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AN ANALYSIS OF MEDIATION IN OIL & GAS DISPUTES

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ABSTRACT

"*Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time.*"[1] – Abraham Lincoln

Increasing dissatisfaction with arbitration as the preferred method of alternate dispute resolution in the Oil and Gas industry has, over time, led the parties to look for other alternative dispute resolution methods, even though the decisions rendered through Alternative Dispute Resolution methods are typically nonbinding in nature. Taking these facts into consideration, the popularity of mediation as a planned method of conflict resolution in the Oil and Gas industry is increasing, perhaps not as a single solution, but as a component of a multi-tiered, mutually agreed-upon conflict resolution strategy. To determine whether or not mediation, as a process for dispute resolution, can be preferred over litigation, the pros and cons of both processes will be discussed in this article. The goal is to determine whether industry players believe that mediation, as an arranged way of dispute resolution, is preferable to litigation, taking into consideration both advantages and disadvantages of the same. This will be followed by a discussion on the obstacles and the prospects for mediation to be utilised as a key tool in the settlement of problems affecting the oil and gas sector.

Keywords: ADR, Mediation, Multi-Tier Dispute Resolution.

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[1] P Basler, 'Abraham Lincoln Notes for a Law lecture', <http://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm> accessed at 03 January 2022.

INTRODUCTION

Owing to its dynamic and diverse character, the oil and gas industry is no stranger to controversies attached to it. . You may get swept up in the excitement of attempting to clinch the sale and forget about the ramifications of any problems that may arise throughout the process. According to Black's law dictionary, "A dispute is defined as a disagreement over a fact, law, or policy in which one party's claim or assertion is answered by the rejection, denial, or counter-claim of the opposing side"[2]. When we speak of an international conflict, we are referring to a dispute that involves parties from all over the world. Disagreements have existed in the oil and gas industry since the first oil well in Pennsylvania was dug in 1859, when Colonel Drake had a conflict with his local suppliers of supplies and services.

There is a worldwide market, and players have assets in several different countries. Multiple contracts are long-term in nature, involving numerous parties, and maybe highly technical as well as legally complex. Not only a contract disputes may result in millions of pounds of losses for oil and gas companies, but they also have the potential to wreck future joint ventures, causing reputational damage as well as preventing new joint ventures from being formed. Both of these consequences have more significant and sometimes intangible ramifications that may make it difficult to overcome obstacles in the future. In the oil and gas industry, long-term relationships are preferred and solutions that cause the least amount of disruption to existing partnerships, projects are sought wherever possible. Therefore, disputing parties are unlikely to stop or discontinue their activities, and once their differences are resolved, they will almost always prefer to go on with their company as normal. When a problem arises that was not anticipated and agreed upon in the parties' parent agreement, such as, "a delay in equipment delivery, maritime boundary issues, a problem with an indigenous community, or a pipeline incident such as the recent British Petroleum (BP) disaster,"[3] a dispute is likely to arise. Conflicts arising from a contract which includes land acquisition, exploratory exploration, supply and marketing agreements, and construction projects, among other things, have made oil and gas one of the world's most litigious industries. In addition to the industry's need to chase newly unknown resources further afield, such as in the Arctic; decreasing oil reserves in shallow coastal areas have raised the probability of disputes occurring. As a consequence, establishing precise dispute resolution processes that define the choice of venue and laws applicable becomes more important.

[2] Mi Yung. Yoon, 'Colonialism and Border Disputes in Africa: The Case of the Malawi-Tanzania Dispute over Lake Malawi/Nyasa' [2014] PL 75-89.

[3] James. Stocker, 'No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean' [2012] PL 579-597.

In the United Kingdom Commercial Service, there are two basic mechanisms for settling contractual issues: informal talk and formal discussion. It is the former method that occurs when the parties, who are often from top management, meet in good faith to discuss the problems under dispute to find a speedy and informal solution. Because this process usually takes place early in a dispute, the parties may argue the need to include a language in an agreement that indicates what they regard to be a self-evident condition in the first place. The fact that a contractual provision to settle disputes by informal methods would rarely contain detailed instructions on how the mechanism was to be implemented, stems from the fact that it would be incongruous with the nature of such a mechanism to include detailed instructions on how the mechanism was to be employed.

ADR VIS-À-VIS OIL AND ENERGY DISPUTES

The Rand Corporation led a review in the mid-1980s that observed that the normal consolidated expense of a jury preliminary to citizens and parties in every single government court and a significant state locale studied was around $16,000 per case, however, the normal measure of recuperation in generally 75% of civil preliminaries in one regular major metropolitan jurisdiction was under $8000.[4] The research focuses on a single fundamental reason for widespread discontent within the American legal system: "the low return on investment in conflict resolution. The cost, complexity, and delay inherent in the American legal system have long been a source of dissatisfaction. Despite Roscoe Pound's well-reasoned talk at the American Bar Association's Annual Convention in St. Paul, Minnesota in 1906, no significant effort at change was made until 1976, when the American Bar Association sponsored the Pound Conference.[5] The Pound Conference, with its core issue of The Causes of Popular Dissatisfaction with the Administration of Justice, is credited for launching the current age of alternative dispute resolution (ADR) in the courts." Since the meeting, court-administered ADR programmes have sprung up throughout the country, and legislation to give alternatives to litigation has been passed. Mediation, arbitration, mini-trials, and summary jury trials are all examples of alternative dispute resolution. Mediation may be the ideal technique for settling oil and gas law conflicts for a variety of reasons.[6]

[4] Warren E.Burger, 'Reflections on the Adversary System', 27 Val. U. L. Rev. 309 (1993) <http://scholar.valpo.edu/vulr/vol27/iss2/1> accessed at 03 January 2022.
[5]Barry Friedman, 'Popular Dissatisfaction with the Administration of Justice: A Retrospective (and a Look Ahead)' (2007) 82 ILJ <https://www.repository.law.indiana.edu/ilj/vol82/iss5/3 > accessed 03 January 2022.
[6] Lisa C. McManus, 'Mediation in Oil and Gas law Disputes', (LexisNexis 2013) <https://www.lexisnexis.com/legalnewsroom/energy/b/oil-gas-energy/posts/mediation-in-oil-and-gas-law-disputes>accessed at 03 January 2022.

MEDIATION- A CRITICAL COMMENT

Mediation is a kind of organised negotiation in the continuation of direct discussion. It is used to resolve disputes between parties. In this approach, a neutral third party is selected to act as a mediator between the parties involved in the negotiations. Normally, mediation is initiated by the parties involved, but it may also be initiated by the courts and conducted outside of the legal system as well. To have a better understanding of the parties' viewpoints, the mediator will often hold discussions with them. If there are possible roadblocks to reaching an agreement, the mediator may help in the examination of various solutions to those roadblocks. But the mediator cannot compel the parties to reach a solution. The ultimate aim is for both parties to come to a mutually acceptable agreement. Faster hearings, cheaper expenses, confidentiality, and privacy are just a few of the advantages of mediation versus litigation. There is also more flexibility in how much control the parties have over the process and its outcome. A settlement cannot be imposed unilaterally because settlements cannot be imposed unilaterally and also mediation does not establish precedent, rather each case is handled on its own merits, taking into consideration all relevant facts as well as the best solution for the parties. Approaches to mediation include facilitative and evaluative, transformational, and narrative mediation, all of which are preferable to litigation since the parties agree on the framework and process before the mediation takes place. In contrast to conciliation, which is often more evaluative, mediation is a cooperative approach in which the mediator does not voice an opinion or make any recommendations to the parties. However, in certain instances, oil and gas sector parties agree on evaluative mediators who have industry experience, and in these instances, proposals may be made to the parties. However, no proposal can bind the parties involved, but they do provide the groundwork for both parties to go forward with increased understanding toward a shared objective. In the majority of cases, the mediator is not required to be an expert or to give a conclusive remark on the topic at hand. Essentially, they will act as an impartial, non-adversarial third party who supports the parties in achieving a mutually advantageous agreement. Traditional common law courts have been reluctant to enforce mediation agreements because of ambiguity, a desire to avoid the courts' jurisdiction, and a lack of adequate remedies available to the parties. For a contract to be enforceable, the term must be clearly defined. The position of contractual certainty for the parties to take the issue for mediation has been upheld, and ADR provision was not an agreement to discuss if the parties had intended to pursue litigation as the last option. And public policy support fully supported enforcing the ADR provision.

A stay of proceedings may be granted by the courts in the United Kingdom awaiting the conclusion of any mediation procedure that has been initiated. Channel Tunnel Group Ltd v Balfour Beatty

Construction Ltd[7], for example, is a good example of this. The refusal to participate in mediation is also a significant legal issue, as evidenced by several cases, including the Court of Appeal's decision in Dunnett v Railtrack Plc[8], which stated that mediation may sometimes be able to provide a better solution than the courts. In Hurst v Leeming[9], a sharper line was established, clarifying the applicability of the Dunnett principle as the courts would not allow cases to move to arbitration or litigation if mediation is considered a fair way of resolving disputes. What may seem to be outside the scope of mediation is otherwise when the parties involved choose to engage in ADR, particularly mediation? However, as established by Halsey v Milton Keynes General NHS Trust[10], the courts will not accept the employment of ADR in a non-discriminatory manner. In contrast to foreign arbitral decisions, mediation does not have international enforceability. As a result, people involved in the oil and gas industry prefer to employ mediation as part of a multi-tiered conflict resolution mechanism rather than as the main means of resolving issues.[11]

BENEFITS OF MEDIATION

Mediation has several advantages over other types of alternative conflict resolution and litigation, including cost-effectiveness, expediency, confidentiality, and flexibility, among other things. The winner-takes-all method of the formal adjudicative process has the problem of not being able to offer both parties an acceptable resolution since there is no alternative tool available to do so. Mediation fosters the examination of non-traditional techniques of resolving issues, which are frequently overlooked by informal dispute resolution processes. Mediation is only successful if the parties can reach a mutually beneficial agreement. For some disputants, litigation is a straightforward alternative since the onus of reaching a decision is taken from the litigants; and the adjudicator determines the appropriate resolution. But in mediation, the participants must determine whether or not a proposed agreement is reasonable. A compromise may be difficult to distinguish from an unfair and painful surrender, and ultimately, the responsibility lies with the decision-maker, who is required to routinely reveal his or her findings to others, such as a board of directors or shareholders, to maintain public trust.

But mediation enables the parties to achieve a settlement that may not provide each party with all they seek, but it eliminates the possibility of losing everything they desire. Aside from that, the

[7] *Tunnel Group Ltd v. Balfour Beatty Construction Ltd*, (1993) HL Feb 1993.
[8] *Dunnett v. Railtrack Plc*, (2002) EWCA Civ 303.
[9] *Hurst v. Leeming* (2002) EWHC 1051.
[10] *Halsey v. Milton Keynes General NHS Trust* (2004) WLR 3002.
[11] Alessandra Sgubini, Mara Prieditis & Andrea Marighetto, 'Arbitration, Mediation and Conciliation' (Mediate 2004) <https://www.mediate.com/articles/sgubiniA2.cfm > accessed at 03 January 2022.

savings in terms of legal expenses, delayed production, and an unknown commitment on the balance sheet are substantial. The parties' cooperation and the mediator's ability to maintain control throughout the proceedings are critical to the success of mediation. There is no specific technique that must be followed. In the majority of situations, the processes begin before the parties meet for the first time, and when the parties provide the mediator with background information. The mediator would generally begin the mediation by explaining how it will be conducted and urge the parties to adhere to the basic set of principles designed to promote peaceful interactions amongst them. The introduction of the process by the mediator is intended to create a climate conducive to compromise, in which the mediator will urge the parties to put their emotional differences aside and work toward a common goal. Following that, each party is allowed to present their "side" of the story in their own words. In some cases, concessions such as the use of attorneys as major spokespersons and the greater use of private meetings rather than joint sessions are unavoidable, although the paradigm of mediation as a collaborative process should ideally concentrate on direct communication between the parties. When the parties are separated in different rooms and the mediator participates in shuttle diplomacy, the route to resolution is often not clear until accomplished. The parties and their legal counsel may offer joint sessions and private caucuses at any time throughout the mediation process; at that point, either party or the mediator may advocate them as the most beneficial. They may either rely on the mediator for all discussions or they can negotiate directly with the negotiator, depending on their needs and preferences. The absence of evidentiary constraints, other than secrecy, encourages the parties to discuss whatever topic they think is significant, regardless of relevancy. "Mediation enables the parties to analyse what to include in their presentations and discussions, while typical adjudicative models filter evidence to include only that which has a direct influence on the subject matter of the dispute. As a consequence, the parties' needs, interests, worries, and motivations for their views are often brought up in court."[12]

MEDIATION IN US FEDERAL COURT

"In 1978, the first federal court-annexed mandatory arbitration programs were established in three districts on a trial basis. In 1983, Rule 16 of the Federal Rules of Civil Procedure was amended to encourage courts to consider the possibility of settlement or the use of extra-judicial procedures to resolve the dispute at pre-trial conferences."[13] Title IX of the 1988 Judicial Improvements and

[12]Geetanjali Sethi, 'Mediation: Current Jurisprudence and the path ahead'<https://www.mondaq.com/india/arbitration-dispute-resolution/957898/mediation-current-jurisprudence-and-the-path-ahead> accessed at 03 January 2022.
[13] Amendments to Federal Rules of Civil Procedure, 1983, § 16(c)(7).

Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642 (1988), later authorized court-annexed arbitration programs in additional pilot districts. The Civil Justice Reform Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990) (codified at 28 U.S.C. §§ 471-482), required every federal district court to at least consider court-sponsored ADR in its required Civil Justice Reform Act Plan.[14]

The Alternative Dispute Resolution Act of 1998, by local rule, requires every federal district court to approve "the use of alternative dispute resolution methods in all civil proceedings" and to appoint a judge or other employee who is competent in ADR techniques. The Act gives federal courts the power to order mediation or an early unbiased review. Each district court is required by local regulation to compel plaintiffs in civil matters to explore employing alternative dispute resolution (ADR) at a suitable point in the litigation, while certain types of cases may be excused for not suited to ADR techniques. Congress mandated that magistrate judges and neutrals employed in ADR proceedings be properly trained, or professional neutrals from the business sector be hired. "In most cases, the Court will issue an order within 30 days of the filing of the defendants' answer, setting the date and time of the initial scheduling conference, as well as the dates by which the parties must confer and file the Rule 26(f) Report (so named because the provisions are outlined in Fed. R. Civ. P. 26(f)). The Rule 26(f) Report must be submitted at least 21 days before the scheduling conference.

"The Rule 26(f) Report is a joint report that describes the precise ADR procedure that the parties have discussed and chosen, as well as the expected timetable for the ADR process' completion. The Court will consider the ADR possibilities with counsel during the scheduling meeting if the parties have not agreed to an ADR procedure before the conference. If the parties are unable to reach an agreement on a procedure before the completion of the scheduling conference, the Court will decide for them. The parties must engage in the ADR process in good faith."[15] The Court prefers that ADR take place before discovery, but it understands that in certain cases, discovery is required before substantive settlement negotiations can take place.

[14] Civil Justice Reform Act,1990.
[15] LORETTA W. MOORE, and DAVID E. PIERCE, 'A Structural Model for Arbitrating Disputes Under the Oil and Gas Lease' [1997] PL 407-456.

THE BENEFITS AND CHALLENGES OF MEDIATION IN OIL AND GAS LAW DISPUTES

For a variety of reasons, mediation is a viable option for addressing a broad range of oil and gas difficulties, especially in the industry. A situation in which couples who have been in a long-term relationship may confront a dispute is the one described above. Since mediation is less confrontational than litigation or arbitration, it allows the parties to reach a mutually agreeable resolution of their dispute. Because neither party will be completely satisfied with the outcome, reaching an agreement through the mediation of a third party may help to prevent one party from becoming so enraged by the outcome of the adjudication process and that the relationship between the parties is irreparably damaged in the process. Consider the situation of operators who have long-standing relationships with major landowners; keeping a favourable connection with them during a dispute over a single tract is critical to retain economic advantages throughout the whole land base. Each party is liberated from the obligation of accusing the other of being at fault when they participate in mediation. Their ability to work together to create an acceptable and workable solution helps them to move forward more swiftly.[16]

Parties are unable to address their disputes via the adjudication process if they are denied the opportunity to apply the innovative problem-solving methodologies which are accessible by mediation. When a dispute involves firmly ingrained rights in one location, for example, the parties may agree to exchange property that the first party does not value, but that the second party finds valuable. Another way of looking at it is that if a lease dispute occurs about whether a lease is for production or not; the lessor and lessee may be able to agree if they sign a new lease with conditions that are fair to both parties and are reasonable to the lessor. Alternatively, if two parties cannot agree on whether a pooling provision was used in good faith, they may be able to resolve their dispute by abandoning some land while keeping others. Players from both sides of an oil and gas conflict have a significant advantage since they have the capacitance in the disagreement. However, rather than relinquishing all decision-making power to counsel and an adjudicator, the degree of engagement on the part of the parties permits them to exert influence over the method and result of the case. Negotiation is often skewed in favour of the party with the greatest money, power, or negotiating abilities. The use of mediation, especially in certain situations, such as when two parties have equal or similar amounts of money, power, and negotiating skills, can help to level the playing field by allowing the parties to meet and discuss their respective points of view in-depth to reach

[16] T D Resol, 'ALTERNATIVE DISPUTE RESOLUTION: MEDIATION AND CONCILIATION' (Law Reform Commission 2010) <https://www.lawreform.ie/_fileupload/reports/r98adr.pdf > accessed 03 January 2022.

to a beneficial agreement. Although mediation is frequently regarded as an ideal solution in disputes that the parties wish to keep private. Its effectiveness is dependent on the preservation of privacy and secrecy, making it an obvious choice in which the parties would prefer not to have their identities revealed. Because mediation allows for the avoidance of a judgement that might be detrimental to one or both parties, it is often used when there is uncertainty in the law and a poor judgement could have a significant effect on both parties' interests. Furthermore, when a large producer makes a single concession on a single issue, the influence on subsequent events is little, since the action of making a single concession on a single issue is followed by a series of other modest acts. One of the most significant benefits of the mediation process is the ability for it to level the playing field for all parties involved. The perception, as well as the legal interpretation of the facts, may make settlement difficult since either an attorney or a party would not accept anything less than full value for the case. An impartial mediator will not be able to reach a legally enforceable agreement, but in the case of a private caucus, a skilful mediator will undoubtedly offer observations on the relative merits of various perspectives. Litigation may help both parties and their legal counsel with information on the likelihood of winning if the case goes to the trial court, which may be useful in settlement talks later on.

MULTI-TIERED DISPUTE RESOLUTION CLAUSES

Increasingly, multi-tiered dispute resolution techniques are being employed in the oil and gas industry, notably in multibillion-dollar international contracts. Numerous conflict resolution processes at different and growing levels are made possible by multi-tiered conflict resolution agreements, which allow for the settlement of disputes on multiple levels at the same time. There are so many different forms and sizes in a multi-tiered dispute resolution agreement. "The case of Thames Valley Power Ltd v Total Gas and Power Ltd, for example, included a long-term gas supply agreement that incorporated a three-tiered dispute resolution procedure. After receiving written notification of the issue, the parties agreed to meet and make all reasonable attempts to resolve the dispute or disagreement in good faith."[17] Any conflict that cannot be resolved between the parties should be referred to an unbiased expert for resolution. Finally, according to the statute, "if no expert can be located or if the procedures cannot be followed, any party may refer the dispute to arbitration under the Arbitration Act of 1996". There are additional tiered dispute resolution processes under the LOGIC General Conditions of Contract [which include the Contract (including Guidance Note) for Services clause 30 as well as the Supply of Major Items of

[17] Simon Tolson, 'Alternative Dispute Resolution' <https://www.fenwickelliott.com/sites/default/files/st_-_alternative_dispute_resolution_-_law_summer_school_17.pdf > accessed 03 January 2022.

Plant and Equipment clause 36]. Briefly stated, the method comprises the referral of the subject to company leaders for discussion and reasonable efforts to resolve. The dispute is sent to the two individuals named in the contract's appendix. If no agreement can be reached, the disagreement is forwarded to the court of law. If no agreement can be reached, the subject is sent to executive negotiation, which is comprised of the managing directors of the enterprises involved.

When it comes to settling conflicts, the judicial system is the final option. Although arbitration is not required in all scenarios involving international shipping, the parties have the option of choosing to use it as an alternate dispute resolution mechanism in certain circumstances. The provision of an FPSO (Floating Production, Storage, and Offloading) facility in the North Sea is another example of a deal worth millions of dollars. It was signed for the first time in 1996 and featured a chapter on dispute settlement. The approach was developed to settle without turning to arbitration or litigation as a solution. As a result, the contract provided for the resolution of differences via a hybrid, rising negotiating process that comprised executive negotiation as well as expert decision-making. According to the contract's relevant language, disputes were to be resolved initially by representatives from both the client and the contractor parties. These responsibilities were outlined in the contract, and employees were appointed formally. If they were unable to resolve the issue, it would be escalated to the next level of management, which would be either senior or director level, and they would attempt to come to a solution together. It is possible that this will not result in a settlement, and in that case, the two sides will jointly choose an expert to resolve the disagreement. The operation was split down into 14-day chunks, with each phase having 14 days to fulfil its work before moving on to the next.[18]

When it came to accepting the expert's conclusion, there was no agreement in this context stating that the parties were bound by them (i.e. "the firm was not obligated to accept the conclusion, and if this was the case, the contractor might resort to litigation"), which proved to be a stumbling block throughout the entire procedure. The latter method, on the other hand, may jeopardise the whole process since it permits the client, but not the contractor, to disregard the entire contract's procedural requirements. As shown by this contract, it is essential to ensure that the agreed-upon method, whatever it may be, also includes a promise, binding on both parties, to accept the conclusion. To decide whether the parties are permitted to follow the sequence of dispute resolution strategies, as indicated in the clause, or whether they are under a legal obligation to do so, the text of the provision is first looked at to see whether or not it is enforceable. Failure to

[18] Govinda Clayton, 'Oil, Relative Strength and Civil War Mediation' [2016] PL 325-344.

comply with pre-arbitral requirements under the multi-tiered process may result in the arbitral tribunal being unable to hear the case. The arbitral tribunal will evaluate whether a party has a valid objection to this by using the competence-competence principle and the arbitral tribunal's authority. The oil and gas business seeks to settle disputes as quickly and inexpensively as possible while causing the least amount of interruption to operations and relationships among industry participants. The use of more expensive dispute resolution processes such as arbitration or litigation is generally not recommended unless there is a good chance of having an increased impact on the conflict, such as in situations where you have greater leverage over the other party, such as through negotiation or mediation. To pursue litigation, such as going to court, a course of action must first be determined to be both costly and difficult, which implies that all parties must waive their right to remain anonymous during the process. Therefore, it is improbable that the strategy will be effective in having the judgement executed outside of the United Governments unless the parties' respective dispute-resolving states have signed bilateral recognition and enforcement treaties with one another. The result is that the oil and gas companies are more likely than other enterprises to choose a mutually agreed-upon conflict resolution process rather than resorting to litigation. Generally, arbitration is less costly than litigation, however, this is not always the case in practice. This method of dispute resolution has several benefits over traditional litigation, including the fact that it is confidential and that a foreign arbitral decision may be implemented under the 1958 New York Convention on International Commercial Arbitration. Even though arbitration has flaws, it is a regularly utilised method of resolving disputes in the sector. ADR (also known as informal and/or formal methods) is more difficult to accomplish than other alternatives. As a result, arbitration and litigation, which are more time-consuming alternatives, are becoming more popular as a last resort.[19] It is more typical to use a multi-tiered dispute resolution system that involves discussion, mediation, expert judgement, and ultimately arbitration as the first step before proceeding. The most significant benefit of using a multi-tiered strategy is that it boosts efficiency while also lowering the cost of dispute resolution. This system serves as a filter, ensuring that only the most severe and challenging disagreements are resolved via arbitration. While less complex disputes are resolved at a lower level, hence conserving time, energy, and financial resources. By transferring conflict resolution to a succession of alternative dispute resolution methods that emphasise collaboration, the parties' future relationships are safeguarded.

[19] James F. Smith, 'MEDIATING INTERNATIONAL INTELLECTUAL PROPERTY DISPUTES' [1997] PL 238-259.

CONCLUSION

Alternative dispute resolution (ADR) is a more formal technique of conflict settlement that includes mediation and arbitration. Depending on the approach utilised, this is a mediation-based procedure that takes place inside an organised process that involves a third-party supervisor, and it may either enforce a settlement or allow for discussion to take place. When a settlement cannot be achieved, alternative dispute resolution (ADR) often does not prevent the parties from proceeding with other conflict resolution options, such as arbitration or litigation.

People are attracted to it, which is why it is in high demand on the market. Even though various issues are now resolved by Mediation, litigation has traditionally been the method of choice when there is a disagreement over the amount of money at stake, with the expectation that the court judgement will provide resolution. However, as the following reasons demonstrate, litigation may not be the most advantageous strategy for advancing the economic interests of industry players.[20] Mediation may be extremely beneficial in settling oil and gas law difficulties when the parties are willing to compromise and seek to maintain a high degree of control and secrecy over the process. Since mediation expedites the conclusion of an argument, resulting in both cost and time savings, it may be successful in assisting parties in resolving their disputes. However, regardless of whether alternative dispute resolution (ADR) is needed in the jurisdiction in which the matter is litigated, or not, efforts should be made to explore ADR in resolving conflicts in the oil and gas business when it is considered that a negotiated settlement is feasible.

[20] Philip C. C. Huang, 'Court Mediation in China, Past and Present' [2006] PL 275-314.