The Legal Rules forElectronic Commercial Arbitration in Algeria

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Abstract:

There is no doubt that electronic arbitration has become a system that cannot be ignored in the digital age and in light of the increasing number of legal transactions that take place online. This is due to the growing need for it, and the fact that the general rules of traditional arbitration do not fit relatively with electronic arbitration. In the absence of specific provisions for the latter, it is necessary to deduce and amend the legal rules to keep pace with the rapid development in the field of technology and the world of communications. Despite the fact that some modern legislations have issued laws related to electronic commerce, such as the Algerian legislator as a model, this study aims to find alternatives to them because electronic arbitration is an effective and successful legal system. In addition to that, it is necessary to follow up on technological development and confront it with legal rules that are compatible with it through the codification of electronic arbitration within a comprehensive legal system.

Keywords: Electronic Arbitration; Commercial Contracts; E-commerce; Legal System.

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1. Introduction:

The field of law was not immune to the technological and electronic revolution and the emergence of the Internet, which provided ease of communication and eliminated physical distances and geographical boundaries. The information revolution has even affected legal actions, and as a result of globalization, many contracts are now made online and are known as electronic contracts, which are considered legally binding like traditional contracts.

Therefore, they are subject to the provisions of the general theory of contracts, which we find particularly in electronic commerce contracts as one of the pillars of the new economic system. As online contracts are international contracts, it was necessary to resort to the methods of private international law to determine the competent court and the applicable law, although its legal rules are based on geographical criteria that do not fit the nature of electronic commerce contract disputes, leading to a conflict of private international law rules in electronic commerce contract disputes.

In the midst of these obstacles to settling electronic commerce disputes, human thinking turned to finding mechanisms that rely on the same technology used in concluding these transactions and settling them electronically in the same way they were concluded, without the need for the parties to the dispute to be present in one place, using technological means. This is what is called international electronic arbitration or electronic mediation, through the use of modern communication methods in its various procedures.

The phenomenon of electronic arbitration has spread through some self-initiatives adopted by some regional organizations and professional associations concerned with keeping pace with electronic development, while most national legislations have not adopted it despite the noticeable legislative interest nationally and internationally in electronic development, especially with the issuance of a set of electronic laws by the Algerian legislator, starting with the Electronic Commerce Law, the Personal Data Protection Law, and the Postal and Telecommunications Law.

1.1 Problem of the study:

In light of the virtual privacy of electronic commerce disputes that private international law has been unable to resolve, which is a clear indication of the utmost importance of electronic commercial arbitration, we wonder about the legal framework for electronic commercial arbitration in resolving electronic commerce disputes.

1.2 Importance of the study:

The importance of studying electronic commercial arbitration lies in its speed in resolving disputes, as it does not require the physical presence of the parties to the dispute before the arbitrators, but rather the disputants can be heard through electronic means of communication. It also saves costs and expenses of

litigation, reducing travel expenses and presenting the dispute to specialized persons with legal and technical expertise in the field of electronic commerce. On the other hand, it excludes resorting to rules of conflict of laws and jurisdiction to address these disputes.

1.3 Objectives of the study:

This study is one of the academic scientific works related to foreign trade and electronic commerce, despite the scarcity of scientific studies that deal with electronic commercial arbitration. The study aims to recognize electronic commercial arbitration in resolving disputes related to electronic commerce contracts and foreign trade in general, at the national and international legislative levels

1.4 Study methodology:

Since the choice of research methodology depends on the type of research and its suitability for the issues studied and the objectives sought, and given the specificity of the electronic arbitration subject, the researcher relied on the descriptive method that describes the phenomenon under study, information, and facts, and puts them in a precise and complete framework.

This was done by identifying the legal system of electronic commercial arbitration, determining its legal controls, and considering analysis as one of the most important tools of the descriptive method, which the researcher used in the research details, and relied on in reviewing international agreements, model laws, national laws, and the efforts of international organizations to embody the electronic arbitration system at the level of foreign and electronic commerce, as the descriptive and analytical approach is the closest and most appropriate to determine the features and alphabet of our study topic accurately.

Finally, we have divided the study according to what we believe is the closest to answering the questions of the topic, through two axes; the first includes the legal problem of electronic commercial arbitration, while the second axis organizes the determination of the law applicable to electronic commerce contract disputes.

2. The issue of unifying the legal framework for electronic arbitration agreements:

An overview of the legal framework for e-government to achieve compatibility with electronic government services. The law is based on the principle that the government can rely on networks such as the internet to provide its services to citizens, either by creating them itself or by allowing others to create them on its behalf. The law aims to ensure that the government is fully aware of the services it offers through the internet, and it must establish a single point of contact for citizens to access these services. The law also aims to protect the privacy and security of citizens' data, as well as the confidentiality of government information.

The law should also provide for the establishment of a legal framework for electronic signatures, electronic documents, and online services, as well as the creation of a central register for electronic signatures. The law should also include provisions related to the establishment of a national database and the development

of a national policy for e-government services, as well as the creation of a framework for the management and operation of e-government services.

2.1 The Concept of Electonic Arbitration

The idea of electronic arbitration emerged as a modern method for resolving disputes arising from electronic transactions, compared to other dispute resolution methods such as electronic negotiations and electronic mediation. It allows the use of electronic technologies without the need for the parties to travel or be present at the place of arbitration.

The definitions of arbitration have varied and multiplied according to the perspective from which each jurist approaches arbitration. Some jurists define it as:A special judicial system in which the parties choose their judges, and entrust them under a written agreement with the task of settling disputes that may arise or have already arisen between them regarding their contractual or non-contractual relationships, which may be resolved by arbitration, in accordance with the requirements of law and justice and issuing a judicial decision binding on them, Others define arbitration as:The agreement to submit the dispute to one or more arbitrators to rule on it instead of the competent court, with a judgment binding on the parties, provided that the legislator recognizes this agreement, whether it is a condition or a contract (Salama, 2006).

In general, an arbitration agreement is defined as an agreement under which the parties undertake that disputes arising between them or that may arise will be resolved through arbitration. It is a legal act issued by two or more wills and is considered a judicial act, where the arbitrator performs the same function as the judge, which is to resolve disputes that arise before him by issuing a judgment in them(Souilm, 2019), the following question arises: Is electronic arbitration a development of traditional arbitration or a modern system that is an alternative to it?

In this context, some people have come to rely on electronic mail (email) as a means of communication, and they no longer need to use traditional methods such as sending letters or making phone calls. Instead, they rely on email for almost all their communication needs, whether it is between individuals or between individuals and institutions. However, some people are unable to adapt to this new way of communication, and they still prefer traditional methods. This is because they believe that email communication lacks the personal touch and direct interaction that traditional methods offer(Fathi, 2005).

In reality, email communication has become more prevalent in various aspects of life, such as government, business, and personal matters. For example, email has replaced traditional mail and phone calls in many cases, and it has become the primary means of communication for many individuals and institutions. This has led to a shift in the way people interact and conduct their daily lives, making email an essential tool for modern communication.

The procedures of arbitration are conducted electronically, such as holding sessions via the internet using visual or auditory means, or even through the exchange of electronic messages between the members of the arbitration panel. In summary, electronic arbitration can be defined as an agreement between parties within a specific legal relationship that occurs electronically over the internet, whether contractual or non-contractual, in order to resolve electronic disputes that have arisen or may arise between them, through other individuals chosen as arbitrators or through electronic arbitration centers, and this is done via the internet or any other electronic means, where the dispute is presented, its procedures are conducted, the decision is issued, and it is executed electronically.

The nature of an electronic arbitration agreement does not differ in this respect from the nature of an arbitration agreement in general, in that it is considered an electronic contract, and regardless of the type of arbitration agreement, the dispute is not moved unless it is submitted to arbitration under the arbitration agreement, and as long as it is a contract, it is subject to the general rules and provisions set forth in the general theory of contracts governed by civil commitment, it is done by agreement and consent between the two parties, but it is characterized as a contract made remotely and between absentees using electronic means(Hamoudi, 2009).

2.2 The established rules for the digital hearing process:

Indeed, the digital hearing process represents the first step in the digital hearing system. As it expands, it becomes clear that the concept of digital hearing is not limited to a specific type of hearing aid, but rather encompasses various types of hearing aids that use digital technology. The rules governing the digital hearing process do not differ from the general rules governing hearings in terms of their legal framework, whether the parties involved are individuals or legal entities. The specific rules for the digital hearing process are derived from the general rules, and the legal framework for digital hearings is based on the general legal framework for hearings, taking into account the specific features of digital hearing aids.

In this context, if a party requests a digital hearing, it is considered as if it has requested an oral hearing. The legal framework for the digital hearing process does not impose any specific restrictions on the parties involved, as long as they comply with the general rules for hearings. The specific rules for the digital hearing process are derived from the general rules, and the legal framework for digital hearings is based on the general legal framework for hearings, taking into account the specific features of digital hearing aids.

In conclusion, the digital hearing process is a specific type of hearing process that uses digital technology. The rules governing the digital hearing process are derived from the general rules for hearings, and the legal framework for digital hearings is based on the general legal framework for hearings, taking into account the specific features of digital hearing aids. The digital hearing process is not limited to a specific type of hearing aid but encompasses various types of hearing aids that use digital technology.

2.2.1 Subjective Conditions for the Validity of an Electronic Arbitration Agreement

Traditional commercial relations are based on offer and acceptance in all contracts, but the matter is relatively different in electronic commerce contracts. An electronic commerce contract is a contract that is concluded between two parties by a means of remote communication and is performed physically or by means of remote communication. Therefore, an electronic commerce contract is similar to a traditional commercial contract except for the means of conclusion and execution. There is no disagreement between them in terms of the availability of the general elements of the contract, which are consent, which is represented by the meeting of the offer and acceptance and the direction of the will to contract, and that the purpose of the contract is legitimate. An arbitration agreement is not valid except for those who have the capacity to dispose of their rights(Touakol, 2010).

An electronic arbitration agreement, as a contract, requires for its existence what any other contract requires of the objective conditions necessary for its conclusion, which are: consent, place, and cause, but it is characterized by a certain specificity considering that it is concluded through an electronic means, which raises the issue of the extent to which it is possible to express the will of the parties electronically, and how to verify the availability of the necessary conditions for the validity of expression, especially the availability of capacity for the parties.

❖ **Capacity in Electronic Arbitration Agreements**

Capacity is a fundamental element of a contract. It refers to the ability of a person to acquire rights, assume obligations, and perform legal acts that would have a legal effect for them. In general, jurisprudence divides capacity into two types: capacity of enjoyment or obligation, i.e., the ability of a person to enjoy rights and assume obligations. Therefore, we will address the provisions of the capacity to act, as it represents the ability of the person to use the rights granted to them that can have the legal effect of acquiring rights or assuming obligations(Elsanhouri, 1998).

If the requirement of contracting capacity in a traditional arbitration agreement is easy to verify because it is a contract between present people in a single contract meeting, it is difficult to verify it in electronic contracting where the contract is concluded remotely, resulting in not knowing all the basic information about individuals from each other. It is also possible that the website that the contractor deals with is a fake website, and it may be

difficult to verify the accuracy of the information provided by the visitor to the site, as the visitor often intentionally provides incorrect information about his identity to protect his privacy. Therefore, the electronic arbitration ruling is subject to invalidity if it is found that the information submitted to the website is inaccurate.

This matter has been addressed through the service of electronic signature and electronic authentication, as the provider of the authentication service provides an electronic certificate that includes the identification data of the certificate holder, showing his name, address, credit card number, and his capacity after signing the contract electronically. The Algerian legislator defined the electronic signature in Article 2 of Law 15/04 on the General Rules of Electronic Signature and Authentication as "data in electronic form attached to or logically linked to other electronic data used as a means of authentication"(Executive16-142, 2016), then the legislator defined the electronically authenticated document in Executive Decree No. 16/142 specifying the methods of preserving the electronically signed document as: an electronic document attached or logically connected to an electronic signature (law15/04, 2015).

❖ **The consent in the electronic arbitration agreement**

Is a fundamental pillar in the contract, as its absence negates the existence of the contract. The agreement in electronic arbitration does not differ from the definition of the agreement, except that it is made through electronic means via the internet and is signed electronically. The law does not require that the arbitration agreement be outside the legal relationship in terms of its parties or that it must be contemporaneous with it, but it must be independent of the original contract between the parties.

The agreement must be made by one of the contracting parties and followed by acceptance from the other party, and both the agreement and acceptance must match. The issue becomes more difficult in electronic contracting, where the expression of intent is made through the internet, and the parties are separated and clearly distant from each other. The expression of intent must be clear, decisive, and unambiguous, and the acceptor must have the intention to enter into the arbitration agreement and be committed to it when it is associated with acceptance.

In accordance with the principle of voluntariness, the law does not require a specific form of acceptance for the contract to be valid. In general, there is nothing in the general rules that prevents the complete expression of intent through electronic means, as long as it is consistent with the general principles related to the means of expressing intent. Therefore, if a visitor to the website clicks on a specific icon indicating acceptance of the contract terms on the website page, it is a clear indication of consent, and there is no doubt about its meaning. The European Union has required the commitment to the authenticity and validity of acceptance in accordance with Directive 2000/31/EC regarding some legal aspects of information and commercial communication services(moussa, 2021).

❖ **The Venue in Electronic Arbitration Agreement**

The general rules that require every contract to have a venue that is subject to the contract's jurisdiction apply to electronic arbitration agreements as well. The venue added to the arbitration agreement is represented by the dispute that is subject to arbitration in its nature. On the electronic level, the contracting process is carried out by describing the product or service through modern communication technologies accurately and completely, while avoiding deceptive and misleading advertisements.

The venue of the arbitration agreement must be capable of being settled through electronic arbitration. This is because it is obvious that the consumer, whose position is weak, needs protection. Therefore, when an electronic contract is concluded, it is not permissible to agree on electronic arbitration if one of the parties is a consumer(zamzami, 2009). The issue becomes more precise and difficult in electronic contracting, where the expression of will is carried out through the Internet, and the parties are clearly separated and distant from each other.

❖ **The Cause in Electronic Arbitration Agreements**

In general, the cause in a traditional contract is no different from the cause in electronic contracts. However, the cause in an electronic contract must be lawful. This means that it must not violate public policy or public morals.

The concept of public morals is relative and varies from country to country. This requires, of course, the need for coordination between countries at the regional and international levels. For example, the Algerian legislator prohibited a large group of goods that may be included in the subject matter of electronic arbitration, which raises many problems in foreign trade exchanges. Article 3 of Law 18/05 of 2018 states that:

"Any transaction by electronic communications relating to:

- Gambling, lottery, and betting.
- Alcoholic beverages and tobacco.
- Pharmaceutical products.
- Precious products and intellectual, industrial, or commercial property rights.
- Any goods or services prohibited by the applicable legislation.
- Any goods or services that require the preparation of a formal contract."

As the cause is the direct purpose that the obligor intends from behind his obligation, the conditions of the cause must be met. Therefore, the cause in the electronic contract must be:

- Present: The cause must exist.
- Valid: The cause must be lawful.

- Legitimate: The cause must be justified.

The same applies to electronic arbitration agreements.

2.2.1 Third The formal requirements for the validity of electronic arbitration agreement

Since the arbitration agreement deprives the national or international judiciary of its authority to settle the dispute between the parties, most of the substantive laws and international conventions have specified certain formal rules to ensure its effectiveness in writing, despite the variation in its role as a condition for convening or as a requirement for proof (Tahiaoui, 2007).

❖ **The writing in the electronic arbitration agreement**

The writing of the electronic commercial contract may consist of documents on paper foundations including an electronic signature, or it may be official documents issued by a public official within his jurisdiction, or informal documents regulated between individuals and not involving the public official, which include signed messages and telegrams. Given that the condition of writing is met by the customary written form, the question arises about the availability of this condition in the electronic arbitration agreement, meaning what is the legal status of the electronic writing used in drafting the arbitration agreement and its legitimacy?

Most laws regulating traditional arbitration provisions require a specific form, which is that the arbitration agreement must be in writing. However, the legal texts have not clarified in most cases what is meant by writing, and have not indicated the form that the writing should take. On the other hand, jurisprudence has settled that no specific conditions are required for writing, neither in terms of its form nor in terms of the method of recording. Any expression of the intended meaning is valid after being signed to be evidence of its signatory, and thus any method of writing is permissible, even in any language, and even special symbols are permissible if the parties retain a key to these symbols.

However, with the development of the internet, the web, and email, writing using one of the modern electronic media has become permissible(Elhaoiri, 2015), To confirm this, the majority of national and international conventions have recognized electronic writing, the most important of which is the UNCITRAL Model Law on Electronic Commerce issued by the United Nations International Commercial Law Commission, as well as the Algerian legislator in the text of Article 10 of Law 18/05 mentioned above, which stipulated: "Every electronic commercial transaction must be preceded by an electronic commercial offer and documented by an electronic contract authenticated by the electronic consumer"(law18/05, 2018).

For electronic writing to gain legal validity, it is required to meet important main conditions, the most important of which is that the writing must be readable and perceptible, i.e. clear enough to be understood, and the writing must be continuous and permanent, meaning that it is recorded on a medium that preserves it for a long period of time so that it can be referred to when needed. It is also required that the writing be on a paper or

electronic medium, such as storing it on a computer memory, magnetic disks, email, or information cloud(Nour, 2017).

❖ **The importance of the written text in electronic arbitration agreements**

The written text is considered the most important condition that the judge seeks to impose on the parties in order to prove the transaction, as it is the basis for determining the validity of the arbitration agreement. In the field of electronic commercial transactions, the need to replace the traditional written text has become necessary due to the rapid development of the internet, the web, and email.

The electronic written text has gained legitimacy and has become a condition for the validity of the arbitration agreement, as it is the basis for determining the validity of the agreement and its legal effects. It is also the basis for the parties' ability to resort to it when needed, and it is the guarantee of their return to it when they need it. It is also the basis for the guarantee of their return to it when they need it, and it is the basis for the guarantee of their return to it when they need it.

3. Determining the Applicable Law in Electronic Arbitration

The issue of the applicable law in an arbitration case is a complex and very important matter, as knowing this law is the basis for issuing the arbitral award and resolving the dispute. Arbitration in general is subject to the principle of party autonomy in subjecting the contract to a specific legal system in accordance with the free will of the parties to the dispute. The contracting parties do not submit to this arbitration under their will. It is also necessary that electronic arbitration be carried out within a legal framework that is consistent with the specific nature of this modern legal system, away from the legal system of traditional arbitration, and therefore has its own regulation that is not linked to the law of a particular state. For this reason, we will seek in this section to clarify the observed problems in determining the applicable law in electronic arbitration by identifying the parties subject to the applicable law on the electronic dispute, and addressing the case of not determining the applicable law in electronic arbitration.

3.1. The Agreement on the Applicable Law in Electronic Disputes Information

Technology is the backbone of the arbitration system, and it is what gives it legitimacy. Failure to observe or violate this technology will result in the invalidity of the award and the refusal to recognize or enforce it. The law that governs the arbitration agreement must be determined in accordance with the principle of the law of will. The parties to the dispute have complete freedom to choose this law. They can either specify the legal texts that are to be applied in the arbitration agreement itself, or agree to subject the arbitration dispute to a specific arbitration system, and they also have the choice of the rules that the court will apply to this dispute.

Therefore, the parties may agree on legal rules other than the law of the state in which the arbitration takes place, to govern the dispute between them. The agreement to apply the law of a particular state, and it can

also include the application of the provisions of international agreements that this state has concluded, as it is considered part of its legal arsenal. The parties to the dispute may also agree to apply the law of a particular state even if it is not the law they have chosen, even if it is a foreign law from the place of arbitration, the nationality of its parties, or the nationality of the arbitrators. Although the practice usually requires the parties to resort to choosing a specific law that they believe is more just.

The legal implications of electronic arbitration agreements and their enforceability. It highlights the importance of the written text in electronic arbitration agreements and its role in determining the validity of the agreement and its legal effects. The paragraph also discusses the applicability of traditional arbitration provisions to electronic arbitration agreements and the challenges posed by the rapid development of the internet, the web, and email.

No legal system has stipulated that if one party to an agreement is located in a country and another party is located in another country, and the legal system applies to one of the parties, the agreement will be considered valid. However, the specific legal system may have its own rules regarding the application of its laws to electronic agreements, and the other party may have its own rules. This may lead to disputes over the interpretation of the agreement, which may affect the determination of its validity(Moussa M. A., 2017).

3.2. the challenges of determining the applicable law in electronic arbitration agreements

If the parties do not agree on the applicable legal rules, the arbitration panel will choose the legal rules to be applied. The panel may choose the law of the state where the arbitration is taking place or the law of the state where the dispute arose. However, the panel does not have absolute authority in this choice, as one of the parties may request that the law of their state be applied. If the panel chooses a specific law to apply, it must apply all of its rules to the dispute.

The Algerian legislator has stipulated that the Algerian judiciary has jurisdiction over contracts that are delivered in Algeria, which poses a practical problem, especially in the absence of an agreement between the parties on the place of execution. The judge must try to determine the actual location where the files or services were received under the contract, and may be guided by the electronic contract copy that the consumer usually fills out on the website when concluding the contract, which often contains a statement of the consumer's place of residence. However, the difficulty lies in determining the domicile or residence in the virtual world because the supplier can circumvent this by making its information delivery site in a country that does not criminalize such illegal acts, in addition to the possibility of multiple locations, which may be a misleading statement(Moussa L. , 2020).

In 1996, the Australian Securities and Investments Commission (ASIC) introduced the option for companies to choose the law that would govern their obligations regarding disclosure and continuous disclosure

requirements. This choice was made in response to the recommendations of the Australian Law Reform Commission (ALRC) in its report on the reform of securities laws. The ALRC proposed that companies be given the option to choose the law that would govern their disclosure obligations, either the Corporations Law or the Australian Securities and Investments Act 1988 (E, 2017).This choice reflects the recommendations of the ALRC and the desire of the Australian government to provide flexibility in the regulation of securities markets.

However, the ALRC also noted that the choice of the law should not be left entirely to the companies, as this could lead to inconsistencies and potential regulatory gaps. Therefore, the ALRC proposed that the choice of the law should be subject to certain conditions and limitations. For example, the choice of the law should not affect the rights and obligations of third parties, and the law chosen by a company should not be less protective of investors than the Corporations Law or the ASIC Act.In addition, the ALRC recommended that the regulation of disclosure and continuous disclosure requirements should be subject to certain principles(S, 2014), such as materiality, consistency, and transparency. This means that the information provided by companies should be relevant, consistent, and transparent, and should not mislead or deceive investors.

Furthermore, the ALRC proposed that the regulation of disclosure and continuous disclosure requirements should be coordinated and consistent with other securities laws and regulations. This is important to ensure that the regulation of securities markets in Australia is coherent and consistent, and does not create inconsistencies or gaps in the regulation(Berdje, 2000).

4. Conclusion:

There is no doubt that electronic arbitration has become a necessity that cannot be ignored in a technical world that witnesses the intensity of legal transactions on the Internet. Despite its importance in the growth and prosperity of electronic commerce, the efforts made within the framework of electronic arbitration have not been able to put in place a comprehensive legal framework that regulates and recognizes this modern system for resolving commercial disputes, especially international disputes, in a modern and inexpensive way. In light of the efforts of foreign legal institutions and organizations to establish specialized arbitration centers on the network, and in light of the slowness of judicial systems and their failure to keep pace with the requirements of the age, to achieve this, it is necessary to first explicitly recognize that national arbitration systems or those applied by the relevant bodies are not appropriate and not suitable for electronic arbitration disputes and their technologies. This requires tracking development and responding to it with legal rules that are compatible with this modern electronic system, through its codification within a specific legal system, as well as the need to amend international agreements or create new ones as a main mechanism for resolving disputes arising from electronic commercial transactions, in order to achieve cross-border legal security.

Based on the discussion in this study, we can propose some suggestions that can make electronic arbitration a new legal trend that is adopted by all national and international legislations. These suggestions are as follows:

- Work to provide legal information security for transactions that take place online and to upgrade and develop it.
- Review legislation that prohibits electronic arbitration in the context of consumer contracts, if it is more beneficial to the consumer.
- Embody a list of internationally accredited centers for electronic dispute resolution, including the adoption of their decisions internationally.
- Encourage competent and interested parties in the affairs of electronic arbitration to prepare studies and research on electronic commerce, transactions, and contracts and their relationship to electronic arbitration.
- Develop human resources in the field of electronic arbitration in order to establish a legal arbitration judiciary.
- We also hope that the Algerian legislator will strive to embody a legal system for commercial arbitration, traditional or electronic, so that Algeria is not marginalized from the development of the digital economy in general, and from the mechanisms provided by the electronic environment to resolve disputes on the other hand.

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