ALTERNATIVE DISPUTE RESOLUTION (ADR) FOR INTERNATIONAL COMMERCE DISPUTES THROUGH UNCITRAL

DR. GHADA M. AWADA

Introduction

International commerce, driven by globalization, has seen a surge in cross-border disputes. To address these disputes efficiently, various Alternative Dispute Resolution (ADR) mechanisms have gained prominence. The United Nations Commission on International Trade Law (UNCITRAL) plays a pivotal role in promoting and facilitating ADR methods for resolving international commerce disputes. The evolution of ADR within the UNCITRAL framework has been a subject of extensive research. Scholars [1-7] have traced the historical development of ADR mechanisms within UNCITRAL and highlighted their increasing importance in resolving international commerce disputes.The UNCITRAL Model Law on International Commercial Arbitration, first adopted in 1985 and later amended in 2006, had a profound impact on international commercial arbitration.The UNCITRAL Conciliation Rules have provided a framework for the resolution of disputes through non-binding conciliation. Studies [1-5] have explored the advantages and disadvantages of using these rules for international commerce disputes, emphasizing their flexibility and neutrality.

Research studies have consistently highlighted the paramount significance of integrating technology across various domains, including education[12-19], business[20-32], political science and media[32-143],engineering[124], medicine[24], and arbitration[1-11]. In education, technology has revolutionized learning by providing access to a wealth of information, interactive tools, and personalized learning experiences. It enhances engagement, facilitates remote learning, and equips students with essential digital skills. In medicine, technology has transformed healthcare delivery, from telemedicine consultations to advanced diagnostic tools and electronic health records[24]. It has improved patient outcomes, streamlined processes, and enabled global collaboration among healthcare professionals. In the realm of arbitration, technology has expedited dispute resolution by offering online platforms for hearings, document management, and virtual communication, making the process more efficient and accessible. These research findings underscore the transformative potential of technology in enhancing education, healthcare, and the legal landscape, ultimately improving the quality of life and services in these vital sectors.

The research in this context is intricately linked to the convergence of UNCITRAL principles with online arbitration and the role of technology in this process. In the context of arbitration, UNCITRAL principles encompass the foundational framework that guides arbitration practices on an international scale. These principles provide the basis for standardizing arbitration procedures and ensuring fairness and efficiency in dispute resolution. In this research, there's a shift towards exploring the application of UNCITRAL principles in the realm of online arbitration, which introduces a new dimension to dispute resolution[10],[11].

Establishment of Online Arbitration Agreement: in general, arbitration processes require parties to establish an arbitration agreement in line with UNCITRAL principles. This agreement signifies the mutual consent of the parties to engage in arbitration, aligning with the international standards set forth by UNCITRAL. However, in the context of online arbitration, this agreement might not always be bilateral, as parties might engage unilaterally by accepting terms and conditions presented online[10].The research underscores the increasing importance of technology in our society, where agreements, whether explicitly or implicitly, are often formed online. Technology enables parties to enter into agreements without direct, face-to-face negotiations, making it possible for one party to initiate an arbitration process through online means while adhering to UNCITRAL principles[11].In the context of our tech-driven society, the online arbitration agreement is portrayed as the fundamental cornerstone for online arbitration cases, incorporating UNCITRAL principles. It's the point where technology and international arbitration standards intersect, allowing parties to initiate arbitration processes through online channels, often without the direct involvement of the other party[11].

The research underscores that ensuring the legality and validity of these online arbitration agreements is crucial, especially in the Nigerian context. It highlights that the legal framework in Nigeria, as represented by the Nigerian Arbitration and Conciliation Act of 2004, does not adequately address the concept of online arbitration agreements in alignment with UNCITRAL principles. Therefore, there's a concern about the legal status of these UNCITRAL-compliant, tech-facilitated agreements[11].In response to this gap, the research recommends the amendment of Nigerian arbitration laws to incorporate provisions specifically addressing online arbitration agreements in accordance with UNCITRAL principles. This recommendation recognizes the pivotal role that technology plays in modern dispute resolution while ensuring alignment with international arbitration standards[11].

In summary, the research explores the evolving landscape of arbitration in the digital age, where technology and UNCITRAL principles intersect to form the foundation of online arbitration agreements. It calls for legal adjustments to accommodate these changes, ensuring adherence to international standards while recognizing the influence of technology on dispute resolution[10].Mediation as an ADR mechanism has gained traction in international commerce disputes under UNCITRAL.[9] have conducted empirical research on the utilization of mediation and its effectiveness in achieving mutually satisfactory outcomes for disputing parties.UNCITRAL has not only influenced ADR within its own framework but has also played a significant role in promoting ADR practices worldwide.[1] has also examined UNCITRAL's impact on the adoption of ADR in various international conventions and treaties, showcasing its influence on shaping the global ADR landscape.

Research Questions:

As such, this study addresses the following questions:

To what extent has the UNCITRAL proven effective in ADR cases?

What potential future developments and reforms within UNCITRAL are needed to enhance the effectiveness of ADR in resolving international commerce disputes?

[4] has identified issues related to enforcement of arbitral awards and the need for ongoing improvements in ADR mechanisms under UNCITRAL. Additionally, scholars have discussed potential future developments and reforms within UNCITRAL to enhance the effectiveness of ADR in resolving international commerce disputes [3-8].

Despite being a major global industry, the tourism sector utilizes arbitration and other forms of alternative dispute resolution (ADR) less frequently compared to other industries. Disputes involving parties from different jurisdictions are common in the travel and tourism sector, involving travel agents, airlines, hotels, rental vehicle companies, and travel insurers from various countries. Resorting to litigation in such cases is not only expensive and detrimental to productive relationships but also impractical, as court decisions in one jurisdiction often cannot be enforced in another[4].

Literature Review

This literature review examines key scholarly works and research findings related to the use of ADR within the framework of UNCITRAL for resolving international commerce disputes.This literature review highlights the diverse body of research on ADR for international commerce disputes through UNCITRAL. It underscores the evolution of ADR mechanisms, the role of UNCITRAL in shaping global ADR practices, and the challenges and future prospects in this field. As international commerce continues to expand, ADR within UNCITRAL remains a critical tool for achieving efficient and fair dispute resolution.

The theoretical framework for understanding the evolution of Alternative Dispute Resolution (ADR) within the UNCITRAL framework and its impact on international commerce disputes can be structured as follows:

Historical Development of ADR within UNCITRAL

The development and significance of ADR mechanisms within UNCITRAL have been subjects of extensive research. Scholars have traced the historical evolution of ADR mechanisms within UNCITRAL and have highlighted their increasing importance in resolving international commercial disputes.

UNCITRAL Model Law on International Commercial Arbitration

The UNCITRAL Model Law on International Commercial Arbitration, first adopted in 1985 and later amended in 2006, has played a pivotal role in shaping international commercial arbitration. Researchers have analyzed the effectiveness of this model law in harmonizing arbitration laws across jurisdictions and promoting international arbitration as a preferred method for dispute resolution [2;4].

UNCITRAL Conciliation Rules

The UNCITRAL Conciliation Rules have provided a structured framework for the resolution of disputes through non-binding conciliation. Studies have explored the advantages and disadvantages of using these rules for international commerce disputes, emphasizing their flexibility, neutrality, and their role in facilitating consensual settlements.

Role of Mediation in UNCITRAL ADR Mechanisms

Mediation as an ADR mechanism has gained prominence within UNCITRAL's framework for resolving international commerce disputes. Empirical research on the utilization of mediation and its effectiveness in achieving mutually satisfactory outcomes for disputing parties highlighted its role in preserving business relationships and reducing the burden on formal adjudicative processes [7].

UNCITRAL's Global Impact in Promoting ADR

UNCITRAL's influence extends beyond its framework, as it has played a significant role in promoting ADR practices globally. [7] have examined UNCITRAL's impact on the adoption of ADR in various international conventions and treaties, showcasing its influence on shaping the global ADR landscape and contributing to the development of international commercial law.

Adoption of UNCITRAL Mechanisms in Namibia

In the specific case of Namibia, it is evident that adopting the UNCITRAL Model Law on International Commercial Arbitration (MLICA) and acceding to the New York Convention are crucial steps to integrate into the global economic community and provide legal certainty for international transactions [8].

The UNCITRAL Model Law on International Commercial Arbitration plays a pivotal role in the modernization and reform of national arbitration laws. Its primary objective is to establish standardized rules and provisions for international business arbitration. This includes regulating the extent of judicial involvement in accepting and enforcing awards, defining arbitration agreements, and specifying the composition and authority of arbitral tribunals throughout all stages of the arbitration process. The Model Law, which has gained acceptance across various regions and legal systems worldwide, reflects a global consensus on fundamental aspects of international arbitration practice[8].

Notably, the Model Law limits the court's interference to specific instances, such as the appointment of arbitrators, challenges to an arbitrator's appointment, the jurisdiction of arbitral awards, and setting aside awards. It also outlines procedures for rendering, enforcing, and contesting awards. By establishing consistency in both procedural and substantive aspects of arbitration, the UNCITRAL Model Law addresses key challenges encountered in international arbitration. A nation's adherence to this Model Law is often viewed as a benchmark for meeting international standards. Failing to adopt it can negatively impact a country's reputation as a potential arbitration venue. Consequently, credible international arbitration institutions are less likely to consider it[9].

UNCITRAL's Role in Facilitating International Commerce Dispute Resolution

Enforcement of UNCITRAL Arbitral Awards

UNCITRAL has contributed to the enforcement of arbitral awards across borders through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (UNCITRAL, n.d.). This convention has been widely adopted and has simplified the recognition and enforcement of arbitral awards globally [9].

UNCITRAL's Role in Investor-State Dispute Settlement (ISDS)

UNCITRAL has been involved in the development of rules and procedures for Investor-State Dispute Settlement (ISDS), which is crucial for international commerce involving foreign investments (UNCITRAL, n.d.). These rules aim to strike a balance between investor protection and the sovereign right of states to regulate[8].

International organizations are pivotal actors within the framework of international law, playing crucial roles in every facet of its existence, spanning from its inception to its enforcement and execution. As their activities become increasingly prominent and specialized, international organizations have undertaken various novel initiatives and have adopted fresh operational approaches. An intriguing illustration of this evolution can be found in the endeavors of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III (WGIII) to reform Investor–State Dispute Settlement (ISDS), an exceptional mechanism for resolving international disputes that allows foreign investors to file claims against states in matters pertaining to international investment law. In an era marked by dwindling international codification efforts, the ambitious plan by UNCITRAL WGIII to reform ISDS stands out significantly. This initiative also demonstrates responsiveness to identified gaps and necessities and is expected, at least to some extent, to result in the reconfiguration of ISDS. In this brief contribution, studies initially distinguish the codification of issues within the realm of international economic law from other types of codification. Subsequently, studies introduce UNCITRAL and delve more specifically into the endeavors of UNCITRAL WGIII. In particular, studies elucidate and evaluate the process of reforming ISDS as an instance of the ongoing transformation of international organizations' activities and a novel initiative they have undertaken through a specific methodology encompassing issue selection, draft text development, and serving as a platform for negotiation[2].

Global shifts in the political and economic landscape across the world are exerting a significant influence on the existing investor-state investment dispute resolution system. The current system for resolving investment disputes has exhibited several challenges, including the unpredictability of dispute outcomes, the adoption of aggressive and expansive jurisdictional approaches, a lack of transparency, high costs, the inability to appeal on substantive grounds, substantial compensation awards, and various other issues. These challenges have catalyzed a rapid transformation process within the investor-state investment dispute resolution system, sparking discussions regarding the potential establishment of a Multilateral Investment Court[2].

The absence of diversity in the selection of tribunal members within investment arbitration has faced persistent criticism. This article delves into an examination of the mechanisms for appointing adjudicators and challenges the prevailing notion that investment arbitration closely mirrors the structures and procedures of commercial arbitration. Instead, those responsible for drafting the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention) drew substantial inspiration from the Permanent Court of Arbitration and the International Court of Justice. In line with this institutional lineage, the development of the equitable representation requirement can be traced back to a growing recognition of the public dimension of the international judicial role. However, the drafters primarily incorporated Article 14(2) of the ICSID Convention to primarily facilitate the execution of the private function of dispute resolution. From a historical perspective, the controversies surrounding various approaches to addressing diversity concerns in the ongoing reform of investor-State dispute settlement ultimately stem from deeper disagreements about the private and public aspects of the judicial role[3].

During the process of drafting the ICSID Convention, the World Bank orchestrated a series of conferences, which included four regional consultative meetings. Aron Broches, the then-General Counsel of the World Bank, chaired these meetings, which were held in the headquarters of the UN Economic Commissions for Africa, Latin America and the Caribbean, Europe, and Asia and the Pacific. The primary purpose of these regional consultative meetings was to facilitate discussions among legal experts from various countries regarding the Convention. These meetings were part of the World Bank's efforts to create an impression of inclusivity and representation.

This section explores the debate surrounding the design of the organizational structure of ICSID in general (as discussed in the 'Organizational Structure of ICSID' section) and, more specifically, the equitable representation requirement (as discussed in the 'Article 14(2) of the ICSID Convention' section). It highlights how the drafters' perspective on public international law influenced the design of the institution[3].

The development and establishment of the equitable representation requirement within the history of international adjudication can be traced back to a growing recognition of the public aspects of the judicial function, particularly the role of judicial institutions in advancing international law. Initially, during the negotiations at the Permanent Court of Arbitration (PCA), the concept of arbitration as a means to maintain peace led to an institutional design focused on promoting arbitration and enhancing party autonomy, without any explicit representation requirement.

The equitable representation requirement surfaced during the later, unsuccessful negotiations at the Commission of Arbitration and Justice (CAJ). Delegations associated it with the law-development aspect of the judicial function but did not deeply engage with this concept. Subsequently, the drafters of the Permanent Court of International Justice (PCIJ) adopted the equitable representation requirement and elaborated on the importance of judges with diverse legal backgrounds in applying and evolving international law. The International Court of Justice (ICJ) further solidified the regional dimension of this requirement, along with a community-oriented view of the judicial function related to the progressive development of international law.

In contrast, the drafters of the International Centre for Settlement of Investment Disputes (ICSID) redefined the equitable representation requirement to facilitate private dispute resolution. Article 14(2) of the ICSID Convention aimed primarily to allow disputing parties to appoint arbitrators with specific qualities or identities and encourage both investing and host States to use the Convention as a platform for resolving investment disputes. Historically, this shift towards dispute resolution stemmed from the diminishing emphasis on the public aspects borrowed from public international law institutions like the PCA and the ICJ. This perspective challenges the prevailing belief that investment arbitration simply follows the procedures of commercial arbitration and highlights its roots in public international law, particularly in specific institutional features.

Looking ahead, the UNCITRAL Working Group III on ISDS reform is reassessing the original institutional choices made by the ICSID drafters. The widespread consensus on the importance of addressing diversity issues has shifted the focus of the debate from why diversity matters to how to achieve it through various institutional design proposals. Nevertheless, analyzing this debate through the lens of the judicial function reveals genuine policy differences among State negotiators regarding the rationale for increased diversity, which in turn affects the choice of institutional design.

On one end of the spectrum, the self-regulation approach, combined with capacity-building, places significant emphasis on the private function of dispute resolution and party autonomy, aligning with the ICSID and PCA founders' principles. Diversity is considered important to the extent that it influences specific case decisions, even if not always empirically measurable. On the other end, echoing the paths taken by the PCIJ and the ICJ, the standing mechanism proposal recognizes the law-development aspect of the judicial function, connecting diversity requirements not only with their impact on individual cases but also with the legitimacy of judicial institutions, especially in the eyes of the public. In between these two extremes, the proposal to enhance the role of arbitration institutions, especially in a more limited form, partially resembles the CAJ drafting process, as it does not completely align with a strong focus on the public aspects of the judicial function.

In essence, the discussion about reform proposals encourages reformers to revisit the question of why diversity matters in light of the desirable judicial function of the ISDS system. Relocating investment arbitration within the context of public international law adjudication offers a promising starting point for such reflections. The endorsement of the law-development aspect of the judicial function in the histories of the PCIJ and the ICJ reflects an assumption that international judicial institutions should have roles extending beyond dispute resolution. Simultaneously, the initial notion of peace preservation associated with the PCA hints at the limitations of judicial institutions in fulfilling certain public functions. This tension is mirrored in contemporary debates about the role of international courts and tribunals in shaping international law in various fields and the growing resistance against them. In summary, the pursuit of diversity is not an isolated policy objective but is intertwined with the broader examination of the international judicial function[3].

While tourism-related arbitration is well-recognized in countries like China, Thailand, and Singapore, it remains relatively unfamiliar in Indonesia. It's worth noting that Indonesia's tourism industry is a

vital contributor to the country's economy, generating approximately 5% of its total GDP and providing employment to around 13 million people, which represents about 11% of total employment. This is due to the increasing influx of foreign tourists[1].

METHODOLOGY

The meta-analysis conducted in this study draws upon a selection of scholarly articles and relevant legal texts. The sources included in the analysis have been retrieved from reputable academic journals and official publications. Additionally, official texts from UNCITRAL, including the UNCITRAL Conciliation Rules (n.d.), UNCITRAL Model Law on International Commercial Arbitration (2006), and information from the United Nations Commission on International Trade Law (UNCITRAL) have been consulted.

Data Extraction and Coding

Relevant information and data from the selected sources have been extracted for inclusion in the meta-analysis. This includes key concepts, findings, statistical data, and legal provisions related to the topics of investor-state dispute settlement, UNCITRAL, international arbitration, and related legal reforms.

Data Synthesis and Analysis

The extracted data were systematically organized and analyzed to identify common themes, trends, and patterns across the selected sources. The analysis aimed to provide insights into the evolving landscape of international dispute resolution, the role of UNCITRAL, and proposed legal reforms in various jurisdictions.

Quantitative and Qualitative Synthesis

Qualitative methods were employed to synthesize the data. Qualitative analysis involved the examination of textual content for thematic and conceptual relationships.

Meta-Analysis Framework

The meta-analysis was framed within the context of international law, investor-state dispute settlement, UNCITRAL's role in legal harmonization, and proposed legal reforms. The analysis provided a comprehensive overview of the literature on these topics and offer insights into the current state of legal discourse in international arbitration and dispute resolution.

Limitations and Bias Assessment

Potential limitations and sources of bias in the selected sources and the meta-analysis process were considered and addressed. These may include publication bias, geographical bias, or limitations in the scope of the selected studies.

Interpretation and Conclusion

The meta-analysis results were interpreted in light of the research questions and objectives. Conclusions were drawn regarding the current state of international dispute resolution, UNCITRAL's influence, and the proposed legal reforms in the field.

Proper citation and referencing of the selected sources, legal texts, and relevant literature were provided to ensure transparency and credibility in the meta-analysis process.This methodology outlined the systematic approach taken to conduct a meta-analysis of the selected references, providing a rigorous and structured framework for the study. It combined qualitative methods to synthesize and analyze the relevant data and literature in the field of international dispute resolution and legal reforms.

Results

The number of investment disputes continued to rise each year, accompanied by an escalation in the complexity of issues within investment arbitration. Despite deep concerns within the international community, dating back to at least 2004, only partial measures were implemented to address these issues. For instance, the International Centre for Investment Disputes revised its Rules on two occasions, in 2006 and 2022. However, the primary challenge lied not in the procedural aspects but in the absence of mechanisms for reviewing and controlling finalized awards. Increasingly, differing conclusions on similar matters had become commonplace. Furthermore, the practice of legal

representatives working on a "secondment" basis as arbitrators posed significant risks of corruption[2].

The prohibition against shareholders pursuing claims for reflective loss is a foundational principle within corporate law, widely accepted in various domestic legal systems and consistent with customary international law. However, bilateral investment treaties (BITs) have deviated from this traditional approach by permitting shareholders to assert claims for their indirect losses. UNCITRAL Working Group III has recognized that this exceptional treatment of shareholder claims may warrant consideration for reform. In support of the Working Group III's initiative for multilateral reform, this article explored various options for reforming shareholder reflective loss claims available to states. It contends that treaty-based derivative claims mechanisms represent a suitable avenue for reform. These derivative claims mechanisms were incorporated into several international investment agreements (IIAs), although the arbitration practice surrounding such provisions has not been thoroughly examined until now. An analysis of this arbitration practice, particularly drawing from past cases involving the North American Free Trade Agreement, revealed that arbitral tribunals had not consistently interpreted these mechanisms as barring shareholder reflective loss claims. This suggested that states should incorporate explicit clarifying language in treaties to make these clauses effective[5].

DISCUSION

Considering all these issues, UNCITRAL Working Group III, UNCTAD, and the European Commission have initiated an unprecedented process aimed at promoting the concept of creating a Multilateral Investment Court. This article is dedicated to reviewing and analyzing the idea of establishing such a court. It delves into the actual problems encountered in investment arbitration, as well as the advantages and disadvantages of creating a Multilateral Investment Court. The conclusion drawn is that the creation of a Multilateral Investment Court would have a more positive impact than negative. From our standpoint, the challenges faced in investment arbitration have reached a point where they can no longer be ignored[4].

In the forthcoming sections of this article, we will actively engage in this discussion, explore the primary concerns, and contemplate potential resolutions[4].

Aligning Indonesia's arbitration legislation with the UNCITRAL Model Law would yield several positive effects. It would enhance Indonesia's reputation as a favorable destination for arbitral proceedings, attracting users of arbitration and increasing tourism and business activities. By updating its arbitration laws, Indonesia may also become a preferred seat or location for arbitration recognized by reputable arbitral institutions, such as the International Chamber of Commerce (ICC). Such institutions often select locations with favorable arbitration legislation for their hearings. To attract international arbitral institutions, foreign lawyers, and parties interested in international arbitration, Indonesia must establish an arbitration statute that aligns with widely accepted standards. Adopting the UNCITRAL Model Law is a crucial step toward achieving this goal and fostering growth in the tourism industry[1].

Namibia's current arbitration law, the Arbitration Act 42 of 1965, does not encompass international business arbitration. The Act primarily focuses on domestic arbitration, lacking explicit provisions for foreign arbitration. Consequently, it falls short when it comes to addressing the complexities of international arbitration. In today's commercial landscape, modern arbitration practices are increasingly shaped by the Model Law on International Commercial Arbitration (MLICA) developed by UNCITRAL (the United Nations Commission on International Trade Law) or by state legislation influenced by it[7].

It is evident that Namibia needs to adopt the MLICA, including the significant revisions made in 2006, to fully integrate into the global economic community. Furthermore, Namibia has not yet ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (CREFAA), widely regarded as the most effective treaty governing international trade[7].

This article proposes that Namibia should take steps to implement both the MLICA and the CREFAA. Failure to do so may deter businesses in Namibia from participating in international transactions due

to the absence of the legal certainty and protections offered by the New York Convention and contemporary domestic arbitration legislation.

Introduction of a New Arbitration Act for Namibia

While the Model Law on International Commercial Arbitration (MLICA) sets a standard for evaluating arbitration legislation, it serves as a blueprint rather than a strict mandate for international commercial arbitration law. It allows for the adoption of the Model Law, either in its entirety or in part. Therefore, there is a pressing need for the implementation of modern arbitration legislation in Namibia that aligns with international standards. This step is crucial not only to promote international uniformity in arbitration laws but also to foster the growth of international arbitration within Namibia. Considering the two primary adoption methods, as identified by Binder, it is recommended that Namibia adopts the incorporation-by-reference approach to align with UNCITRAL's goal of harmonization and unification. Additionally, UNCITRAL's travaux préparatoires should serve as an interpretative tool in cases of interpretation challenges. The implementation of an MLICA-informed Act should be focused solely on international commercial arbitrations[7].

Accession to the New York Convention: With or Without Reservations?

Namibia should adopt the MLICA with most of the 2006 amendments. Specifically, there is no need to make reservations regarding reciprocity since the Model Law does not include a reciprocity requirement. While the New York Convention is often considered self-executing, and Namibian law automatically incorporates international agreements upon signature, it is advisable to follow the approach recommended by the South African Reform Law Commission regarding the Convention's implementation. In this context, the English text of the New York Convention should be included as a schedule to the new Act[7].

In a recent study by [5], the examination of Shareholder Reflective Loss (SRL) claims within the context of Investor-State Dispute Settlement (ISDS) reveals that these claims are at odds with the fundamental principles of corporate governance. Consequently, the study argues that SRL claims do not provide a suitable avenue for shareholders seeking compensation.

In Section II, the article initially presents an analysis of the prevalent treatment of SRL claims in various domestic legal systems and customary international law (CIL). Subsequently, it shifts its focus to the distinctive stance taken within ISDS and explores the arguments both in favor of and against accepting SRL claims by arbitral tribunals[4].

Section III delves into the spectrum of tools employed by both tribunals and states to manage SRL claims. These tools encompass consolidation clauses and other treaty mechanisms, the utilization of preclusionary doctrines by tribunals, share acquisition options, and the inclusion of explicit drafting provisions aimed at limiting the availability of SRL claims. The effectiveness of these tools in advancing reform efforts is also examined[4].

Section IV places particular emphasis on derivative claims mechanisms as a reform option with significant potential to address the challenges posed by SRL claims in ISDS[4].

Lastly, Section V critically assesses the reasons for the limited effectiveness of derivative claims mechanisms in curbing SRL claims, particularly in cases where they have been implemented. It identifies the inconsistency in arbitral practice as linked to the absence of a textual basis for interpreting derivative claims and direct claims provisions as mutually exclusive alternatives for shareholders, a situation similar to those found in NAFTA-style agreements[2].

The article concludes by proposing recommended modifications and strategies for implementation that would render derivative claims a more appropriate substitute for SRL claims[4].

Recommendations and Conclusions

While ADR through UNCITRAL has proven effective in many cases, it is not without its challenges. The acceptance of SRL claims in ISDS stands in contrast to the prevailing practices within both domestic and international legal systems. This departure ultimately undermines the interests of respondent States and non-claimant parties when an investor asserts an SRL claim. Consequently, this issue strongly warrants reform by States[4].

States have a significant opportunity to introduce effective, multilateral reforms to address the shortcomings associated with SRL claims in ISDS. This opportunity is presented through the efforts of

Working Group III (WG III), which is expected to focus on potential reforms related to SRL claims in the near future. Such reforms, including the adoption of a multilateral derivative claims mechanism as a replacement for SRL claims, would contribute to greater consistency in arbitral outcomes in shareholder claims and enhance the legitimacy of ISDS through a more policy-informed approach[4].
Therefore, it is imperative to establish legal safeguards for the tourism industry, including the implementation of arbitration laws that align with the standards set by the UNCITRAL Model Law. The objective of this study is to explore how aligning Indonesian arbitration legislation with the UNCITRAL Model Law can promote peaceful conflict resolution within the travel and tourism sector. This topic holds great significance as it is a critical component of the Indonesian government's efforts to develop and enhance its tourism sector. To compete effectively with other Asian countries in the tourism industry, Indonesia must bring its arbitration laws in line with international standards[1].
This article has explored the existing range of solutions and recommends that derivative claims mechanisms represent the most promising option for multilateral reform. It suggests that States should incorporate derivative claims mechanisms into their International Investment Agreements (IIAs) as the appropriate channel for shareholder recovery when the local company is unable or unwilling to pursue direct recovery. Additionally, the article proposes that States should prohibit the availability of SRL claims, aligning with the well-established policy rationale that supports the preservation of separate legal identities. Such reforms would ultimately serve the interests of all stakeholders involved and provide a more balanced approach to the rights of States, shareholders, corporations, and creditors[4].
This study highlights the diverse body of research on ADR for international commerce disputes through UNCITRAL. It underscores the evolution of ADR mechanisms, the role of UNCITRAL in shaping global ADR practices, and the challenges and future prospects in this field. As international commerce continues to expand, ADR within UNCITRAL remains a critical tool for achieving efficient and fair dispute resolution.
Namibia must enact a commercial arbitration statute that incorporates the MLICA and the New York Convention as binding within the country. The wording of both statutes and the Convention should be included as schedules to the Act. This commercial arbitration statute, potentially named the "International Arbitration Act of Namibia," should establish an arbitral tribunal to handle commercial disputes, either as a sole arbitrator or a panel of arbitrators. Arbitral awards from the tribunal should be enforceable through competent courts following the provisions of Namibia's new commercial arbitration statute. This comprehensive legal framework will cover all aspects of resolving disputes arising from international commercial transactions, from enforcing settlement agreements to recognizing and enforcing arbitral awards based on arbitration agreements. Such a move will provide Namibia with a unified legal framework for adjudicating international economic disputes[7].
The MLICA aligns with the New York Convention in terms of the grounds for refusing recognition and enforcement of an award. Therefore, it is crucial, in the interest of harmonization, to implement these provisions verbatim. Concerning the formalities for award enforcement, it is recommended to apply the more liberal approach reflected in the 2006 amendment to article 35(2) of the MLICA for Convention purposes as well. Despite the overlap between Chapter VIII of the MLICA and the New York Convention on award recognition and enforcement, Namibia should ratify the Convention to facilitate Namibian parties seeking to enforce awards in jurisdictions like Botswana, which has made a reciprocity reservation[7].
Training of Legal Practitioners in Arbitration Law and Practice
A significant number of legal practitioners should receive training in mediation and arbitration to drive the cultural shift away from court litigation towards dispute resolution through mediation and/or arbitration.

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Author : Dr. Ghada M. Awada is a distinguished scholar and international arbitrator, known for her exceptional contributions to various fields. Her notable achievements include being named a Fulbright Scholar at North Carolina State University in 2016 and earning the distinction of being the first female recipient of the American University of Beirut Excellence Service Award in 2018. In recognition of her outstanding contributions, she was also honored with the Lebanese American University-CEP Excellence Award in 2014.Dr. Awada's pioneering spirit led her to establish the Certificate Arbitration Program at LAU-ACE and serve as the visionary President of Gloria Academy. Her leadership in these roles has significantly influenced the realms of education and arbitration, fostering innovation and excellence.With a profound academic background, Dr. Awada holds dual Ph.D. degrees, one in Applied Linguistics and another in Public International Law and International Relations and Diplomacy. Her multidisciplinary expertise showcases her dedication to expanding the boundaries of knowledge.Dr. Awada's influence extends far beyond academia; she has served as a consultant for UNESCO and the World Bank, contributing her insights to curriculum and textbook development projects of global significance. Her involvement underscores her commitment to advancing international education initiatives.As a prolific author, Dr. Awada has penned textbooks and numerous publications covering a wide spectrum of subjects, including curriculum reform, human rights education, arbitration, global citizenship, intercultural communication, differentiated instruction, inclusive environments, and special education interventions. Her publications have left

an indelible mark on educational discourse and practice.Currently affiliated with the Lebanese American University, Dr. Awada continues to inspire and guide the next generation of scholars and professionals. For inquiries and further communication, you may reach her at ghada.awada@lau.edu.lb and ghadawada@gmail.com, and her professional profile can be explored at https://orcid.org/0000-0001-8486-1630.