ONLINE ARBITRATION FOR RESOLVING E- COMMERCE DISPUTES: GATEWAY TO THE FUTURE

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ABSTRACT

The article aims at studying the multivariable options to establish and facilitate Online Alternative Dispute Resolution ("OADR") in e-commerce. An attempt has been made to determine the direction of the codification of law. Globalization across borders and the concrete setup of bodies like World Trade Organization have enabled the development of e-commerce across the globe. With the advent of any system there exists a parallel need for establishing a mechanism to facilitate it. In the 21st century, mankind has a materialistically sophisticated orientation which imbibes in it the promotion of e-commerce. The growing acceptance of e-commerce amongst people within and across countries itself is the basic tenet which strives for creating a dynamic set of transnational substantive rules of e-commerce.

The article aims at exploring the viability of Lex Informatica Principle for online dispute resolution and attempts to identify a set of dynamic transnational rules for governing e-businesses and the pragmatic implementation and application in the current business community.

I. Introduction

While determining the substantive set of dynamic rules for the e-business community, it is imperative to mention that the parties in a global community are free to select a national law for deciding their rights and obligations under an e-commerce contract[1]. This implies that, as the primary initiative is in the hands of the parties themselves, negotiations may be initiated depending on the situation, circumstances and negotiation. If such negotiation fails, then from the terms and conditions of the contract itself, the parties can subject themselves to the Alternative Dispute Resolution Mechanism ("*ADR*").[2] The practice, which has been accepted by the international community by and large, i.e., the applicability

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[1] Bekker C., *The Proper Legal Regime for Cyberspace*, 55 U PIT L R 993 (2012)

[2] K.P.Berger, *Law and Borders - The Rise of Law in Cyberspace* , 48 STANFORD L R 1367 (2008)

of the national laws by the arbitrators in the absence of the choice of law being mentioned by the parties, is in pursuance of the conflict of laws method.

A dilemma arises in the modern day world with respect to the application of rules and laws in the resolution of disputes by online arbitration tribunals. Currently in the formative stages, there is an urgent need for development of flexible, transnational legal standards that can be applied by arbitration tribunals in cross-border e-business disputes. This approach is desirable and convenient from the consumer's perspective, as he/she may be located in a jurisdiction different from that of the seller. The main advantage of the approach necessitating the application of OADR in e-commerce is that, it not only manifests the dynamic nature of the system, but also facilitates confidence in the Business to Consumer Model ("*B2C*") and the Business to Business Model ("*B2B*") which is in the interest of the global business community.

II. Promising Future of Lex Informatica Principle: Precedents Setting the Pathway for Future

Lex Informatica principles have assured a promising mechanism for providing proper adjudication of disputes at transnational level.[3] There are certain principles and rules which have already emerged and have been accepted as fundamental principles in the international arena, like the functional equivalence of written and electronic documents.[4]Furthermore, e-signatures are manifested in several e-business instruments and their importance is widely recognized the world over. On the same lines, the principle of technological-medium neutrality is reflected in various instruments and enjoys wide consensus. Development of certain areas, which are still in dormant stages could prove handy for the application of the aforesaid OADR mechanism in the adjudication of disputes by online arbitrators. For instance, e-business custom demonstrates the obligation of professional parties to use state-of-the-art security technology as a means of protecting the confidentiality and integrity of their transactions. Another e-

[3] This use of the term should be distinguished from the use that refers to a set of rules for information flows imposed by technology and communication networks. Such technological rules constitute a useful extra-legal instrument of policymaking that may achieve objectives that otherwise challenge conventional laws and governmental attempts for regulation across jurisdictions. *See* Joel R. Reidenberg, *Lex Informatica*: *The Formulation of Information Policy Rules through Technology*, 76 TEX. L. REV. 553 (1998) [hereinafter Joel].
[4] G.A. Res. 60/21, Art. 8(1) and Art.9(2), U.N. Doc.A/RES/60/21 (Nov. 23, 2005).

business custom may be the presumption of IT competence of professional parties who engage in e-business and possess the necessary skills and equipment. Therefore, the parties may not claim incompetence, asserting a security breach or incapacity to perform a contractual obligation, in order to defend themselves.

III. Developing a Uniform Set of Rules for the Resolution of Online Disputes

For subjecting any matter to online arbitration, there should be a certain set of rules or laws for the arbitrator to act upon. Thus, foreseeing the contingencies which "may" arise in the future, an attempt has been made through this article to develop a set of rules for governing OADR.

A. General Principles of Law and the Relevance of Lex Mercatoria Principles:

Principles of *Lex Mercatoria,* laying down general principles of law, are identical to *Lex Informatica,* which again help in developing definite code for the adjudication of matters by online ADR.[5] It is pertinent to note that the connotation attached to 'General Principles of Law' might sometimes be deceptive, as the subjectivity in its application might create a hindrance in it being accepted as a general principle of law.[6] For instance, general principles like good faith and fair dealing may assume a specific meaning in cross-border e-business, requiring clarification or specific justification from an e-business perspective.[7] The point here is that market cultures vary across the globe in accordance with the cultures of the land. Thus, formulating a general principle of law for the application of OADR in settling e-commerce disputes is a troublesome task for which an objective test has to be defined and a uniform opinion has to be generated amongst the masses of the world.

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[5] V. J. J. M. BEKKERS & SJAAK NOUWT, EMERGING ELECTRONIC HIGHWAYS: NEW CHALLENGES FOR POLITICS AND LAW 153 (1996).

[6] Liber Amicorum Karl-Heinz Böckstiegelet et al., *Law of International Business and Dispute Settlement in the 21st Century,* ICCA 267-276 (2001).

[7] Antonis Patrikios, *Resolution of Cross Border E-Business Disputes by Arbitration Tribunals on the Basis of Transnational Substantive Rules of Law and E-Business Usages: The Emergence of the LexInformatica,* 38 U. TOL. L. REV. 271 (2006).

B. International Instruments in Shaping the Uniform Laws:

The United Nations Commission on International Trade Law ("*UNCITRAL*") initiatives have aided in the development of rules at a global level which are of immense importance in developing *Lex Informatica* principles and rules. The principles governing e-commerce[8] and e-signatures[9] have undergone significant development due to the codification and framing of Model Laws by UNCITRAL on these subjects. It thus becomes implicit to explain the instant terminology before going ahead. It is defined as follows:

Model laws are examples of instruments that demonstrate international consensus stemming from their legislative history and the numerous jurisdictions that have adapted their legislation based on their provisions.[10]

The Model Law on Electronic Commerce demonstrates international consensus on issues such as the legal recognition of data messages,[11] incorporation by reference,[12] admissibility and evidential weight of data messages,[13] formation and validity of contracts, and attribution of data messages. The Model Law on Electronic Signatures includes provisions on issues such as equal treatment of

[8]United Nations Commission on International Trade Law, Model Law on Electronic Commerce with Guide to Enactment, U.N. Sales No.E.99.V.4 (Nov. 20th, 1996) [hereinafter "UNCITRAL 1996"].

[9] United Nations Commission on International Trade Law, Model Law on Electronic Signatures with Guide to Enactment, U.N. Sales No.E.02.V.8 (2001).

[10] 53 countries have adopted, have adapted or have been influenced by the Model Law on Electronic Commerce, *See:*http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html27 nations have adopted legislation based on the Model Law on Electronic Signatures *See:* http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_status.html

[11] G.A. Res. 51/162, Art. 5, U.N. Doc.A/RES/51/162 (Jan. 30, 1997) [hereinafter G.A. Res. 51/162].

[12] UNCITRAL 1996, *supra* note 8 at Art. 5.

[13] G.A. Res. 51/162, *supra* note 11, at Art. 9.

signature technologies,[14] compliance with a requirement for a signature, conduct of the signatory and conduct of the relying party.[15]

The *United Nations Convention on the Use of Electronic Communication in International Contracts*[16] reflects broad consensus despite the fact that it was opened for signature only two years ago.[17] It includes provisions on issues such as legal recognition of electronic communications,[18] form requirements,[19] the principle of "functional equivalence of electronic documents" and electronic signatures, time and place of dispatch and receipt of data messages, use of automated systems for contract formation, availability of contract terms, and error in electronic communications.[20] Depending on its adoption by a significant number of States, and most importantly, the acceptance of its rules by the international e-business community, the e-Contracting Convention may develop an instrument directly applicable to online arbitrators in e-business disputes pursuant to *Lex Informatica* analysis.[21]

The aforesaid provision has been cited to put forth certain rules which already exist and could be of immense importance for arbitrators while resolving an e-

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[14] G.A. Res. 56/80, Art. 3, U.N. Doc.A/RES/56/80 (Jan. 24, 2002) [hereinafter G.A. Res. 56/80].

[15] *Id.*

[14] G.A. Res 56/80, *supra* note 14; The official text of the Convention, incorporating the changes agreed at the 38th UNCITRAL session, was released as an annex to UNCITRAL's report to the General Assembly. See Rep. of UNCITRAL on its 38th Sess., Annex I,65, 2005, U.N. Doc. A/60/17 (July 26, 2005), The Convention complements and builds upon the Model Laws of Electronic Commerce and Electronic Signatures.

[17] The Convention was adopted by the U.N. General Assembly on Nov. 23, 2005, and is open for signature from Jan. 16, 2006 to Jan. 16, 2008. Press Release, General Assembly, General Assembly Adopts Convention on Use of Electronic Communications in International Contracting, U.N. Doc. GA/10424 (Nov. 23, 2005). For the use of international treaties not in force by arbitrators as a means of determining broad consensus

[18] *Id.* at Art. 8.

[19] *Id.* at Art. 9.

[20] G.A. Res. 56/80, *supra* note 14.

[21]Similar to the direct application of the CISG by international arbitrators in sales of goods disputes. The CISG is currently estimated to be applicable to two-thirds of world trade. *See* Pace Law School, *CISG Database*, available at: http://www.cisg.law.pace.edu. Its rules are commonly being applied by arbitral tribunals for the resolution of international sales of goods disputes.

dispute. Beyond providing specific rules for the issues of their respective area of application, they may also be employed as sources of general principles of e-business, such as the functional equivalence of written and electronic documents[22] and signatures[23] or technological-medium neutrality.[24] The same view is also accepted worldwide that:

> *"In the context of applying Lex Informatica, the UNCITRAL instruments can be used by online arbitrators as instruments directly applicable in online arbitration, as benchmarks in the context of comparative law analysis for the establishment of the broad acceptance of a given transnational rule, as means of identification of e-business usages, or as means of interpretation."*

C. *National and Supranational Sources of Law:*

It is submitted that after analyzing the provisions enshrined under national statutes,[25] their application is completely contingent upon the extent of acceptance of a given rule by the international community. Thus, the jurisdiction of the online arbitrator is limited to the extent of acceptance of such a rule by the international community. The instant rule is equally effective for supranational instruments, such as the European Union ("EU") directives on e-commerce[26] and e-signatures.[27] Their importance lies in the fact that:

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[22]The principle of functional equivalence of electronic communication by means such as telex and telefax is so widely accepted that it already forms a part of *lexmercatoria*; *See* KLAUS PETER BERGER, THE CREEPING CODIFICATION OF THE LEX MERCATORIA 9-113 (1999).

[23]G.A. Res. 56/80, *supra* note 14, Art. 8(1) & 9(3).

[24] G.A. Res. 56/80, *supra*note 14, Art. 3

[25]*See* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001-7031 (2006) ("U.S. E-Sign Act"); Uniform Electronic Transactions Act, 5 U.S.C (1999); Electronic Communications Act, 2000, c. 7, Long Title (U.K.); the Electronic Commerce Regulations, 2002, c.10 (U.K.); Electronic Signatures Regulations, 2002, c. 68 (U.K.); *Electronic Transactions Act 1999* (Cth) (Austl.); *Electronic Communications Act1999* (Cth) (Austl.); Digital Signature Act, June 13, 1997 (F.R.G.); Electronic Transactions Ordinance 2001 (H.K.); Electronic Transactions Act 1998 (Sing.).

[26] Council Directive 2000/31/EC, 2000 O.J. (L178) (EC) (on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

[27] Council Directive 1999/93/EC, 1999 O.J. (L13/12) (EC) (on a Community Framework on Electronic Signatures).

"These directives are important because they demonstrate transnational recognition of electronic contracts and signatures and contain a consensus model for their regulation, which is applicable to both common and civil law systems. Hence they provide a clear cut model for the online arbitrators in resolving the disputes pertaining to e-commerce."[28]

Another important rule that the online arbitrators should focus upon while determining the "trans-nationality" of a given rule is,

"*Not only on the wide acceptance of the rule in comparative law, but also on the current practice in the particular sector of e-business. If a recent rule reflects current practice, but is not supported by the results of comparative law analysis, its "trans-nationality" could be founded on usage*."[29]

D. E-Business Custom and Usages:

The phenomenal increase in the volume of international e-business transactions is resulting in growth and development of new usages in cross-border e-business. It is submitted that while tracing the roots of usages, it is not always convenient to identify the usages and if they are identified, then the principle of wider acceptance creates an impeding factor in their application. Besides, it is practically difficult for the online arbitrators to call any practice a usage, or as a part of customary international law in e-business, because the strings are still very soft and the laws are in a transitional phase which might result in a disputable situation in the future. Given the high volume of e-commerce transactions, elements of customary practices are already identifiable or are even being formulated by international agencies such as the Internet Chamber of Commerce ("ICC").[30] Therefore, the development of customs in international e-business is likely to be faster than it is in international trade. In this regard, it is submitted for online arbitrators that:

[28] A. F. M. Maniruzzaman, *The Lex Mercatoria and International Contracts: A Challenge for International Commercial Arbitration?*,14 A. U. INTL. L. R. 657 – 660 *et seq.* (1999).
[29] UNCITRAL 1996, *supra* note 8.
[30] UNCITRAL 1996, *supra* note 8.

They should consider this in determining which given set of rules are applicable to a particular economic relationship. For that purpose the kind of milieu from which parties belong to and the nature of business relationships which they share are of utmost importance.[31]

Finally, it can be argued that elements of non-codified customs are also observable. For example, in important interactions over the internet, there exists an obligation to use appropriate security technology to protect the confidentiality, integrity, and attribution of communications.[32] The decision regarding confidentiality is left to the discretion of the parties. Confidentiality is desirable for business houses as reports of disputes might adversely affect their goodwill. For example, non-compliance by a bank or a professional end-user in the context of online banking may trigger liability for compensation.[33] Similarly, non-compliance by an online arbitral institution may lead to liability if the confidentiality of the proceedings is compromised.[34]

E. Codes of Conduct and Guidelines:

Innumerable guidelines and codes of conduct addressing issues of consumer protection provide which set a norm to be followed and thus aid in the development of a uniform set of rules for resolving e-commerce disputes. For example, the validity and enforceability of electronic contracting, the time and place of dispatch and receipt of electronic communications, or attribution of communications, have started to emerge and may be evidenced by the provisions of existing

[31] K.P.Berger, Do *the UNIDROIT Principles of International Commercial Contracts Form a New LexMercatoria?,* 15(2) ARB INTL. L. R. 115 (1999).

[32] Lowenfeld, *Self-Regulation in Global Electronic Markets Through Reinvigorated Trade Usages*, 31 Idaho LR 863 (2008)

[33] Paul P. Polanski & Robert B. Johnston, *International Custom as a Source of Law in Global Electronic Commerce*at, *in* PROCEEDINGS OF THE 35TH HAWAII INTERNATIONAL CONFERENCE ON SYSTEM SCIENCES 7 (2002), (exploring the possibility of e-custom as a potential solution to legal disputes in contractual global e-commerce)

[34] *See* Ch. 2.2 of Antonis C. Patrikios, *Transnational Online Arbitration as the Centrepiece of Co-regulation for Cross-border E-business* (2006) (unpublished Ph.D. thesis, on file with author).

international instruments like UNCITRAL and UNIDROIT principles.[35]

F. Role of Online Tribunals and Arbitral Case Laws:

Online tribunals and their case laws are of paramount importance in the formulation of a uniform code for aiding the arbitrators in resolving e-disputes. The awards given by the arbitrators/arbitral tribunals define or clarify transnational rules and usages. One major step needed instantly is the publication of the arbitral awards for the interpretation of the uniform codes which is currently not materialized.[36] The publication of awards is likely to raise awareness, increase predictability and facilitate development, acceptance and application of the uniform code by the online arbitrators. Therefore, a solution that permits the publication of e-business awards while preserving the confidentiality of the arbitration is essential.

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[35] *See,* Org. for Econ. Cooperation and Dev. ("OECD"), Guidelines for Consumer Protection in the Context of Electronic Commerce (1999), http://213.253.134.29/oecd/pdfs/browseit/9300023E.pdf (used by most member countries); Canadian Working Group on E-Commerce and Consumers, Principles of Consumer Protection for Electronic Commerce, A Canadian Framework (Industry Canada 1999), http://strategis.ic.gc.ca/pics/ca/principlese.pdf; Canadian Code of Practice for Consumer Protection in Electronic Commerce (Industry Canada 2003), http://cmcweb.ca/epic/Internet/incmc-cmc.nsf/vwapj/EcommPrinciples2003 e.pdf/ $ FILE/EcommPrinciples2003 e.pdf; Office of the NSW Privay Comm'r, Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business (2004), http://www.lawlink.nsw.gov.au/lawlink/privacynsw/llpnsw.nsf/vw files/sub reviewbpg.pdf/$ file/sub reviewbpg.pdf; Commonwealth of Australia, Australian Guidelines for Electronic Commerce (2006), http://www.treasury.gov.au/documents/1083/PDF/australianguidelines for electronic commerce.pdf; New Zealand Model Code for Consumer Protection in Electronic Commerce (Ministry of Consumer Affairs, 2000), http://www.consumeraffairs.govt.nz/policylaw research/pdfpapers/model code.pdf; Global Business Dialogue on Electronic Commerce ("GBDe"), Consumer Confidence (1999), http://www.gbde.org/pdf/recommendations/ consconf99.pdf; GBDe, Summary of Recommendations Affecting Consumer Confidence (2000), http://www.gbde.org/pdf/recommendations/consconfsummary00.pdf; Transatlantic Consumer Dialogue, Core Consumer Protection Principles in Electronic Commerce (No. Ecom-10-99, 1999), http://www.tacd.org/db files/files/files-78-filetag.pdf.

[36] Lowenfeld, E., *LexMercatoria: An Arbitrator s View,* 6 ARB INT. l 133 (1990).

IV. Rule of Interpretation Applied in Online Alternative Disputes Resolution

On the basis of the three UNCITRAL initiatives, a basic framework of fundamental transnational principles and rules for the conduct of cross-border e-business can be articulated. Beyond providing specific rules for the issues of their respective area of application, they may also be employed as sources of general principles of e-business such as functional equivalence of written and electronic documents,[37] functional equivalence of written and electronic signatures,[38] or technological/medium neutrality.[39] In the context of application of the *Lex Informatica*, the UNCITRAL instruments can be used by online arbitrators as instruments directly applicable in online arbitration,[40] as benchmarks in the context of comparative law analysis for the establishment of the broad acceptance of a given transnational rule, as means of identification of e-business usages, or as means of interpretation.[41]

First, the tribunal will carefully consider the intent of the parties, as expressed in the 'choice of law' clause, and in particular examine whether the parties themselves have given any methodological instructions.[42]

However, where inconclusive terminology is used, online arbitrators should attempt to interpret it in the light of the circumstances of the particular case. If

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[37] *See* Model e-Commerce Law articles 5 and 6; e-Contracting Convention articles 8(1) and 9(2). The principle of functional equivalence of electronic communication means such as telex and telefax is so widely accepted that already forms a part of lex mercatoria, see e.g. rule 57 in the list of Berger, Creeping Codification, supra note 5, 302; CENTRAL Principles Rule No. XIII.2 on Proof of written Content.

[38] *See* Model e-Signatures Law articles 2 and 6; Model e-Commerce Law article 7; e-Contracting Convention articles 8(1) and 9(3).

[39] *See* Model e-Signatures Law article 3; e-Contracting Convention article 9(3).

[40] The UNIDROIT Principles are increasingly adopted in international contracts and used in dispute resolution, see Bonnel, M.J., UNIDROIT Principles 2004 The New Edition of the Principles of International Commercial Contracts Adopted by the International Institute for the Unification of Private Law , ULR 5 (2004)

[41]See further Guide to Enactment of the Model e-Commerce Law paragraph 5 and Guide to Enactment of the Model e- signatures law paragraph 11.

[42] *See* Julian D. M. Lew et al., COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION 18-57 (2003) [hereinafter "Julian D. M. Lew"].

necessary, the tribunal may request clarification of submissions.[43] In any case, the objective is the identification of the intent of the parties and this is the guiding principle directing arbitrators in adjudicating any matter.

Secondly, the arbitrator will examine, on the basis of functional comparative law analysis, whether the submissions of the parties are supported by a rule with wide acceptance which constitutes a transnational rule of law or an established e-business usage. In performing the comparative analysis to determine the acceptance of a specific rule, the arbitrator should consider:

i. Compilation of the *lex mercatoria* principles including codifications and lists;
ii. Pertinent international instrument reflecting consensus;
iii. Relevant published Awards;
iv. Comparative law resources such as specialized publications. *If the rule is merely idiosyncratic of a particular system, it should be rejected.* However, a rule can be elevated to the status of a transnational rule of law or established e-business usage even if there is no universal or unanimous acceptance of the rule.[44]

Finally, in case of a conflict between the custom and current usage, preference should be given to current usage over custom.[45] Also, the ICC General Usage for International Digitally Ensured Commerce II (GUIDEC II) including the Principles of Fair Electronic Contracting (POFEC), aim to serve as an indicator of terms and contain definitions and best practices. GUIDEC II aims to balance different legal traditions and cover both the civil and common-law treatment of the subject, as well as pertinent international principles and provided a comprehensive statement of best practices for a global infrastructure.[46]

[43] I*d.,*at 18-54.
[44]JULIAN D. M. LEW, *supra* note 42.
[45]Joel, *supra* note 3.
[46]See foreword to the GUIDEC II by William Kennair, http://www.iccwbo.org/home/guidec/guidec_two/foreword.asp. GUIDEC II is available athttp://www.iccwbo.org/law.

Discretion of the Arbitrators:

In the absence of choice of law on the part of the parties, the arbitrators are vested with the discretion to apply national laws indirectly.[47] The application of law shall be made pursuant to conflict of law method, i.e., by checking that the national law to be applied is not in conflict with the international law on that particular subject. The national law however, can be applied directly if the arbitrators think it fit for the concerned dispute.

Loopholes:

i. Parties having exposure to different States are unaware of the laws applicable in those States. The resulting lack of confidence between parties might be detrimental to resolution of the dispute through arbitration.
ii. As the application of OADR is still in the formative stages, it confuses the arbitrators as to which rules are to be applied by them while adjudicating a dispute, as there are no settled rules on OADR. This enhances the possibilities of the discretion of the arbitrator being exercised in an unreasonable manner.

The possibility of a transnational approach to the determination of these rules of law appears to be acceptable to the stakeholders in international consumer protection. For instance, the 2003 New York Recommendations of the Global Business Dialogue on Electronic Commerce ("GBDe") incorporates an agreement reached between GBDe and Consumers International on Alternative Dispute Resolution guidelines applicable to international B2C e-Commerce.[48]

The guidelines state that ADR is advantageous, as opposed to the difficult, cumbersome, and costly research on detailed legal rules regarding court procedures because "ADR dispute resolution officers may decide in *equity* and on the basis of *codes of conduct*. This flexibility regarding the grounds for ADR

[47]Antonis Patrikios, *Resolution of Cross Border E-Business Disputes by Arbitration Tribunals on the Basis of Transnational Substantive Rules of Law and E-Business Usages: The Emergence of Lex Informative*, 38U.TOL.L.REV.271 (2006).

[48] *See generally*: GBDe Summit (New York), Recommendations, available at http://www.gbde.org/pdf/recommendations/NYCRecommendations.pdf.

decisions provides an opportunity for the development of high standards of consumer protection worldwide."[49]

As a measure of security while adjudicating any dispute, the fundamental principle of *contra proferentum* must be applied. In basic terms it suggests that:

'While adjudicating any dispute between two parties, equity demands the verdict to be in favor of the weaker party.'[50]

Thus, the aforesaid principle is of utmost significance while resolving any dispute categorized under B2C category. If the arbitrator has to exercise his discretion pertaining to the granting of the award, then the elementary principle which is supposed to be followed is:

'The award should be granted in the favor of the weaker party i.e., consumer in the B2C Model cases, after applying the principle of contra proferentum.' [51]

V. Recommendations

1. If a comprehensive study is carried out and a vent is allowed for those customs comprising a blend of e-commerce and arbitration, provided that the custom is not in contravention with International norms, then customs must be applied instead of the international norms.
2. The articulation of a body of transnational rules for cross-border e-business is needed for facilitating online alternative dispute resolution mechanism. It is time an initiative is taken by the legislators and international organizations like UNCITRAL, UNIDROIT etc. This is necessitated for comprehensive and ongoing research in order to clarify the exact content of the existing transnational principles, rules, customs and usages of e-business. In addition, further research is needed to monitor the constant development of the *Lex Informatica*.
3. It is submitted that the culture of markets varies across the globe in accordance with the culture of the land. Thus, formulating a general

[49] JULIAN, *supra* note 42.
[50] Appelbaum, R.P., Felstiner, L.F., Gessner V., (eds.), *Rules and Networks; the Legal Culture of Global Business Transactions*, Oxford University Press, pg. 159-167, (2001).
[51] *Supra* note 3.

principle of law for the application of OADR in settling e-commerce disputes is a herculean task for which an objective test has to be defined and a uniform opinion has to be generated amongst the masses of the world.

4. The awards granted by the arbitral tribunal should be published so that it may facilitate the formulation of the uniform code for adjudicating e-commerce disputes by online arbitrators.
5. It is submitted, regarding the application of customs and usages in resolving e-commerce disputes by the online arbitrators, that while tracing the roots of usages it is not always convenient to identify it and if it is identified, then the principle of 'wider acceptance' creates an impeding factor in its application. To alleviate the instant problem, it is suggested that the expert opinion should be sought.[52]
6. It is highly asserted that during the time of the formation of the arbitration agreement, the parties themselves should decide the laws applicable in case of disputes till no uniform law comes into force for OADR in e-Commerce.
7. In the absence of such provisions demonstrating the application of the law in cases of dispute, the arbitrator should be given discretion. However, the details of such law should be provided to the parties and only after the consent of both the parties should the arbitration proceedings begin.

VI. Conclusion

It is submitted that after realizing the different factors influencing the formulation of the uniform code for ascertaining and resolving e-commerce disputes by online arbitrators, the most important factor is that the intention of the parties for an amicable solution must be given within a reasonable time. The work to formulate a uniform code for OADR should be carried out extensively and the different governments of the world should strive forth and establish an international body/organization, which would in turn co-ordinate with its member countries and the concerned forum of the United Nations. This will definitely aid in the creation of a set of transnational rules manifesting the interest and the will of the different sovereigns.

[52]Katsh, E., Journal of Online Law, Cybertime, Cyberspace and Cyberlaw (2011), available at *http://www.law.cornell.edu/jol/katsch.htm*.