to choose the place of arbitration, the court's jurisdiction, the applicable substantive and procedural rules and language of the process, as they see fit, thus eliminating the benefits

that a party might have on the other. The negotiation and stipulation of the arbitration agreement must be done carefully to achieve this goal.

The principle of neutrality in international arbitration has been embraced by Pakistani Law Arbitration and Mediation. Article 42 states: "Any person or entity, public or private, unrestricted free to provide directly or by reference to arbitration rules all matters relating to arbitration proceedings, including the creation, processing, language, applicable law, jurisdiction and the courthouse, which may be in Pakistan or in a foreign country".

Article 42 of the Model Law places particular emphasis on the principle of autonomy, allowing part of an international arbitration is made in Pakistan or under the laws structuring an arbitration agreement that ensures balance and neutrality of the process.

International recognition

International recognition of arbitral awards is another important advantage of arbitration. The awards made by arbitral tribunals are generally easier to implement than the judgments of courts. You can identify at least two fundamental problems in the execution of the latter:

First, the process is complicated and not very expeditious. State courts are generally jealous of their jurisdiction and enforcement of judgments it is consistently rejected for lack of jurisdiction of the foreign court. Although there are 29 international conventions on the subject, the procedure remains difficult. 30 For example, under with the Sanchez de Bustamante Code and the Montevideo Convention of 1979, the party seeking enforcement of a sentence in a particular country must first obtain a ruling by the judge in the country of origin to certify the enforceability and status of the jeopardy cause. That is, the applicant must obtain two exequatur, one of the courts of the country where the sentencing judge and one of the countries where it intends to execute, subject to compliance with various requirements of the conventions and domestic law the countries involved.

Second, the scope of the convention on the enforcement of foreign judgments is not global, which is explained by the inability to sign international instruments that apply to different legal systems in the world. In fact, the conventions that Pakistan has signed on enforcement of foreign judgments are applicable only within a block of American countries, 33 are out of this regime most of the world. 34 These difficulties have shown unequivocally that traditional litigation in courts is not the best alternative for resolving international conflicts. The speed of business requires flexible means to resolve conflicts and reliable.

Arbitration, on the other hand, has the appropriate legal framework for the enforcement of arbitral awards abroad. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) is the most representative on the subject, both for its length and its effectiveness. With more than 120 countries worldwide subscribers, 35 including Pakistan, the New York Convention has proven to be one of the greatest achievements of private international law.

Legal proceedings may result in long delays, high costs, advertising they were going well, and relations between the parties detestable. After the decision has been pronounced the procedure of Appellation, if we use it, requires a new expectation. Arbitration, by contrast, is generally faster and less expensive, and as is a judicial process, it results in a decision that cannot be questioned.

Speed

Despite the commendable efforts made to improve the speed of time required for the procedure, the huge number of commercial cases hampers the law enforcement, budget constraints and other factors mean that in many courts, there are delays of several years before a case is brought to the hearing. The call increases with the delays, ultimately, an end result even more distant. ADR procedures do not include enrolments process. Only

elements that affect the speed of the procedure lies in the eagerness which are the parties themselves will show to finish and complexity of the case.

The parties intending to end their dispute through an ADR procedure are facilitated by an independent person who has the experience to deal with the object of their dispute. The table is composed of persons belonging to various professions and from the business community.

Experience in relation to the matter that is the subject of conflict reduces the waiting would have been required to inform a judge or jury with respect to technical data on which is the case, and this experience guarantees to the parties that the decision will be fully motivated. The Association has a permanent table with a 20,000 people with experience in a wide range of activities in the field of business, technology, insurance, labour relations, but also in many other disciplines.

Simplicity and flexibility

According to the methods of ADR, the procedure looks more like a negotiation than litigation. For example, each party is for the referee in an atmosphere of solemnity takes less than it would at the hearing of a tribunal.

Thus, where a court has to make the application of complex rules regarding the administration of evidence and while in this case, the judge may be led to consider that such evidence is inadmissible; officials admit any kind of evidence provided it is relevant. Of course, referees will consider testimony and other evidence, like hearsay on obvious facts, but the fact that there are no binding rules concerning the administration of proof allows each party to present its case in a freer than before a judge. Here again, the parties better understand the course of the procedure and feel better able to take advantage of the opportunity they have to explain fully.

Because the parties have control of the trial, they can only take advantage of this great flexibility. The hearing may be conducted on the premises where the dispute arises or during a late hour. The evidence can even be collected by telephone. The Association also offers to conduct the proceedings by using the facilities offered "Lexis Counsel Connect" (note: website legal advice) that can connect directly with computers installed in offices in which can be isolated.

Privacy

Arbitration, mediation and other forms of ADR procedures do not take place in the public eye as it is business before a tribunal debates as the imposition of sentences have are held in private and secret, thus preserving the maintenance of business relationships between the parties.

ADR procedures are meant to take place in the speed to be reduced to the essential, to be borrowed for less formal proceedings. Most costly procedures associated with formalist trial taking place in the courts, for example, there is no enrolment fee or filing fee causes queries.

Adequacy of Arbitrators

Another notable advantage of arbitration is the freedom of the parties to choose the "judges" to resolve their dispute, in contrast to what happens in the ordinary courts where they are designated by the same judicial apparatus. The arbitrators are usually chosen in consideration of their knowledge and experience in the matter of the dispute, so that an arbitral tribunal to settle for people that the parties consider most appropriate to a particular dispute.

Current international transactions can be complex, because contracts are based on highly technical, are implemented with multiple financial mechanisms and take effect in several states and under different legal systems. Internationally there is a consensus that the arbitrators are more competent than judges to resolve international disputes, because the

latter usually lack the expertise and business experience necessary to adjudicate fairly and accurately in a dispute of this kind.

The appropriateness of the umpires benefits to the parties in several ways. First, a good referee is able to identify the claims of the parties and the important points of dispute, so as to avoid unnecessary delays in matters of little relevance. This results in saving time and money to the parties. Second, an arbitrator can resolve conflicts in an ingenious way and in accordance with current practices of international trade. 57 Third, the experience and knowledge of a good referee reduce the risk of conflicting decisions arbitrary, unfair or wrong, more even if the arbitral tribunal consists of three arbitrators. Also, when you opt for a managed or institutional arbitration, the parties have the backing of major arbitration centres have lists of selected arbitrators with expertise in all areas of business.

Alternatively, other arbitration centres such as International Chamber of Commerce (ICC) located in Paris, leading a sui generis control on the awards issued under its auspices. The awards of the ICC, before finally being issued and served on the parties, must first be approved by the Court of Arbitration of the Chamber, the same that makes an exhaustive examination of form and substance. 59 Finally, it has demonstrated that selection of the arbitrators voluntarily contributes to the enforcement of the award, because the parties have confidence in them, automatically increases the possibility that the award is complied with and therefore decreases the probability of being challenged in the courts.

CHAPTER 5: REFORMS

5.1 Summary

Today, ADR methods are widely accepted by both the U.S. business community, for services that support staff, and by the public. The number of cases handled by the American Arbitration Association alone has exceeded 60,000, a figure that is equal to a quarter of stored procedures each year by the federal courts. In fact, the courts in Pakistan have recognized the usefulness of ADR. Today, in many countries including Pakistan, there are programmes ADR, they are either mandatory or optional. They apply to cases in which one can find a solution without any need to appeal to the proceedings. Spend a visit (the Internet) to the home page of the federal courts.

Unlike what happens in the ordinary courts where judgments can be appealed and contested by ordinary and extraordinary means, in arbitration decisions are final. The arbitration is by nature a single instance, the decisions of the arbitrators is final, irrevocable and binding on the parties.

Internationally, most modern legislation, have embraced the principle of arbitration awards final, in short, dictates that a court can not retry the matter already decided by an arbitral tribunal. A court may not re-enter the merits of the case judged by the referees even when it is presumed that they have made mistakes in jurisprudence. This does not mean, however, that there are mechanisms to control the conduct of referees and their decisions. An award may be challenged before the competent court of the place where it was issued, and in the country where you intend to run or country under whose law the arbitration was conducted under the grounds set out in domestic law and applicable international conventions. These grounds for revocation generally relate to the procedural regularity of the arbitration and compliance with the rules of public order, but not refer to the substantive part of the award.

As a rule, international treaties determine the grounds for refusal of enforcement of arbitral awards in a country other than where it was issued, while a country's domestic laws provide grounds to nullify the award made in its territory. It is noteworthy that in accordance with the Convention of New York and Panama, an award has been annulled by the courts of the country of origin cannot be performed elsewhere. Therefore, if an award in Pakistan is offset by its courts, it cannot be executed in another country.

The Law of Arbitration and Mediation in Pakistan is consistent with the international

trend of not allowing the courts to interfere in the substance of arbitral proceedings. In this context, Article 30 clearly states that "arbitral awards rendered by arbitral tribunals are final ...." Only horizontal resources fit against them for clarification and expansion. Awards issued in Pakistan are challenged only by the action of nullity, one or more of the reasons exhaustively laid down in Article 31 of the ADR concur in the referee's decision. This rule is not seen as grounds for annulment error or wrongness of an arbitrator or any other substantive reason to allow a judge to examine the merits of the matter at issue already resolved by the arbitrator.

As mentioned above, corresponds to the internal laws of a country properly control the issuance of awards in its territory and regulate the actions for annulment brought against them. Therefore, Article 31 of Law Arbitration and Mediation Pakistani arbitration applies to both national as international. Consequently, if the parties to an international arbitration have selected Pakistan as a place of arbitration or the arbitration is under its laws, the parties have the right to challenge the validity of the award under the provisions of article 31 of the ADR.

It should be realised, however, that the wording of Article 31 is deficient. On the one hand, several circumstances that certainly vitiate the validity of the arbitration award and were not considered as grounds for revocation. For example, ADR does not provide grounds for annulment as the composition of an arbitral tribunal illegal. 54 Nor delimits the powers of a court against such action, which may cause problems in your application. Moreover, in our opinion, the wording of Article 31 is too "local" to be applied internationally. These deficiencies probably occur because the drafters of the ADR rules did not take into account the action of nullity is applicable not only to domestic arbitration awards issued, but also those issued in international arbitrations.

5.2 Judicial Reforms and ADR in Pakistan

During the past thirty years, there have been various significant measures taken in connection with the judicial reforms related to alternate dispute resolution. But they have not borne expected results. This is due to lack of support and funding from the government. Also the competent authorities including the Supreme Court of Pakistan, Federal Board of Revenue have not shown desired interest in the implementation of the provisions of ADR laws.

In the year 2002, under the directives of then President Pervez Musharraf, the Supreme Court put forward the National Judicial Policy, providing adequate attention to ADR mechanisms. The Customs Act of 1969 was amended to include section 195-C that highlights the importance and application of ADR in commercial disputes. Similarly, the Custom Rules 2001 has been amended to include Chapter 17 that provides guidelines for the procedure and facilitation of ADR. Section 134-A has been included in the Income Tax Ordinance 2001. This section caters for ADR. The Federal Excise Act of 2005 provides section 38 that specifies ADR procedures. There have been a couple of amendments in the Sales Tax Act of 1990 with the inclusion of section 47-A and Chapter 10 on ADR process. The establishment of Institute of Arbitrators and Mediators in the Federal Judicial Academy is on cards, which is in line with the provisions of the National Judicial Policy. For the improvement and development of legal education, Lahore University of Management Sciences has introduced a course on ADR at LLB level.

CHAPTER 6: CONCLUSION

6.1 Recommendations

Commercial and trade disputes are also part of the dispute could be resolved using the procedures proposed by the Association. Employment contracts usually contain provisions calling for arbitration of disputes dark on reasons that cannot be a contentious trial. This is true of disputes relating to discipline, dismissal, the resignations, promotions, productivity, pensions and seniority-related problem. Actions based on commercial law may also be subject to arbitration and mediation proceedings using the standard regulations of the Pakistan Bar Council.

Arbitration proceedings relating both to disputes concerning the securities field are a constantly increasing. Disputes arise in connection with agreements between brokers and their clients are generally settled on the basis of the provisions of the Association referred to as "Securities Arbitration Rules." These rules contain an important provision under which the majority of the arbitrators an arbitral tribunal cannot be linked to companies dealing in securities.

Within the alternative dispute resolution - ADR - are negotiation, mediation and arbitration. As we have seen in previous posts ... We focus on mediation to be relevant in different legal systems. Through the mediation understand the alternative system whereby two or more parties, assisted by a third party who listens to them, accept this proposed solution to your problem. It is a step in the negotiation between the parties but not to arbitration, the mediator has no power to impose a solution on the parties in conflict, as it does the referee. Among the most important reasons that lead to different legal systems to introduce these mechanisms, such as mediation are: the need to expedite the work of courts and tribunals, confidentiality as necessary on many issues, the importance of new technologies contractual relations, and the absence of a supranational body that can resolve conflicts between elements of different systems. Here are some of the fundamental reasons that are causing the rise of mediation and that the new system set up as a volunteer and although, as has been shown many times, we can say that mediation has always existed.

6.2 Conclusion

Different legal systems have more or less connection with mediation. In the United States in the early seventies, began to encourage mediation as we know it today. Around the same time, Britain began to introduce mediation in different areas, extending its influence in different European countries. In Latin America, some countries do the same, so if only in Argentina Buenos Aires is mandatory in the sense that before filing suit before the courts should have attempted mediation in certain types of disputes. In Pakistan, lawyers have the obligation to advise clients on the use of mechanisms for alternative dispute resolution. Thus, in countries like Pakistan are now debating the Draft Law on Mediation in civil and commercial matters and for the first time, incorporates the practice of

mediation in the area of jurisdiction.

Pakistan's particular cultural background influences the mode of resolution that is chosen to resolve foreign-related commercial conflicts. A lot of prevention mechanisms are used in Pakistan. Conciliation and mediation come from a millenary tradition and thus have a very important place in resolving commercial conflicts. Conciliation is almost always used before any other kind of conflict resolution solution, such as legal action, is taken into consideration by both parties. By analysing Pakistani judicial structure it is possible to find some omissions in this mode of resolution. Indeed, the judicial independence is in such default that both parties will almost always prefer arbitration rather than a judgment by the court. This being said, some foreign investors can chose to go through with the judicial process but then a basic knowledge of the local judicial system becomes necessary. Therefore foreign-related conflict resolution in Pakistan is usually done by arbitration. There are two categories of arbitration that must be known. One of them is the ad hoc arbitration who is not expressly permitted or prohibited in Pakistan.

It seems that mediation is a reality more and more consolidated not drawn as an alternative to justice, but as an alternative justice where the autonomy of the parties governing the boot process to end. However, we noted the importance and currently have the ADR not seen, but the Online Dispute Resolution, or what is the same system of alternative dispute resolution in the network.

In drafting the Law on Mediation future we have been discussing since the laws state that certain actions can be done electronically, as long as to ensure the identity of participants and respect for the principles of mediation provided, and discussed in previous posts. Also, in the final provision of the proposed Act, requesting the government to regulate a simplified procedure for mediating claims for payment which is carried out electronically. While we applaud the past efforts to use electronic media in the mediation process, we call attention to the future goes beyond law and to use mediation to resolve certain conflicts in the network. Not only use electronic media to facilitate mediation but to use electronic means to conduct a mediation "electronics" on conflicts in the network and where the procedural issues are often so enormous.

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GLOSSARY

AAA American Arbitration Association
ADR Alternative Dispute Resolution
AJK Azad Jammu Kashmir
CEDR Centre for Effective Dispute Resolution
CLD Corporate Law Decisions
CPC Code of Civil Procedure
FATA Federal Administered Tribal Areas
CIArb The Chartered Institute of Arbitrators
ICC International Chamber of Commerce
ICSID International Centre for Settlement of Investment Disputes
LCIA London Court of International Arbitration
PCA Permanent Court of Arbitration
PLD Pakistan Law Digest
UNCITRAL United Nations Commission on International Trade Law