

Title:

Alternative Dispute Resolution: Technology and ADR in the Middle East Following the COVID-19 Pandemic

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Abstract

This article seeks to close a gap in the literature on the use of alternative dispute resolution (ADR) in the Middle East. In particular, it examines unprecedented developments in countries situated in the Persian Gulf where a range of innovative institutions outside the domestic court system provide ADR services. Qatar, Saudi Arabia, and the United Arab Emirates host a number of sophisticated international courts as well as specialized dispute resolution centers backed by the English common law and recognised international arbitration and mediation rules. The COVID-19 pandemic has necessitated remote hearings around the world as courts seek to dispense justice in spite of logistical hurdles preventing in-person

meetings. The same is true in arbitral institutions where lawyers and business representatives have been unable to travel. This paper assesses how these institutions are deploying technology to deliver ADR services to the international business community in the Persian Gulf. The analysis reveals that the courts and ADR centers were largely ‘pandemic ready’ before the pandemic. Some institutions have either been designed specifically to deliver services remotely, or instituted technology prior to the pandemic that could be upscaled rapidly. Others have responded quickly to implement technology to provide hearings remotely. In the background, institutional rules, practice directions, and regional legislation had already mandated and encouraged the use of technology. This pre-emption of the proliferation of technology has highlighted a regional nimbleness that other parts of the world have struggled to replicate as efficiently. Gulf institutions are early adopters of these technologies, positioning themselves as leaders in the dispute resolution field, characterized by a flexible and entrepreneurial character.

1. Introduction

The Arab Gulf Countries that make up the Gulf Cooperation Council (GCC) - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE) - have rapidly growing and diversifying economies.¹ Law and dispute resolution mechanisms play a critical role in supporting the emergence of more competitive business sectors that move beyond dependency on natural resources. This article examines regional developments that have led to a plethora of innovative institutions outside the domestic court system that provide ADR services. These institutions include international courts as well as centers providing arbitration and mediation services. Focusing on Qatar, Saudi Arabia, and the UAE, this article looks in particular at how these institutions have used technology in the delivery of ADR services. The analysis reveals that many of these institutions had implemented new technologies before the pandemic, and those that had not were able to quickly adapt and implement online services. This embrace of online dispute resolution, while not unique, illustrates the nimble and forward-looking character of many regional institutions. The use of technology positions institutions in the Gulf to be leaders in dispute resolution, while also revealing the adaptive and pluralistic legal order taking shape in the region.

2. International Courts and ADR Institutions in the GCC

Qatar, Saudi Arabia, and the UAE have developed institutions for resolving civil and commercial disputes whether through adjudication,

¹ International Monetary Fund, ‘Gulf Cooperation Council: Trade and Foreign Investment—Keys to Diversification and Growth in the GCC,’ (6 December 2018) <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/12/04/pp120618gcc-trade-and-foreign-investment>, last accessed 15 March 2022.

arbitration, or mediation. These institutions provide means of dispute resolution outside domestic courts and domestic law. Here, we outline those institutions before examining their mandates with regard to both arbitration and mediation.

In Qatar, there are two relevant institutions. The first is the Qatar International Court and Dispute Resolution Centre (QICDRC) which specialises in “resolving civil and commercial disputes,” and hearing appeals raised against decisions “of the Qatar Financial Centre (QFC) authority, regulatory authority, or other QFC institutions.”² The QFC is a business and financial center.³ The jurisdiction of the QICDRC extends to “disputes arising from transactions, contracts, arrangements, or incidences taking place in or from the QFC between” a range of entities.⁴ That remit may extend to entities situated outside the QFC. Indeed, QFC Law also contemplates disputes between entities established “within the QFC and residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise.”⁵ Thus, cases involving non-QFC entities may be heard, but a dispute must involve at least one party that falls within the jurisdiction of the QFC for it to be adjudicated by the QICDRC.

The regulations and procedural rules of the QICDRC “are inspired by the England and Wales Commercial Courts Guide.”⁶ There are also a number of judges on the Court from the United Kingdom (UK) judiciary, with the Presidency having been held by prominent judges from the UK.⁷ Despite this, the Court does not expressly apply the common law of England.⁸ In practice, the general principles of common law are applied without the court being tethered to a particular body of jurisprudence. The court is ultimately seeking to apply “international best practice[s]” in their adjudication of cases.⁹ This approach reflects the judicial makeup of the

² The QICDRC was established by QFC Law No. 2 of 2009 (Qatar); QICDRC, ‘About Us’, <https://www.qicdrc.gov.qa/about-us/history>.

³ ‘QFC Benefits *QFC*’, <https://www.qfc.qa/en/about-qfc/qfc-benefits>, last accessed 15 March 2022.

⁴ Article 8, QFC Law No. 7 of 2005 (Qatar) (amended by Law No. 14 of 2009 (Qatar)).

⁵ *Ibid.*

⁶ Zain Al Abdin Sharar, ‘A Comparative Guide to the Proceedings of a Case in the Qatar International Court and in the Qatar National Courts’ (2020) 2 *Lexis Nexis/ The Qatar Business Law Review* 34, 34, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3748329, last accessed 15 March 2022.

⁷ Lord Phillips was the first President of the Court, while Lord Thomas has been the President since 2018. See, ‘The Court Overview’ *QICDRC*, <https://www.qicdrc.gov.qa/courts/court>, last accessed 15 March 2022.

⁸ Sharar (n 6) 34.

⁹ ‘Qatar International Court and Dispute Resolution Centre: An Introduction’ 1 *QICDRC 7*, https://www.qicdrc.gov.qa/sites/default/files/2021-12/3qicdrc_-_an_introduction_0.pdf, last accessed 15 March 2022.

Court which consists largely of common law judges (although, civil law judges also preside on its benches).

The second institution, in addition to the QICDRC, is the Qatar International Center for Conciliation and Arbitration (QICCA) established in 2006, operating under the auspices of the Qatar Chamber of Commerce and Industry.¹⁰ The Qatar Chamber encourages members to use model clauses in their national and international contracts.¹¹ Hearings of both the QICDRC and QICCA are typically held in-person, but they have both developed practices for resolving disputes online which shall be explored later in this paper. In terms of jurisdiction, the principle of ‘competence-competence’ is applied by the QICCA, which means that it can rule on the extent of its own competence regarding the dispute before it.¹² Three arbitrators preside over the arbitration (two chosen by the parties respectively, and one appointed by the two arbitrators).¹³

Institutions with similar aims, underlying principles, and approaches to governance exist in Saudi Arabia. In Saudi Arabia, the Saudi Center for Commercial Arbitration (SCCA)¹⁴ was created to administer “civil and commercial disputes where parties agree to refer their disputes” to the Center.¹⁵ The SCCA provides a venue for both arbitration and mediation. It has established a strategic partnership to advance commercial arbitration in the region with the international arm of the American Arbitration Association’s International Center for Dispute Settlement (AAA-ICDR).¹⁶

Abu Dhabi hosts the Abu Dhabi Global Market (ADGM), which is an international financial center with \$857 billion of total assets under management.¹⁷ Like the QFC in Qatar, it also has a court system called the ADGM Courts. This court is more explicit than the QICDRC in its direct application of the English Common Law, with the courts and judiciary “modelled on the English judicial system.”¹⁸ In Dubai, the Dubai International Financial Centre’s (DIFC) banking assets were \$178

¹⁰ Qatar Chamber, ‘Qatar International Center for Conciliation and Arbitration: Rules of Conciliation and Arbitration’ 1, 6. https://qicca.org/wp-content/uploads/2016/08/QICCA_Rules_Eng.pdf, last accessed 15 March 2022.

¹¹ Ibid 6.

¹² Ibid 18.

¹³ Ibid 23 at 2.

¹⁴ Established by Cabinet Decree number 257 (14/6/1435/H – 15/03/2014G) (Saudi Arabia).

¹⁵ ‘About SCCA’ <https://sadr.org/about-scca?lang=en>, last accessed 15 March 2022.

¹⁶ ‘Saudi Centre for Commercial Arbitration (SCCA) and the International Center for Dispute Resolution (ICDR) enter new phase of their relationship’ *SCCA* (10 Oct 2019) <https://sadr.org/news-details/55?lang=en>, last accessed 15 March 2022.

¹⁷ ‘About Abu Dhabi Global Market’ *ADGM*, <https://www.adgm.com/about-adgm/overview>, last accessed 15 March 2022.

¹⁸ ‘English Common Law’ *ADGM*, <https://www.adgm.com/adgm-courts/english-common-law>, last accessed 15 March 2022.

billion as of 2019.¹⁹ The DIFC Courts,²⁰ like the ADGM Courts, apply English Common Law unless the contract between the parties states otherwise.²¹ The jurisdiction of the DIFC extends to any civil or commercial case in which both parties choose to submit a dispute to the DIFC (either by contract or post-dispute) or to any “civil, commercial or employment case related to the DIFC.”²² The ADGM Courts may hear any civil or commercial claim “where the parties agree in writing to file such claim or dispute with them whether before or after the claim or dispute arises.”²³ However, in general, the ADGM Courts will hear disputes involving the ADGM, its authorities or establishments.²⁴ There are also several dispute resolution centers in the UAE, such as the Dubai International Arbitration Centre (DIAC), founded in 1994.²⁵

The institutions identified above all offer an avenue for the resolution of disputes and have tackled technological necessities required for conducting their mandates remotely. The sections below examine the use of ADR in these institutions before evaluating the technological mechanisms employed to ensure the continued use of those services.

3. Administering ADR in the Respective Institutions

ADR has seen significant inroads in the region. Arbitration has tended to dominate, but greater attention is being given to mediation (although, mediation is sometimes referred to as ‘conciliation’ despite both being separate ADR processes). There have been two approaches to the use of ADR. First, through the creation of bespoke arbitral institutions as noted above, which provide the rules and framework for ADR. Second, the international courts which provide a venue for ADR, employing the rules of the arbitral institution selected by the parties in their contract.

QICCA in Qatar has adopted both the UNCITRAL Arbitration and Conciliation Rules for its proceedings.²⁶ The SCCA in Saudi Arabia has also adopted the UNCITRAL Arbitration Rules but utilises the AAA-

¹⁹ ‘DIFC Reports Record Growth in 2019’ DIFC (8 March 2020) <https://www.difc.ae/newsroom/news/difc-reports-record-growth-2019/#:~:text=In%202019%2C%20total%20banking%20assets,invested%20by%20DIFC%20portfolio%20managers>, last accessed 15 March 2022.

²⁰ Established by Dubai Law No. 12 of 2004 (Dubai).

²¹ ‘Courts FAQ’ DIFC Courts, <https://www.difccourts.ae/about/faq/courts-faq>, last accessed 15 March 2022.

²² Ibid.; Article 5 of Law No. 16 of 2011 (UAE).

²³ Law No 12 of 2020 (amending Law No 4 of 2013) (Abu Dhabi).

²⁴ Ibid.

²⁵ ‘About DIAC’ DIAC, <http://www.diac.ae/idias/aboutus/>, last accessed 15 March 2022.

²⁶ Qatar International Center for Conciliation and Arbitration, *Rules of Conciliation and Arbitration* (1 May 2012) 6.

ICDR Mediation Rules for mediation.²⁷ The UAE has adopted the Federal Arbitration Law, which is based on UNCITRAL Model Law.²⁸ All onshore centers (those other than the ADGM and DIFC) will apply UNCITRAL rules by virtue of the Federal Law (such as the Dubai International Arbitration Centre (DIAC) and the Abu Dhabi Conciliation and Arbitration Centre (ADCAC)).²⁹

In Qatar and the UAE, parties may also choose to use the international courts as their ADR venue applying the rules of an external arbitral institution. In Qatar, this option is provided for under Article 6 of Law No. 2 of 2017 Issuing the Arbitration Law in Civil and Commercial Matters requiring that parties select a ‘competent court’ for their arbitral proceedings. The QICDRC recommends that parties use a model clause in their contracts for this purpose.³⁰ Mediation can also be initiated by the court, through a contractual agreement between the parties or by voluntary request of the parties.³¹ In this regard, the Court has adopted Mediation Rules as it seeks to offer a means for resolving disputes beyond arbitration.³² Encouraging the use of arbitration and mediation falls within Article 5 of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules.

In the UAE, there is a divergent approach between the courts in Abu Dhabi and Dubai. The ADGM Courts apply a similar approach to that of the QICDRC in offering a venue where arbitration and mediation can be undertaken. This is called the ADGM Arbitration Centre (ADGMAC), which is available to anyone regardless of the institution chosen by parties

²⁷ Saudi Center for Commercial Arbitration, *Arbitration Rules: Mediation Rules* (October 2018) 7 & 9.

²⁸ Federal Arbitration Law No 6 of 2018 (UAE); ‘The UAE’s New Arbitration Law – Federal Law 6 of 2018’ *Al Tamimi & Co*; <https://www.tamimi.com/insights/video-gallery/the-uaes-new-arbitration-law-federal-law-no-6-of-2018/>, last accessed 15 March 2022.

²⁹ John Lewis and Nassif BouMalhab, ‘Spotlight: Alternatives to Litigation in the United Arab Emirates’ *Lexology* (11 Feb 2020) <https://www.lexology.com/library/detail.aspx?g=34494176-7f11-4677-9755-001f5b380acb>, last accessed 15 March 2022; Malak Nasreddine, ‘The UNCITRAL Model Arbitration Law and the UAE Federal Arbitration Law: Points of Convergence and Divergence’ *Kluwer Arbitration Blog* (22 November 2018) <http://arbitrationblog.kluwerarbitration.com/2018/11/22/the-uncitral-model-arbitration-law-and-the-uae/>, last accessed 15 March 2022; Thomas R. Snider and Sara Koleilat-Aranjo, ‘UNCITRAL Confirms UAE Arbitration Law as Model Law-Based’ *Al Tamimi & Co* (July 2020) <https://www.tamimi.com/law-update-articles/uncitral-confirms-uae-arbitration-laws-as-model-law-based/>, last accessed 15 March 2022.

³⁰ ‘Dispute Resolution Clause’ *QICDRC*, <https://www.qicdrc.gov.qa/dispute-resolution-clause>, last accessed 15 March 2022.

³¹ ‘Mediation Overview’ *QICDRC*, <https://www.qicdrc.gov.qa/services/mediation>, last accessed 15 March 2022.

³² QICDRC, *Mediation Rules*, https://www.qicdrc.gov.qa/sites/default/files/2021-12/mediation_booklet_english.pdf, last accessed 15 March 2022.

to administer an arbitration.³³ Like many arbitral institutions around the world, the ADGMAC's framework is based on the UNCITRAL Model Law.³⁴ Moreover, the Abu Dhabi Global market can be selected by parties as the seat of the arbitration. The ADGMAC does not, however, have its own arbitration rules, nor does it administer arbitral proceedings. The ADGMAC facilities can also be used for mediation, and the ADGM Courts provide a court-annexed mediation service.³⁵

The DIFC in Dubai (like other institutions) has an arbitration law based on the UNCITRAL Model Law.³⁶ However, it has taken a different approach to arbitration through "a joint venture between the DIFC, the Arbitration Institute (DAI), and the London Court of International Arbitration (LCIA)."³⁷ This joint venture is called the DIFC-LCIA Arbitration Centre, which has its own arbitration rules and administers arbitral proceedings.³⁸ In this partnership, the LCIA assists with promoting and administering arbitrations where the DIFC is chosen as the seat. This contrasts with arbitrations where Dubai is chosen as the seat because the DIFC is a 'special jurisdiction' in Dubai.³⁹ The DIFC-LCIA can also be used for mediation following the Centre's mediation rules.⁴⁰

Finally, it is worth noting significant recent developments regarding mediation that might lead more parties to use mediation and to embark on mediation proceedings remotely. The United Nations Convention on International Settlement Agreements Resulting from Mediation (known as the Singapore Convention)⁴¹ was adopted for the recognition of mediation agreements across borders. This development will give greater

³³ ADGM Arbitration Centre, 'Arbitration in ADGM', <https://www.adgmac.com>, last accessed 15 March 2022; ADGM Arbitration Regulations 2015 (ADGM Abu Dhabi).

³⁴ ADGM Arbitration Centre, 'Why Arbitrate in ADGM?', <https://www.adgmac.com/arbitration/why-arbitrate-in-adgm/>, last accessed 15 March 2022.

³⁵ Part 36, ADGM Court Procedure Rules 2016 (ADGM Abu Dhabi); ADGM Arbitration Centre, 'Mediation Facilities', <https://www.adgmac.com/mediation/>, last accessed 15 March 2022.

³⁶ DIFC Law No 1 of 2008 (DIFC, Dubai).

³⁷ DIFC-LCIA Arbitration Centre, 'Why Was the DIFC-LCIA Established?', <http://www.difc-lcia.org/why-was-the-difc-lcia-established.aspx>, last accessed 15 March 2022.

³⁸ It was legally established following Art. 8, Sect. 3, Par. 5(f), Dubai Law No 7 of 2014 (amending Law No 9 of 2004) (UAE).

³⁹ DIFC-LCIA Arbitration Centre, 'Overview', <http://www.difc-lcia.org/overview.aspx>, last accessed 15 March 2022; DIFC-LCIA Arbitration Centre, 'Why is the DIFC-LCIA the Preferred Alternative Dispute Resolution Forum, and What Makes it Unique?', <http://www.difc-lcia.org/why-is-difc-lcia-the-preferred-alternative-dispute-resolution.aspx>, last accessed 15 March 2022.

⁴⁰ DIFC-LCIA Arbitration Centre, *Mediation Rules* (1 Jan 2021) <http://www.difc-lcia.org/mediation.aspx>, last accessed 15 March 2022.

⁴¹ Resolution Adopted by the General Assembly on 20 December 2018 (Sixth committee (A/73/496) 73/198) (Singapore).

weight to mediation agreements because they will be enforceable. Qatar ratified the Convention in 2020. It played a key role in bringing the convention into force because three countries were required to ratify the Convention before it could come into force. Saudi Arabia was the fourth country to ratify the Convention in 2020 also reflecting its eagerness. As a result of these changes, parties can now enforce mediation agreements as they would an arbitral award.⁴² Further, while the Singapore Convention has a particular focus, its ratification provides an important and broad indicator for local, regional institutions that encourage mediation, offer mediation services, or provide a framework within which mediations can be undertaken.⁴³

4. The Shift Towards Digitization

COVID-19 has undoubtedly led to the rapid utilisation of technology to conduct dispute resolution remotely in lieu of in-person hearings. In arbitration, there has been a dramatic acceleration of the digitization of arbitration processes.⁴⁴ Here, a distinction ought to be drawn again between the ADR institutions and the courts.

4.1 Arbitral Institutions

Following the pandemic, the leading arbitral institutions from around the world issued a joint statement emphasising that arbitral institutions should make the ‘best use of digital technologies for working remotely’ to overcome undue delays.⁴⁵ Institutions could already rely on the Seoul Protocol on Video Conferencing in International Arbitration that was introduced at the 7th Asia Pacific ADR Conference in South Korea in 2018. The Seoul Protocol is intended to serve as a guide to best practices for planning, testing and conducting video conferences in international arbitration.⁴⁶ The guidance covers witness examination, the venue,

⁴² Mahmoud Abuwasel, ‘Qatar of First Signatories to the Singapore Convention on Mediation’ *Lexology* (4 September 2019)

<https://www.lexology.com/library/detail.aspx?g=74858f7d-0915-4936-b12c-d5450b7cc6fe>, last accessed 15 March 2022.

⁴³ Sara Koleilat-Aranjo and Aishwarya Nair, Mediation in the Middle East: Before and After the Singapore Convention’ *Al-Tammimi & Co* (October 2019),

<https://www.tamimi.com/law-update-articles/mediation-in-the-middle-east-before-and-after-the-singapore-convention/>, last accessed 15 March 2022.

⁴⁴ ‘Update [4]: “Necessity Is The Mother Of Invention”: Covid-19 Dramatically Accelerates Digitalisation Of Arbitration Processes’ *Hebert Smith Freehills* (15 May 2020) <https://hsfnotes.com/arbitration/2020/07/10/update-8-necessity-is-the-mother-of-invention-covid-19-dramatically-accelerates-digitalisation-of-arbitration-processes/>, last accessed 15 March 2022.

⁴⁵ ‘Arbitration and COVID-19’, https://www.viac.eu/images/documents/Covid-19_Joint_Statement.pdf, last accessed 15 March 2022.

⁴⁶ Seoul Protocol on Video Conferencing in International Arbitration, Introduction, http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014, last accessed 15 March 2022.

observers, documents, technical requirements, test conferencing and audio conferencing backup, interpretation, recordings and preparatory arrangements.⁴⁷ This guidance has been a useful starting point for some entities.

Indeed, in Qatar, QICCA followed the best practices established by the Seoul Protocol to conduct arbitrations remotely.⁴⁸ It saw a significant increase in the number of disputes being settled online through electronic arbitration.⁴⁹ Proceedings were conducted through ‘closed TV channels’ to ‘ensure confidence, maintain corporate trade secrets, and allow for deliberation among arbitration members before issuing the final arbitration award.’⁵⁰ Technology was used to record arbitration cases, select arbitrators, form arbitral tribunals, conduct hearings, exchange of notes, make pleadings, and issue and send the award to parties electronically.⁵¹ The benefits have been “characterised by rapid dispute resolution, low expenses and visits, efficiency and variety of arbitrators, as well as overcoming the problem of jurisdiction and conflict of laws, and establishing the principle of transcending time and place in law.”⁵²

The SCCA in Saudi Arabia also moved online following the pandemic by accepting online filings for both arbitration and mediation and offering video conferencing tools for hearings.⁵³ Similarly, the DIAC in Dubai issued a circular stating that all processes would be moved online, such as the registration of new cases and hearings.⁵⁴ It should be noted, however, that the UAE Federal Arbitration Law No 6 of 2018 already encouraged online hearings prior to the pandemic. Article 28(2)(b) states that unless agreed otherwise with the parties, the Tribunal may hold arbitration

⁴⁷ Ibid.

⁴⁸ ‘Significant Increase in Online Dispute Settlements Amid COVID-19: QICCA’ *Qatar Tribune* (14 July 2020) <https://www.qatar-tribune.com/news-details/id/193569>, last accessed 15 March 2022.

⁴⁹ Ibid.

⁵⁰ ‘QICCA Receives Arbitration Proceedings Electronically, says Sheikh Thani’ *Qatar Chamber* (08/04/2020) <https://www.qatarchamber.com/qicca-receives-arbitration-proceedings-electronically-says-sheikh-thani/>, last accessed 15 March 2022.

⁵¹ Ibid.

⁵² ‘Significant Increase’ (n 48).

⁵³ SCCA, ‘Update on SCCA Services in Wake of COVID-19’ (24 March 2020) <https://sadr.org/news-details/69>, last accessed 15 March 2022; SCCA, ‘SCCA Adds “Mediation Facilitation Service” to its COVID-19 Emergency Mediation Program’ (31 Jan 2020) <https://sadr.org/news-details/78>, last accessed 15 March 2022.

⁵⁴ Matthew Showler and Lucy Walton, ‘COVID-19 and the Use of Remote Hearings in Dubai’ *Trowers & Hamblins* (30 April 2020), <https://www.trowers.com/insights/2020/april/covid-19-and-the-use-of-remote-hearings-in-dubai>, last accessed 15 March 2022; ‘COVID-19 and the Global Approach to Further Court Proceedings, Hearings’ *Norton Rose Fulbright* (April 2020) <https://www.nortonrosefulbright.com/en-cn/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings>, last accessed 15 March 2022.

hearings ‘by modern means of communication and electronic technology.’ Article 33(1) states that arbitral hearings ‘shall be held on camera unless the parties agree otherwise.’ Article 33(3) states that hearings may be held by remote means ‘without the physical presence of the Parties at the hearing.’ Thus, there was already a clear mandate prior to the pandemic for online hearings in onshore arbitral centers in the UAE. This differs from the situation in Qatar where the relevant provisions of the arbitration law are generally interpreted to permit online hearings only when the parties consent to doing so.⁵⁵

A final matter to emphasize regarding arbitral institutions is the limited scope of the Seoul Protocol. Experience of the remote process has led to further guidance concerning important factors that parties should consider. These include whether it is “practicable to have counsel, witnesses, and the tribunal” in different locations during a hearing; whether it would be beneficial to make further provision in the arbitration agreement or institutional rules for remote processes; whether the length of the hearings will require adjusting; whether it might be unfair to a party if the hearing or parts of it are conducted remotely; what should happen if travel restrictions might prevent parties from sending as observers their preferred counsel; and what should happen if some witnesses can attend a hearing in-person but others cannot.⁵⁶ Experience has taught that these matters ought to be borne in mind, in addition to the factors highlighted in the Seoul Protocol.

4.2 International Courts

It is at the international courts (the ADGM Courts and QICDRC) that we find the clearest commitment to the use of technology predating the pandemic. The ADGM Courts were specifically designed as being fully digital from their inception.⁵⁷ Registration, case management, lodging appeals, filing claims, hearings and more, are all conducted online.⁵⁸ Indeed, the mandate for this fully digital operation is explicitly stated in the General Practice Direction of the ADGM Courts. It states that: “To

⁵⁵ Qatar Law No. 2 of 2017, Article 19(1) provides that “Subject to the provisions of this Law, the Parties may agree to the Arbitration procedures,” while Article 19(2) provides that “The Arbitral Tribunal may, subject to the provisions of this Law, apply the procedures that it deems appropriate.”

⁵⁶ ‘Conducting arbitration remotely in the wake of COVID-19: the Seoul Protocol on Video Conferencing in International Arbitration’ *Linklaters* (23 March 2020) <https://www.linklaters.com/en/insights/blogs/arbitrationlinks/2020/march/conducting-arbitration-remotely-in-the-wake-of-covid19>, last accessed 15 March 2022.

⁵⁷ ADGM Courts, ‘Digital Approach’, <https://www.adgm.com/adgm-courts/digital-approach>, last accessed 15 March 2022.

⁵⁸ ADGM Courts, Practice Direction 1, General, <https://www.adgm.com/documents/courts/legislation-and-procedures/practice-directions/adgm-courts-practice-direction-1-general-ecourts-platform.pdf>, last accessed 15 March 2022; ADGM Courts, ‘Digital Approach’, <https://www.adgm.com/adgm-courts/digital-approach>, last accessed 15 March 2022.

ensure accessibility, efficiency and fairness for all parties, ADGM Courts' operations and services are fully digitised."⁵⁹ Thus, the COVID-19 pandemic had no effect on the workings of the Courts because they were already fully digitized, and business operated as normal.

The QICDRC's route to remote hearings was less explicit than the ADGM Courts, but technology was, nevertheless, a prominent consideration. The Court was established with technology and remote access in mind, and there was a technology upgrade between 2018 to 2019.⁶⁰ Up until the pandemic, some interlocutory matters were heard remotely, and some participants would appear in hearings remotely.⁶¹ Following the pandemic, in March 2020, the Court encouraged parties to fully utilise its eCourt "to file claims, appeals and other miscellaneous applications electronically."⁶² This was soon followed by the Court's first fully remote hearing in April 2020.⁶³ As such, while the Court was not fully digital in its operations at its inception like the ADGM Courts, it was prepared once the pandemic arose because it had recently established the technology necessary for remote hearings. It also had experience with using that technology in specific ways. When the pandemic arose, it upscaled that experience to the breadth of the court process, including hearings.⁶⁴

In terms of the mandate to move fully online, the QICDRC was able to draw upon Regulations and Procedural Rules issued in 2010.⁶⁵ The Court's overriding objective is to deal with cases justly, which includes "making appropriate use of information technology."⁶⁶ Couched within those regulations are several other rules that support the move towards remote hearings.⁶⁷ Thus, in moving fully online, the Court was simply undertaking its overriding objective. The Registrar also issued further Ground Rules in an effort to pre-empt any difficulties that might arise

⁵⁹ Ibid, ADGM Courts, Practice Direction 1, General, Rule D1.7.

⁶⁰ 'Qatar International Court Celebrates 10 Years: Special Edition' LexisNexis (2020) 6. https://www.qicdrc.gov.qa/sites/default/files/2021-12/special_qicdrc_2020_web.pdf, last accessed 15 March 2022.

⁶¹ QICDRC, 'Remote Hearings Before the Qatar International Court in Light of COVID-19', (12 April 2020), <https://www.qicdrc.gov.qa/media-center/news/remote-hearings-qatar-international-court-light-covid-19>, last accessed 15 March 2022.

⁶² QICDRC, 'Qatar International Court Encourages use of eCourt' (18 March 2020), <https://www.qicdrc.gov.qa/media-center/news/qatar-international-court-encourages-use-ecourt>, last accessed 15 March 2022.

⁶³ QICDRC, 'Innovative online hearing connects participants remotely during times of social distancing' (8 April 2020) <https://www.qicdrc.gov.qa/media-center/news/innovative-online-hearing-connects-participants-remotely-during-times-social>, last accessed 15 March 2022.

⁶⁴ QICDRC, 'Remote Hearings' (n 61).

⁶⁵ The Qatar Financial Centre Civil and Commercial Court, Regulations and Procedural Rules 2010, <https://www.qicdrc.gov.qa/courts/court/regulations-and-procedural-rules>, last accessed 15 March 2022.

⁶⁶ Ibid, Article 4.

⁶⁷ QICDRC, 'Remote Hearings' (n 61).

during hearings for participants that were unfamiliar with the online process.⁶⁸ The Ground Rules covered procedures concerning commencement of hearings, etiquette, court dress, equipment tests, recordings, audio/ video quality and several other matters.⁶⁹ The Rules have been successful in dealing with the vast majority of issues that might arise.

Finally, despite these changes, it is also critical to note the limitations of technology. A common theme has arisen for the institutions with remote hearings:

“being not accepted by those who don’t know how to deal with technology, lack of confidentiality and inadequacy of domestic and international legislation for electronic arbitration, as well as some procedural and substantive obstacles.”⁷⁰

In a webinar involving representatives from both QICCA and the QICDRC, the experiences of the respective institutions were discussed. It was recommended that both the courts and participants should be “equipped with the knowledge, capability, and access to the required technology,” that balance should be maintained between streamlining proceedings using technology and respecting due process.⁷¹ It was also recognized that (while inevitable) the use of technology is to the detriment of “the interpersonal dynamic” that one would typically find during an in-person hearing.⁷² Although, it is not expected that these hurdles will be significant enough to pivot away from remote hearings becoming the new norm.

5. The Culture and Practice of ADR in the Gulf

As recently as 2017, one could assert with relative certainty that the “subject of online dispute resolution (‘ODR’) has been a matter of interest to a relatively small part of the American legal community.”⁷³ The same conclusion would have applied to the ADR community worldwide. Even as there was an emerging sense that technology was changing the practice of arbitration and mediation, interest in conducting dispute resolution proceedings in an online environment remained modest.

The pandemic has changed this situation and provoked a rethinking of how ADR services are conducted. A revolution in dispute resolution has

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ ‘Significant Increase’ (n 48).

⁷¹ ‘QICCA Holds Webinar on ‘Dos and Don’ts for Online Hearings’ Qatar Chamber (25 Jan 2021) <https://qicca.org/6266>.

⁷² Ibid.

⁷³ Robert J. Condlin, ‘Online Dispute Resolution: Stinky, Repugnant, or Drab,’ (2017) 18 *Cardozo Journal of Conflict Resolution* 717.

arrived and brought about a permanent reorganization of the field.⁷⁴ The concern of this article is not to offer a normative evaluation of these changes. There is already a developed literature assessing the merits and limitations of ODR. The general lines of debate were established before the pandemic. Factors such as accessibility, flexibility, speed, ease of case management, and cost efficiencies are frequently cited benefits.⁷⁵ Attention is also increasingly given to environmental considerations. Those more critical of ODR point to the value of in-person interaction for reading behavior and building trust. This debate will only accelerate and become further textured in light of the changes made during the pandemic.

While the shift to online dispute resolution has occurred across jurisdictions and institutions, the focus of this paper has been with developments in the GCC. The above sections have detailed various ways in which technology and ODR have been adopted by courts and leading ADR institutions in the region. However, beyond these specific developments, what does the use of online dispute technology reveal about the culture and practice of ADR in the region more generally?

From a certain perspective, there is little about what is occurring in the Gulf region that is markedly different from other markets. Institutions around the world are developing new technological capacities for the delivery of dispute resolution services. At the same time, the nature of developments in the region reveals something larger about the approach to dispute resolution and its future prospects.

For one, ODR has been embraced because many of the institutions were early adopters of technology. They employed online services before the pandemic made such considerations a matter of exigency. The widespread use of online dispute resolution within the region reflects the fact that many institutions are new, often less than a decade old. This is especially the case with international courts. The DIFC Courts were launched in 2004, The Qatar International Court in 2009, and the Abu Dhabi Global Market Courts in 2013. As new institutions, they were structured with an eye towards incorporating best practices. Newness brings its own challenges. The institutions had to develop reputations and earn the trust of constituencies. Their rules and procedures had to be created anew. At the same time, these institutions did not bear the weight of entrenched practice. They did not have to adapt to technological change but were rather born into a context where technology was increasingly part of dispute settlement practice. Online delivery of services was adopted from

⁷⁴Ryan Abbott and Hiro Aragaki, 'Three Tips for International Online Dispute Resolution in the Age of COVID-19,' *ABA Business Law Today* (9 October 2020) https://www.americanbar.org/groups/business_law/publications/blt/2020/10/intl-odr/, last accessed 15 March 2022.

⁷⁵Kyle Bailey, 'Online Dispute Resolution: A Primer,' *Mediate.com* (February 2020) <https://www.mediate.com/articles/bailey-primer.cfm>, last accessed 15 March 2022.

their inception. As such, these institutions proved particularly nimble in responding to disruptions brought by the pandemic.

Rather than provoking change, the pandemic provided an occasion for these regional institutions to further bolster their reputation for being nimble, entrepreneurial, and technologically sophisticated. This was just as much the case at arbitral centers as the international courts. For instance, QICAA quickly adapted to the new circumstances and was able to conduct 80% of its arbitration cases between April-December 2020 online. QICCA has also been actively engaged in promoting a conversation about the need to facilitate online arbitration.⁷⁶ The Saudi Center for Commercial Arbitration developed one of the most innovative responses to the pandemic in launching its COVID-19 Emergency Mediation Program (EMP), which allows parties to engage in fully remote virtual mediation in which the settlement agreement can be converted into a bond enforceable in Saudi courts. Such initiatives display not only an adaptability towards the use of technology but other innovative mechanisms that facilitate dispute settlement.

The ability to embrace online services speaks to the maturing dispute resolution order in the region. Although the international courts, arbitration centers, and mediation providers operate within distinct spheres and with different strategic objectives, they are directly linked to broader economic and legal developments in the region. In particular, the innovative work of these institutions needs to be considered in connection with national efforts to promote development and investment through greater legal certainty and flexibility. The establishment of financial center courts, as well as efforts to promote arbitration and increasingly commercial mediation, provide reliable dispute settlement options outside of traditional domestic courts. These institutions are creations of the region's ambitions. In this respect, they are state-building initiatives that exert a soft power and influence that cannot be fully separated from broader public aims.

This connection is particularly evident in the case of international courts and associated financial centers, which are creations of domestic law and occupy a distinct space within the overall judicial system of the countries. These courts are part of the dynamic and pluralistic dispute resolution landscape taking shape in the region. This connection, although more indirect, is also present in arbitral institutions. QICCA, for instance, was established in 2006 by resolution of the Qatar Chamber of Commerce's Board of Directors.⁷⁷ The Qatar Chamber, in turn, was established by law

⁷⁶ 'Experts call for cyber protocol for online arbitration in GCC webinar,' <https://qicca.org/6275>, last accessed 15 March 2022.

⁷⁷ 'Chamber's Law,' <https://www.qatarchamber.com/chambers-law/>, last accessed 15 March 2022.

in 1963.⁷⁸ Although QICCA and the Chamber do not operate as state entities, they are part of the ecosystem contributing to national development objectives. Something similar could be said of the Saudi Center for Commercial Arbitration, which was established by Saudi Cabinet decree in 2014. While structured as a non-profit NGO, the SCCA operates according to one commentator “with the full endorsement and support of the government for its important work, enhancing the ease of doing businesses in the Kingdom.”⁷⁹ Along with new national arbitration laws based on the UNCITRAL Model Law on International Commercial Arbitration - Saudi Arabia in 2012, Qatar in 2017, and the UAE in 2018 - these state-supported arbitration centers reflect the maturation of the region’s overall arbitration and dispute resolution infrastructure.

The embrace of technology by international courts and arbitral centers illustrates the entrepreneurial posture towards dispute resolution that defines the region. That is to say, the turn to online dispute resolution reflects deeper connections between innovation in law and legal services and national development objectives.⁸⁰ Such dynamics are not, of course, unique to the Gulf countries under consideration. Innovation in dispute resolution is widely seen as not only advancing ends specific to law but broader social and economic aims as well.⁸¹ It is nevertheless the case that the dispute resolution culture in the region reflects a unique convergence of these factors.

While technology is facilitating the work of international courts and arbitration centers, mediation presents a different story. The use of mediation in commercial disputes remains underdeveloped in the region, in spite of the technological resources available. As one commentator notes, “Despite the positive historical and cultural background, the Middle East has not experienced a surge in the use of mediation institutions and processes.”⁸² Attention has been given recently to the

⁷⁸ Law No.4 of Year 1963 Concerning the Establishment of Qatar Chamber of Commerce.

⁷⁹ ‘Saudi Center for Commercial Arbitration (SCCA),’ 8 Guide to Regional Arbitration (23 January 2020) <https://globalarbitrationreview.com/survey/the-guide-regional-arbitration/2020/organization-profile/saudi-center-commercial-arbitration-scca>, last accessed 15 March 2022.

⁸⁰ ‘Arbitration, mediation ‘most used’ in intellectual property disputes, says Qicca official,’ *Gulf Times* (23 November 2020). <https://m.gulf-times.com/story/678708/Arbitration-mediation-most-used-in-intellectual-property-disputes-says-Qicca-official>, last accessed 15 March 2022..

⁸¹ Gary Birnberg, “The Singapore Convention: A Path To Advance International Economic Development With Mediation,” *New York Law Journal* (22 November 2019) <https://www.law.com/newyorklawjournal/2019/11/22/the-singapore-convention-a-path-to-advance-international-economic-development-with-mediation/?sreturn=20210430035629>, last accessed 15 March 2022.

⁸² Negin Fatahi, ‘The History of Mediation in the Middle East And Its Prospects For the Future’ *Kluwer Mediation Blog* (23 January 2018)

various ways in which technology can expand use of mediation. While this might prove the case in other markets, the shift towards online dispute resolution in the Gulf has not had this effect. The barriers to mediation are cultural and structural rather than technological. These barriers include the predominant role of the state and state-owned entities in commercial transactions, concerns about confidentiality, and difficulty with getting key decision makers involved in the mediation process. Domestic courts in the region are also relatively inexperienced with mediated settlement agreements, thus leaving legal counsel hesitant to pursue the process.

While access to online mediation services might have some impact on the margins, technology will have a significant impact only when mediation is more integrated into the region's overall dispute resolution framework. There are modest signs that regional interest in mediation is growing. Under UAE Federal Law No 26 of 1999, certain mediated settlements are enforceable in domestic courts. The Dubai International Arbitration Centre reported 127 mediations conducted in the first quarter of 2018 at a value of nearly USD 5 million.⁸³ Even more significantly, Qatar and Saudi Arabia were among the first countries to ratify the Singapore Convention. This support for the Convention at the highest reaches of government indicates an interest in advancing mediation capacity, especially in the commercial sphere.

6. Conclusion

Developments in online dispute resolution are part of the emerging legal systems taking shape within the GCC. While the use of technology is not in itself unique, the ways in which it is occurring within different institutional settings is contributing to the rise of a dynamic transnational legal order. Gulf institutions are positioned as early adopters of technology to be leaders in the dispute resolution field, and the flexible and entrepreneurial character of these institutions means they will likely continue to respond to changing legal needs in the future.

Financial center courts and dispute resolution centers provide a window to a broader regional story of legal change and adaptation. Does the creative use of technology indicate that the region is positioning itself as a leader in the dispute resolution field? By itself, the use of technology within these institutions is unlikely to make the region a more attractive site for dispute resolution. Dubai, Doha, or Riyadh might not rival London, Paris, or Singapore anytime soon as hubs for arbitration and other dispute resolution services. However, the sophisticated

<http://mediationblog.kluwerarbitration.com/2018/01/23/history-mediation-middle-east-prospects-future/>, last accessed 15 March 2022.

⁸³ Sara Koleilat-Aranjo, 'Mediation in the Middle East: Before and After the Singapore Convention' (October 2019).

<https://www.tamimi.com/law-update-articles/mediation-in-the-middle-east-before-and-after-the-singapore-convention/>, last accessed 15 March 2022.

technological apparatuses in use at many institutions enhance the reputation and overall attractiveness of the market. Although there are new institutions, new arbitration laws, and a generally good record of awards being enforced by local courts, there continues to be a certain unpredictability in the region.⁸⁴ The embrace of technology, and the creative adaptation of new dispute resolution processes, represents a further maturation of the region's legal institutions and global reputation.

⁸⁴ Mike McClure and Craig Shepherd, 'Editorial - Arbitration in the Middle East: Expectations and Challenges for the Future,' (2015) 2 *Transnational Dispute Management*, <https://www.transnational-dispute-management.com/article.asp?key=2194>, last accessed 15 March 2022.