Communiqué on the 2008 International Forum on Online Dispute Resolution

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I.   Introduction

The 2008International Forum on Online Dispute Resolution (ODR Forum) convened June 18-19, 2008 in Victoria, British Columbia. In addition to some 120 registered delegates and participants, the Forum was attended by 15 Canadian International Development Agency (CIDA) guests, six National Centre for Technology and Dispute resolution (NCTDR) Fellows, four learners from Royal Roads University and one from Pepperdine University. Two dozen sponsors, benefactors and donors collaborated with the organizing committee to offset potential costs for attendees. Select honored guests included: 1996 Nobel Peace Prize winner José Ramos-Horta (President of the Democratic Republic of Timor-Leste); "Father of the Internet," Dr. Vinton Cerf (Vice-President and Chief Internet Evangelist at Google.com): Madame Patricia Durrant (Jamaica's former Ambassador to the United Nations and retired Assistant Secretary General of the UN); and Ambassador. Nelson Santos (Timor-Leste's Ambassador to the United Nations).

The organizers of the ODR Forum wish to express their gratitude to the Governments of Canada and British Columbia for their support of the Forum.

II.   Wednesday June 18, 2008

   1. *Opening ceremony*

The Forum opened with a discussion of the use of Online Dispute Resolution (ODR) in the monitoring of human rights. Within the United Nations (UN) it has proven to be a

powerful means of increasing communication while at the same time reducing prejudices and misinformation. Prerequisites offered for such implementations included information sharing, confidentiality, voluntary participation, neutrality, and independence.

President Jose Ramos Horta of Timor Leste sent a video message to the Forum. While one of the UN's Least Developed Countries, Timor-Leste has for 10 years used the internet to address the suffering of East Timorese with NGO's and civil society. In this context, ODR stands to increase communication and, reduce prejudice, and overcome misinformation.

2. What is ODR?

As an introduction to the technique, ODR was defined as the use of information and communications technology with the aim of helping disputants find resolution to their disputes, or helping parties manage, transform and resolve their conflicts.

3. ODR and Peace

The relevance of resolving employee-related conflicts was discussed as a use of information technology within the United Nations Ombudsman's Office.

4. The Uniform Domain Name Resolution Policy

The Uniform Domain Name Resolution Policy (UDRP) is a process established by the Internet Corporation for Assigned Names and Numbers (ICANN) that exists to help the organization ensure a single, end-to-end interoperable Internet. The policy exists between the registrar and its customer regarding domain name disputes.

Myriad approaches to improving the proactive of ODR were shared, including using document repositories rather than email to manage large files, that alternative dispute resolution (ADR) doesn't have to be conducted in-person, and that a "live person" can help answer procedural questions.

5a.   Technology Presentations and Demonstrations

Six ODR platforms were demonstrated: TheMediationRoom.com, CyberSettle, JuriPax, SAVIOMM, SmartSettle and FairShake.

TheMediationRoom.com's software provides client-branded collaborative platforms adaptable to any form of ADR. Providing more than in 'face-to-face', TheMediationRoom.com facilities include anonymous brainstorming for objective assessment of proposals and an audio-video-desktop sharing conferencing facility. TheMediationRoom.com's clients include two US federal government agencies, The Ministry of Justice of England (the world's first court referred online mediation), the Law Council of Australia, eBay/PayPal and mediators/mediation organisations in over 10 countries. TheMediationRoom also announced a partnering with the leading European provider of government to citizen gateway systems.

Five steps for getting from an existing dispute to an online settled dispute were discussed as an example of real-time, online blind-bidding negotiation within CyberSettle: the plaintiff enters the dispute into a AAA Webfile, the AAA forwards the dispute information to CyberSettle, the plaintiff entering their demands into the system, the defendant being notified of the case, and the defendant enters their offers into the system. If the case is closed, settlement notices are sent to both parties; if not, the dispute is forwarded to the International Centre for Dispute Resolution for desk arbitration.

Another online dispute resolution platform, JuriPax, aims at resolving three types of online disputes: claim-handling and preparation solutions; discussion-room and conference facilities; and digital document and case-management solutions (including feedback surveys).

Potential disadvantages and threats to synchronous A/V-based ODR were discussed by way of the SAVIOMM platform. These included matters of privacy/confidentiality, quality of audio-video devices, illicit recording of ODR sessions, lack of psychological "pressure" to settle, and the availability of webcams. In turn, various benefits were also

discussed, including lowered cost, environmental impact and stress, as well as increased efficiency and security.

End-customer research within ODR was discussed by the developers of the FairShake ODR platform, along with the corresponding technologies that can be used to resolve consumer pain points revealed through the research. Research concerning projected spending on customer experience was also examined, with findings pointing toward increased spending on web analytics, customer satisfaction surveys, focus groups, expert evaluations.

Two aspects of the SmartSettle platform – one optimized for single-valued outcomes, the other for integrative bargaining – were demonstrated. Following this, the concept of rewarding desirable negotiation behavior – providing rewards for the party who made the smallest move in the last session – was discussed.

5b.   Social - cultural aspects of ODR

Conflict prevention and resolution within international, transnational and cross-cultural settings were explored, including – among others – Africa, India and within the Deaf Community.

The ramifications of the digital divide within Africa were discussed in terms of cultural understanding, social mobility, cultural interaction and the production and exchange of information. Obstacles to "e-development" in least-developed countries were discussed, along with recommendations to bridge the digital divide and promote the development of global ODR systems.

Challenges to the dissemination of ODR within India, such as lack of awareness of ODR and lack of faith in non-litigated dispute resolution, were discussed. Suggested strategies to overcoming these barriers included addressing problems with trust, awareness, cultural differences, governmental and international support, and technological prowess.

Lessons gleaned from American Sign Language / English interpreters experience in Technology Mediated Dispute Resolution (TMDR) processes, were discussed. Three

premises supporting the use of TMDR were presented: that today's preteens and teens will be heavily reliant on technology in their adulthood, that rising fuel costs create a business case for TMDR, and that travel itself has become less safe if not less convenient.

6a.   ODR and Environmental Concerns

Using a simulated negotiation relating to the United States *Clean Water Act* as a context, integrative online bargaining methods were discussed which can be used by parties to quickly develop agreements that efficiently meet their joint objectives.

6b.   ODR and the practice of Ombudsmanship

Various challenges facing online ombudsmanship were identified: the geographical scope of responsibility; language; idioms and dialect; reading fluency; proficiency with synchronous and asynchronous methods of communication; developing trust within cross-cultural contests;and maintaining the security of disputants' data. Solutions offered to counter these challenges include: the use of native language translators; employing a well designed case management systems; operating ODR from secure servers; and acting as a reflective practitioner.

An ideal Ombudsman's Office was described as one that is technology-enhanced, rather than technology-based. Various activities would be engaged in within such offices, from case management, online complaint resolution, and SharePoint-based collaborative negotiations. Modulating the choice of applying online or offline ADR practices, it was argued, involves consideration of the nature of the parties' dispute, the degree of their emotionality, and the availability of alternatives.

III.   Thursday June 19, 2008

1. ODR Education

Ethics - and practice - related differences between ADR and ODR were discussed. Guiding values of peace professionals as well as advice for both practitioners and clients new to ODR were suggested. A notable limitation suggested was the deduced control practitioners have over the processes of – and parties to – mediation and negotiation within ODR. By the same token, it was pointed out that ODR's ability to bring geographically distant parties together also introduces issues of cultural diversity which can make dispute resolution more complex.

2. ODR Initiatives in British Columbia

A pilot study exploring the feasibility of using ODR to provide family mediation for British Columbians living in remote, non-urban areas was introduced. The parameters of this project included using ODR to supplement rather than supplant the option of face-to-face mediation, avoiding replacing people with technology, mitigating negative environmental impacts caused by parties' travel, and minimizing inconvenience for disputants. In addition, applications of SmartSettle for resource planning and development, contract negotiations, the identification of satisfaction determinants, and complex decision-making were demonstrated.

3. ODR and Business

Possible advantages of ODR to business, including its potential to overcome problems of geography, jurisdiction, cost and speed, were discussed. In turn, possible challenges – including challenges with communicating nonverbally, mediators' difficulty demonstrating trustworthiness, and the requirement for ADR practitioners to learn new skills – were offered. The emergence of ODR within Chinese arbitration was also discussed, with regard to the choice of law (lex causae) and particularly the place of arbitration (lex loci arbitri) pertaining to disputes resolved online. Lastly, ODR within Canadian consumer financial services was examined. Service delivery and customer experience were suggested as opportunities for B2C ODR, with the complexity of consumer banking, investments and insurance disputes being offered as challenges to be addressed.

4a.   ODR and the Legal Environment

Within the context of global law and ODR, a plurality of new legal orders are being put into place – laws which impact negotiation, mediation and arbitration. If a goal of ODR is to increase access to justice, then a challenge of the legal system in the 21st century is in balancing regulation and self-regulation through mandatory clauses or enforceability decisions. A suggested solution to this quandary involves mediation directives that set procedural (due process) standard with which states must comply, such as a Pan-European trustmark. It was argued that since the internet is distributive & multi-stakeholder, open-market and competitive, interoperable with local law, language, culture and environment, and neither regulatory nor certifying, then so too should be ODR. Concluding the session, participants outlined best practices for ODR with the goal of their being developed more fully by committees following the conference then presented at next year's ODR Forum.

4b.   ODR and Developing Nations

Both in renowned and use, arbitration has become increasingly popular within India. Still in relative infancy in the nation, interest in ODR is increasing due to ecommerce, off-shoring and out-sourcing, e-governance, the judiciary, mobile telephony, a growing rural sector, and micro-financing markets.

Just as cultures develop and transform within the real-world, so too does culture exist and emerge online. Evaluating disputes not only on the basis of extant cross-cultural differences, but also through the lens of the norms and customs of cyberspace, will be an increasingly necessary skill set for third party neutrals within ODR.

A panel of experts discussed ODR as a technology-driven means of accomplishing peace and social justice, particularly within developing nations. UN Security Council Resolution 1325, which requires parties in conflict to both respect women's rights and to involve women in conflict resolution, was discussed as having special relevance for the creation of sustainable peace. Distinctions between how collectivist and individualist cultures approach ODR within developing nations were also explored.

While relatively unknown and unpracticed in Nigeria, ODR was said to have the potential to increase access to dispute resolution within this nation in which traditional means to doing so are often underutilized. Various barriers must first be addressed, including the sufficiency of the internet infrastructure, issues of education and literacy, online trust-building, and a legal framework for Nigerian e-business.

The matter of climate change was discussed as having moved beyond the realm of politics and into the financial sector, largely due to the development of Clean Development Mechanisms (CDMs) such as Certified Emissions Reductions credits (CERs). Disputes are almost certain within this new and complex intersection of the business of environmentalism. ODR was discussed as an opportunity to resolve such conflicts not only effectively and efficiently, but also in a manner that limits contributions of additional greenhouse gases.

5. *"Tracking the Internet into the 21st Century" Keynote Address*

The "Father of the Internet," Dr. Vinton Cerf, discussed his initial work with the 1969 ARPANET project, then provided projections for the Internet of 2035. Growing in size from its current 542 million hosts and 1,320 users to 10 billion hosts and 5.6 billion users in 27 years, Cerf estimates the Internet will have a global penetration of 70% of the world's population. In an analysis of global online issues and disputes, Dr. Cerf discussed a variety of challenges anticipated for the coming digital age.

6. *ODR and the Future*

In the closing session of the Forum, twelve forecasts for the future of ODR were offered, with additional predictions offered by participants. Participants' predictions included increased acceptance of ODR among coming generations, the proliferation of open source ODR platforms, and the incorporation of avatars and holography within ODR. In addition, mobile platforms were predicted to overtake traditional computing, with the technologies of Web 2.0 having long-term implications to parties' experience within ODR. Participants also offered that in the future the differentiation between ADR and ODR will decline, the field will pay less attention to technologies and more to uses, and ODR will be a central piece of creating justice for the underserved.

IV.   Conclusions

Famously, the printing press revolutionized the way that people communicate across time and distance. But it also democratized literacy at the cost of making illiteracy a much greater disadvantage. The double-edged sword of online dispute resolution stands at the precipice of transforming dispute resolution in similar ways. Rather than being limited to the internet as its only medium, the "O" of ODR recognizes myriad stationary and mobile technologies as arenas for the emergence of conflicts as well as contexts within which they may be resolved.

Transcending solely two-party transaction models, ODR allows for exploring possibilities and expanding them, as well as developing multiple alternatives and evaluating them efficiently. And while today's ODR tools may not have existed in the past - nor may they be institutionalized into the future - their prerequisites are not unlike those critical to preventing and resolving conflict throughout human existence. Perhaps highest among these are trust – in its practitioners, processes, and platforms – and security – both as a promise from providers and as a belief held by disputants.

As the relevance and usefulness of the innovations brought about by the printing press were most prescient for the literate, so too the ability to "read" online environments stands to benefit most its early adopters. In growing the potential of ODR, responsible practice is a necessary but not sufficient condition. For ODR to flourish as ADR has over the past three and a half decades, what is also required is educating best practices while exploring novel ones.