Article

Online Dispute Resolution (ODR) within Developing Nations: A Qualitative Evaluation of Transfer and Impact

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Abstract: The field of online dispute resolution (ODR) is developing both as practice and a profession. Evidence of this includes a growing community of scholars and practitioners. A Canadian International Development Agency (CIDA) grant permitted 16 practitioners from developing countries to attend the 2008 ODR Forum in Victoria, British Columbia. In the year following the Forum, an evaluation was conducted to identify changes among these practitioners' behaviors, knowledge, skills, abilities and credibility. Results indicate that ODR practitioners in developing countries are engaged in a wide range of activities, many of which are technologically and logistically complex. These practitioners also face a number of political and infrastructural challenges that are not as commonly experienced by those from developed nations. Taken together, these realities have implications both for the nature of ODR's proliferation as a legitimate practice, as well as for the provision of education and training concerning its underpinnings.

Keywords: technology; international dispute resolution; culture; qualitative; case study; information and communications technology; developing countries; online dispute resolution; CIDA

1. Introduction

Online dispute resolution (ODR) is a wide field, anchored in technology-assisted third party intervention efforts, whether aimed at resolution, peace-building, or conflict management. In some venues and efforts, technology enhances and transforms the capacity of a third party neutral to handle dispute and conflict resolution functions, in effect serving as a "fourth party" [1]. In other applications, ODR may replace the third party neutral altogether by applying computational heuristics to facilitate the resolution of conflicts directly between the disputants themselves. A common definition of ODR is offered by Colin Rule [2], the inaugural Director of Online Dispute Resolution for eBay and PayPal: "the use of information and communications technology to help parties manage, transform and resolve their conflicts."

2. The ODR Forum

The 2008 International Forum on Online Dispute Resolution ("the ODR Forum") convened June 18–19, 2008 in Victoria, British Columbia. Select honored guests included: 1996 Nobel Peace Prize winner José Ramos-Horta (President of the Democratic Republic of East Timor); "Father of the Internet," Dr. Vinton Cerf (Vice-President and Chief Internet Evangelist at Google.com); Madame Patricia Durrant (Jamaica's former Ambassador to the United Nations and retired Assistant Secretary General of the UN); and Ambassador Nelson Santos (East Timor's Ambassador to the United Nations).

In addition to some 120 registered delegates and participants, the ODR Forum was attended by 16 Canadian International Development Agency (CIDA) fellows, 10 National Centre for Technology and Dispute Resolution (NCTDR) fellows, four learners from Royal Roads University (Victoria, British Columbia) and one from Pepperdine University (Malibu, California).

3. Logic Model

Logic models are pictures of how a work takes place, linking outcomes (both short- and long-term) with program activities/processes and the theoretical assumptions/principles of a program [3]. The Forum's objectives, functions, activities, outputs and immediate outcomes have been well established, and can be understood through its logic model. The ODR Forum held as its objectives increasing participants' knowledge of ODR and peace, socio-cultural aspects of ODR (including gender issues), ODR and technology, ODR and aboriginal peoples, ODR and legal systems, and ODR and business. These objectives were pursued through the pre-conference website, the conference itself, and post-conference communications between participants. Activities carried out during the conference included two keynote addresses, sessions conducted by leading academics or practitioners in the field, and group panels and discussions. These aimed at providing the opportunity to discuss the use of information communications technology (ICT) as a pathway for the resolution of disputes, increasing information-sharing across sectors, fostering ongoing dialogue between participants, and providing for mentoring between developed and least developed countries.

Two dozen sponsors, benefactors and donors collaborated with the ODR Forum organizing committee to offset potential costs for attendees. A CAN$50,000 grant provided by the Canadian International Development Agency (CIDA) which permitted attendance at the ODR Forum by 19 fellows from 11

countries (China, East Timor, Egypt, India, Jamaica, Malaysia, Nigeria, Pakistan, Sri Lanka, Tanzania, and Trinidad). Of the 19 CIDA fellows invited to the ODR Forum, 16 attended the conference.

Tangible outcomes stemming from the ODR Forum included the posting of many presentations at odrforum2008.org, creation of a Program Handbook, establishment of the Horta-Cerf Bursary at Royal Roads University, and development of a Forum Communiqué. Similarities and differences were found in exit evaluations completed by 120 registered participants from developed countries, as well as by 16 CIDA fellows, as indicated below.

4. Exit Evaluations

4.1. Knowledge-Building

Both ODR Forum participants from developed countries and the CIDA fellows reported that the ODR Forum was useful for obtaining first-hand information from the experiences of practitioners and their institutions, and for familiarizing themselves with ODR technologies. Participants from developed countries reported that the ODR Forum assisted them in learning about the host country (Canada), and in gleaning information regarding best practices. The CIDA fellows spoke of applying learning locally, of the challenges of using ODR with the illiterate and unskilled technology users, and of developing an understanding of the socio-cultural and environmental aspects of ODR.

4.2. Social and Professional

Both groups reported that the ODR Forum afforded them opportunities for networking. The participants from developed countries spoke of the opportunity for developing the profession and promoting ODR. CIDA fellows spoke of the opportunity for stimulating volunteerism through ODR.

4.3. Settings

Both groups referred to the potential for implementing ODR within the developing world. The participants from developed countries, however, also identified the utility of ODR within the developed world whereas the CIDA fellows did not.

4.4. Possible Applications and Outcomes

Interestingly, neither group identified business applications or financial outcomes in their evaluations. Instead, both groups identified human rights, justice, equality, gender equality, and peace-building as possible outcomes of ODR. The participants from developed countries also referred to its utility in increasing governance, human dignity, fairness, transparency, and accountability, and also for advancing global policy, reducing terrorism, and creating a stable and just world. The CIDA fellows' feedback focused on the opportunity of ODR to prevent, mitigate resolve and transform violent conflict, and to increase participation, inclusiveness and responsiveness through ODR. Also addressed was the potential for ODR to empower disputants, develop nations and advocate for legal rights. Lastly, the CIDA fellows also identified arbitration, long-distance family mediation, ombudsmanship, and the judicial system as possible venues for ODR.

5. Purpose of the Evaluation

As a test of the ODR Forum's logic model, an evaluation was conducted to identify the intermediate outcomes accomplished by CIDA fellows' in the year following the ODR Forum. Data were solicited to identify specific changes among CIDA fellows' behaviors, knowledge, skills, abilities and credibility with regard to ODR since their participation in the ODR Forum.

6. Participants and Methods

6.1. Recruitment

All 16 CIDA fellows that attended the ODR Forum were invited by email to participate in this evaluation and were directed to a web-based survey in which they selected alternative days and times among a two-week period in April 2009 during which they would be available to be interviewed. The CIDA fellows were asked to indicate their preferred start-time according to their local clock and also to indicate their time zone. Finally, they were asked to indicate whether they preferred to be interviewed via Skype or telephone, and to provide their Skype username and/or preferred telephone number as it should be called from the United States. The fellows were asked to complete the scheduling survey by the end of April 2009. Only seven fellows complied with this request, so the recruitment period was extended for a full two months. When interviewing completed in July 2009, all but four of the 16 CIDA fellows attending the ODR Forum had scheduled and completed their interviews. All participants in the evaluation were fluent in English as a second language, and had access to a telephone and/or Skype as a means of communication.

6.2. Instrument

Based on consultation with the ODR Forum's organizers, an interview protocol was developed using semi-structured questions designed to solicit CIDA fellows' responses to eight topics. The first question concerned what each CIDA fellow had learned from the ODR Forum that could be applied within their homelands. Next, participants were asked what they had done with regard to ODR since the ODR Forum. Third, participants were asked what they reported as being the resources necessary to make a difference through ODR. The participants were next asked what they would advise the hosts of future ODR Forums to help ensure access to the Forums by those from developing states. The fifth question explored what participants would advise the National Center for Information Technology and Dispute Resolution (NCTDR) regarding ODR issues among those from developing states. Next, participants were asked what each desired regarding mentoring. The seventh question asked participants to indicate what they believed to be appropriate actions that the NCTDR fellows and the Forum organizers should take to target issues of concern for participants from developing states. Lastly, participants were asked their impressions of Canada as their host and funder.

The interview questions were sent in advance to any participant that requested them. Two made this request and were emailed the questions in advance of the interview.

6.3. Procedures

Recruitment and interviewing occurred concurrently. Interviews began in April 2009 and were completed in July 2009. Each participant was contacted at the time of their choosing, and interviewed for 30 to 60 minutes. The first several minutes of each conversation was spent establishing rapport with the participant. Following this, the substance of the interview began. Participants were encouraged to complete their responses to their satisfaction, and were prompted to clarify or elaborate upon their points as necessary. Field notes were entered into a template segmented according to each of the eight primary interview questions. Participants who requested to review a transcript of the field notes for check for their accuracy were emailed them within 24 hours of the interview.

7. Results

Data were analyzed by aggregating field notes for all twelve interviews by each of the eight topics. Similarities and differences were then identified across all respondents question-by-question, with similar responses compiled together, and unique responses coded singularly. Summaries of each of the eight topics addressed in the interview were then consolidated, and are reported below. To the extent possible, the field notes are presented verbatim, with only minimal edits made to maintain proper grammar within the summary statements.

8. Learning Applied within Homelands

Four of the 12 interview respondents spoke of developing and maintaining a professional network of critical colleagues since returning to their homelands from the ODR Forum. One respondent reported investigating the use of mobile phones as an ODR technology to send information and improve access to justice; another had been exploring the application of ODR within micro-finance industries. One CIDA fellow had become involved in applying mediation within the deaf community, another in ODR within micro-finance banking, while yet another founded one of the first ODR providers within his homeland and expressed interest in the application of ODR to renewable energy finance payments. Another respondent spoke of a desire to mediate technical related disputes through ODR, while two others spoke more generally of what they learned through the ODR Forum as concerning nature and concept of ODR. A final respondent spoke of gaining information regarding global perspective on technology.

9. ODR Applications Undertaken

Activities that respondents had undertaken with ODR since returning to their home countries were unique to each CIDA fellow. One respondent had been exploring the application of ODR within geographically distant family and business disputes, while refashioning broadcast community radio to leverage mobile phones for interactivity and feedback was the work of another. Another fellow had launched the first private sector alternative dispute resolution (ADR) center in his home country and aimed to decrease the influence of the Taliban and Al-Qaeda on citizenry. Yet another CIDA fellow has also established the first ADR conference within his homeland and was exploring how the speed

with which resolutions to conflicts in the IT and communications industry could be increased through ODR. The resolution of disputes concerning digital media and copyright was the focus of another fellow.

Promoting democracy was the aim of a respondent whose interest in using ODR technologies was in its application to real-time election monitoring. Another CIDA fellow succeeded in gaining funding to teach dispute resolution between teachers, parents and schoolchildren. While developing an ODR journal, another respondent had begun working with eBay and PayPal to create "community courts" to advance problem-solving among peers. One respondent reported being in conversation with telephone companies to develop ODR as a community service; another had been using ODR for engaging internet domain-name registrars in disputes between registrants. A respondent with an interest in renewable energy had been exploring the utility of ODR in the arbitration of disputes within that industry. A final respondent had been instrumental in developing an online arbitration commission room and had staffed the center with advanced law degree (LLM) students that were serving on internship programs.

10. Resources Necessary to Effectuate ODR

Several themes emerged among the CIDA fellows' opinions of the resources they reported as necessary to effectuate change through ODR. Whether spoken to as education, advocacy, awareness, outreach or marketing, increasing the profile of ODR as a means for resolving disputes was named by half of the 12 respondents, with another three speaking to the importance of developing pilot projects involving ODR so as to demonstrate its viability as an alternative to the courts. Five of the respondents referred to leveraging mobile-based platforms, such as mobile internet and SMS, as well as integrating mobile-based ODR with face-to-face dispute resolution mechanisms. The same number of respondents also spoke to the inadequacy of current infrastructural issues ranging from a lack of dependable electrical power to unaffordable internet access to illiteracy and police crackdowns on unfettered internet access. Given these limitations, two respondents spoke of the importance of leveraging internet cafes for ODR. One CIDA fellow expressed frustration in ODR providers' proprietary closed-source platforms and unfriendly graphical user interfaces. One respondent aspired for the establishment of high-end service providers and compelling business model for ODR, while another hoped for the opportunity to engage in ODR with large ebusinesses.

11. Ensuring Those from Developing States Have Access to the ODR Forum

Several respondents shared suggestions for future ODR Forums. One requested that the experiences and shortcomings of electoral bodies and NGOs with ODR be more represented. Another desired for examples of ODR within developing nations in which sector-specific schemes had gone from nonexistent to full implementation. A third respondent desired more information regarding non-commercial applications of ODR, both as dedicated platforms as well as expansion of commercial platforms' typical use. Distinct from these three respondents, however, one CIDA fellow pointed out while the topic of ODR and peace may be relevant more to those nations that have civil conflict, sessions concerning the commercial and social side of ODR should not be diminished. One other respondent recommended that future ODR Forums address research regarding ODR's potential application to climate change, the economic downturn, and how both impact society.

Three CIDA fellows offered several suggestions regarding the conduct of future ODR Forums: that participation during and following be possible from a distance, that concurrent sessions be minimized or avoided so that attendees can participate in all presentations, that time be required within sessions for open dialogue and the sharing of best practices, and that ODR "basics" such as its definition, uses and technologies be covered only within a single introductory session to permit additional time for discussion of more advanced topics during later concurrent sessions. Three respondents also shared the opinion that greater measures should be taken to help secure the travel visas necessary for their on-site participation in future ODR Forums. Two others expressed an interest in having their organizations partner with the ODR Forum in the future.

One final set of recommendations came from three respondents who provided advice regarding attendees of future conferences. One desired increased representation from developing states as well as greater partnerships between developing and developed states. Another suggested that governmental representatives and members of various nations' bar associations be invited to future ODR Forums. A third respondent recommended that individuals within NGOs be asked to participate in future ODR Forums so that their momentum could be more readily transferred to regional organizations and politicians.

12. Advice to the NCTDR Regarding ODR Issues among Those from Developing States

Four CIDA fellows shared that opinion that education should be among NCTDR's priorities in advancing the ability for those from developing states to make use of ODR. One suggestion was for outreach efforts to provide governments a formal endorsement of ODR, explain it legitimacy, and underscore its dependability via online training and technical support for practitioners. Another respondent advocated for the development of curriculum that introduces Law and Master's students to ODR and Information Communications Technologies (ICT).

Two respondents invited members of the NCTDR and organizers of the ODR Forum to visit their home countries. Two other respondents reiterated the importance of helping practitioners from developing countries obtain grant funding and visas, as well as be able to participate in live webcasts of the Forum for those unable to attend in person. One respondent expressed an interest in developing partnerships within the ODR community; another encouraged the NCTDR to facilitate a civil online discourse regarding contentious issues concerning ICT and ODR. A final respondent underscored that many in developing countries have more pressing concerns guiding their communities and decisions than ODR, such as making money to live from day-to-day.

13. Mentoring Offers and Requests

Ten of the twelve CIDA fellow stated that they would be interested in providing or receiving mentoring regarding ODR. Six respondents named projects they had previously or were currently interested in: developing a book concerning ODR, creating a certification program for ODR practitioners, mobilizing a working group to define the field of ODR, involving graduate students in ODR research and work, developing scenarios to familiarize lawyers with ODR, and exploring the application of ODR to low-value intangible property disputes such as over dispute concerning digital

media purchases. A final respondent requested mentoring regarding the fostering of a more globalized outlook regarding ODR.

Three CIDA fellows reiterated the importance of developing active communities of practice with fellow ODR practitioners outside of the conference itself. Two respondents suggested that online training in ODR should be developed, with best practices shared back at subsequent ODR Forums.

14. Targeting Issues of Concern to Participants from Developing States

Six of the CIDA fellows shared specific advice relevant to popularizing ODR and the ODR Forum within developing states. These included developing and sharing a roster of ODR advocates, ensuring ODR issues are included within other conferences' agendas, maintaining opportunities for co-learning between those in developed countries and those in developing states, using this evaluation as a means of re-connecting with ODR Forum participants, interfacing with institutes and governments in developing countries, identifying funding for NGOs to learn to apply ADR and ODR, and developing a network for exchanging expertise among ODR practitioners. Four respondents commented on the Forum's advocacy role: one implored the Forum to maintain its commitment to ODR and peace-building; another encouraged popularizing the concept that resolving disputes does not have to terminate in court or prison. A third fellow emphasized that multiple systems of dispute resolution are necessary, while a fourth offered that non-textual means of communication—such as voice over internet protocol (VOIP)—should be explored so that the non-literate may also have access to ODR.

15. Impressions of Canada as Host and Funder

All twelve CIDA fellows were unanimous in their acclaim for Canada as the Forum's host and funder. Three spoke of Victoria's natural beauty; three others remarked on British Columbians' genial nature. Another three respondents made specific mention of highlights of their experience in Victoria: an indigenous Chief whose ceremony opened the ODR Forum, a visit to Pearson College, and a reception at Royal Roads University. Four respondents expressed their appreciation to the ODR Forum's organizers for the overall organization of the conference as well as for travel and resource support. One respondent complimented the work that the British Columbia mediation community provided in the northern part of the province; another expressed surprise by the multiple ethnicities represented in Victoria; a third noted Canada's history of funding civil society initiatives for peacebuilding abroad. At least one stayed beyond the conference itself for vacation, while another pursued business opportunities with the Canadian stock exchange.

16. Conclusions

The ODR Forum consisted of two days of plenary and breakout sessions. It sought to assemble the world's leading practitioners, academics, students, and civil society to discuss the resolution of disputes through online technologies. Such disputes may range from B2C (business-to-consumer) issues to the prevention of human rights violations in conflict regions, and from reconciliation of opposing groups in armed conflict to the resolution of disputes over intellectual property on the internet. It also brought together the leading technology developers who design conflict resolution platforms for use in legal, commercial, or insurance related disputes.

This evaluation served to assess the degree to which 16 CIDA fellows both implemented ODR in their communities and sustained the ODR Forum's immediate outcomes. While consensus of opinion is not necessarily a goal of qualitative evaluation, some interesting patterns did occur across respondents. Though not all CIDA fellows had prior experience with ODR, all had been both active and accomplished in peacekeeping, conflict resolution, diplomacy and allied fields. Perhaps better than most, they seemed to understand that ODR is a far more unfamiliar concept than alternative dispute resolution (ADR), which itself is only in its infancy in many areas of the world. To this end, the CIDA fellows underscored the importance of using education to first develop awareness of ODR, then leveraging that awareness as a means to forward its acceptance. The path to such adoption may well be able to be shortcut by virtue of the very nature of how technology has been disseminated within developing nations. Just as the mobile phone has leapfrogged land-based telephony in many developing nations, so too ODR may supersede ADR as an efficient and effective means for resolving disputes. Ironically, as the infrastructure for mobile-based communication in many of these countries is already well established, it seems unlikely that ODR will be tethered to hardwired computers in the way that it has been within developed countries, and instead will likely take place through wireless mobile devices.

Many of the CIDA fellows related that maintaining and expanding their professional network was one of the most valuable aspects of the ODR Forum. Indeed, many of those interviewed expressed their willingness to volunteer as mentors to assist newcomers to the field. At the same time, travel was difficult for participants from several of the geographically and politically disparate locales from which the CIDA fellows hailed. This dichotomy, perhaps, helps explain why greater communication outside of the Forum, as well as virtual participation in it, was a common request among interviewees.

17. Limitations

Despite the veracity of the evaluation's findings and conclusions, several aspects of the project may limit what Lincoln and Guba [4] refer to as its "trustworthiness." The first aspect of trustworthiness involves the project's credibility: one's confidence in the "truth" of the evaluators' findings. Though collecting data through synchronous voice communication did yield rich naturalistic data, the limitations of both telephone and VOIP connections made a clear and reliable connection very much the exception rather than the rule during the interviews. This was impacted by telecommunication failures, and also by miscalculations of start-times between time zones and difficulties connecting to those residing in countries blocked by Skype "because of a precedent of fraud and misuse" [5].

The second aspect of trustworthiness—applicability—concerns the degree to which a project's findings can be transferred to other contexts. While the rate of participation in the evaluation was high, those that elected not to participate were among the CIDA fellows with the least amount of English fluency. As a corollary, several of the CIDA fellows were also presenters at the conference itself, a phenomenon that might not be the case were future ODR Forum participants from developing countries not encouraged to do so by the conference organizers.

The third aspect of trustworthiness—consistency—deals with the extent to which findings are dependable and could be repeated. During the course of the first several interviews it became apparent that respondents had difficulty differentiating between the intent of the first and second interview topics, as well as between the fourth, fifth and eighth. To address this, effort was made to distinguish

between the intents of each prompt in the interview. Serendipitously, the similarity between these interviews questions also allowed respondents the opportunity to elaborate in greater depth on points they had made previously, much as was afforded by the follow-up probes.

The last aspect of trustworthiness—neutrality—involves discerning whether the findings are grounded solely in the data or the evaluator's biases, motivations, or self-interests. The sponsor of this evaluation was also an organizer of the ODR Forum, and served as ombudsman for a private, nonprofit organization that governs technical operations of the internet. The study's principal evaluator attended the ODR Forum as a graduate student under the auspices of an externship as part of his Master's degree in dispute resolution. While professional relationships with the CIDA fellows are likely to be at least partially responsible for the level of participation obtained in the study, reflexive journals which were completed throughout the planning, conduct and analysis of the evaluation assisted in documenting the methods-related decisions made as well as their rationale.

18. Suggestions for Future Research

This qualitative study allowed for an in-depth investigation a variety of issues pertinent to the potential for ODR to proliferate in developing nations. What remains to be learned, however, is the identification of barriers that hinder the implementation of ODR, as well as the discovery of supports that may help it propagate. One such means for determining these matters is via SWOT Analysis, a technique for identifying the internal enhancers of performance (strengths), as well as the internal inhibitors (weaknesses), external enhancers (opportunities) and external inhibitors (threats). Such strengths, weaknesses, opportunities and threats are known collectively as "SWOTs" [6].

Future researchers may wish to recruit a larger and more representative sample of those from developing states, asking them to independently rate the degree to which various factors are within or outside of their control (ability to influence), as well as the degree to which these factors are seen as impacting their ability to implement ODR. Such a process would allow for "apples-to-apples" comparisons both among and between strengths, weaknesses, opportunities and threats by quantitatively analyzing practitioners' perceptions of control over, and usefulness of, these factors.

19. Summary

The printing press is famous for having revolutionized the way that people communicate across time and distance. It democratized literacy, in turn making illiteracy a much greater disadvantage than had previously been the case. ODR stands at the precipice of similarly transforming dispute resolution.

Rather than being limited to the internet only as its medium, the "O" of ODR recognizes myriad stationary and mobile technologies as arenas for both the emergence of conflicts as well as means for which they may be resolved. ODR allows for exploring possibilities that expand beyond two-party transactional models to one in which multiple alternatives among diverse stakeholders may be considered. While today's ODR tools may not have existed in the past—and may or may not be institutionalized into the future—what is essential to their usefulness are the same tenets that have been critical to preventing and resolving conflict throughout human existence. Perhaps highest among these is trust in ODR's practitioners, processes, and platforms, and security: both as a promise from providers and as a belief held by disputants.

Just as the relevance and usefulness of the innovations brought about by the printing press were most prescient for the literate, so too will the ability to "read" online environments be of greatest benefit to ODR's earliest adopters. In growing the potential of ODR, responsible practice is a necessary but not sufficient condition. For ODR to flourish in the way that its offline predecessor has during the past three and a half decades, what is also required is education concerning both existing best practices and the exploration of novel ones.

Author Contributions

Dr. Doug Leigh, Associate Professor at Pepperdine University, proposed the design and methods for the evaluation, collected and analyzed data, and developed the initial draft of the manuscript. His relevant research, publication, and lecture interests concern cause analysis, organizational trust, leadership visions, and alternative dispute resolution.

Dr. Frank Fowlie, Fellow, National Centre for Technology and Dispute Resolution, University of Massachusetts, was the organizer and Chair of the ODR Forum, and worked with CIDA to fund the participation of colleagues from developing states. He contributed information on the 2008 Forum, and a narrative on the relationship with CIDA and the overseas guests.

Conflicts of Interest

The authors declare no conflict of interest.

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