Prospects for Addis Ababa Becoming Regional Investment and Commercial Dispute Settlement Center

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ABSTRACT

Disputes have existed in all cultures, religions, and societies since time immemorial, as long as humans have dwelt the earth. Nations, groups, and individuals have tried throughout history to manage conflicts in order to minimize the negative and undesirable effects that dispute may pose. Disputes can develop in any situation where people interact, in every situation where two or more persons, or groups of people, perceive that their interests are opposing, and that these interests cannot be met to the satisfaction of all the parties involved. The phrase dispute resolution is simply a collection of procedures intended to prevent, manage or resolve disputes and refers procedures ranging from negotiation to state sanctioned mechanisms called litigation. As volume of international economic transactions rise, resultant disputes require efficient and effective resolutions. There are many regional and international investment and commercial dispute resolution centers. By relying on secondary data sources and qualitative data description and analysis, this article firmly argues that Addis Ababa which is capital city of both Ethiopia and Africa has great prospect to become regional commercial and investment dispute resolution center. It suggests also that all concerned bodies should act to tap this opportunity.

1. Introduction

In addition to domestic effort by each state to use Alternative Dispute Resolution (ADR), the International Community also resorted to use it on the same mode. The international community, for example, use Arbitration clauses in International Trade contracts so as to reduce the back drop of litigation in court. International Arbitrations may be either ad hock or institutional. Ad hock arbitration is specified by parties in their contracts and administered and conducted in a manner defined by them. Institutional arbitration incorporates rules, procedures and administration of Arbitration institutions. Such Arbitration Institutions include the International Chamber of Commerce (ICC), head quarter in Paris, London Court International Arbitration (LCIA), the American Arbitration Association (A.A.A) and the International Center for Settlement of Investment Dispute (ICSID), established by the World Bank in Washington, D.C. Other Arbitration centers have been developed by the United Nations Commission on International Trade laws (UNCITRAL) of uniform set of culturally neutral Arbitral Rules for use on world basis. The UNCITRAL rules have achieved wide acceptance for private as well as quasi-public International Disputes.

1.1. International Centre for Settlement of Investment Disputes (ICSID)

The ICSID is an international arbitration institution which facilitates arbitration and conciliation of legal disputes between international investors. It is a member of the World Bank group which is headquartered in Washington D.C. It was established in 1966 as a multilateral specialized dispute resolution institution to encourage international flow of investment. Although the ICSID is a member of the World Bank Group and receives its funding from the World Bank, it was established as an autonomous institution by a separate treaty. The ICSID is contracted with and governed by its member countries, but has its own Secretariat which carry out its normal operations. The center facilitates arbitration and conciliation proceedings, allowing independent tribunals and arbitration mechanisms to hold proceedings under its rules, and all contracting member states agree to enforce and uphold arbitral awards in accordance with the ICSID Convention. The ICSID also helps administer dispute resolution proceedings...

1 Available online at http://www.univie.ac.at/intlaw/wordpress/pdf/100_icsid_en.pdf.
under other treaties and for alternative arbitration mechanisms. The center also performs advisory activities and maintains several publications.\(^5\)

Ethiopia is signatory to the ICSID though it has not ratified it yet. Since it facilitates arbitration and conciliation proceedings, allowing independent tribunals and arbitration mechanisms to hold proceedings under its rules, ratifying the convention could have its own benefit.\(^6\)

1.2. Regional dispute settlement centers under the auspices of AALCO

The Asian-African Legal Consultative Organization (AALCO), originally known as the Asian Legal Consultative Committee (ALCC) was constituted on 15 November 1956. It is considered to be a tangible outcome of the historic Bandung Conference, held in Indonesia, in April 1955. Seven Asian States, namely Burma (now Myanmar), Ceylon (now Sri Lanka), India, Indonesia, Iraq, Japan, and the United Arab Republic (now Arab Republic of Egypt and Syrian Arab Republic) are the original Member States. Later, in April 1958, in order to include participation of countries of the continent of Africa its name was changed to Asian-African Legal Consultative Committee (AALCC). At the 40th Session, held at the Headquarters of AALCC in New Delhi, in 2001, the name of the Committee was changed to Asian-African Legal Consultative Organization (AALCO). It might seem to be a small nomenclature change; however, it has great symbolic significance reflecting the growing status of the Organization and the place it has secured among the family of international organizations.

One of the major achievements of AALCO in its programme in the economic field was the launching of its Integrated Scheme for Settlement of Disputes in the Economic and Commercial Transactions in 1978. Pursuant to that Scheme, it was decided to establish Regional Arbitration Centers under the auspices of AALCO, which would function as international institutions with the objectives to promote international commercial arbitration in the Asian-African regions and provide for conducting international arbitrations under these Centers.\(^7\)

Four such Centers have been established so far, which are located at Cairo (Arab Republic of Egypt), Kuala Lumpur (Malaysia), Lagos (Nigeria) and Tehran (Islamic Republic of Iran). The respective host-Governments recognize their independent status like an international organization and have accorded privileges and immunities to these Centers.

In consonance with the scheme, the Regional Centres for Arbitration at Cairo, Arab Republic of Egypt for the African region and at Kuala Lumpur, Malaysia for the Asian region were established in 1978 and 1979 respectively. Later two more such Centers were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. AALCO has also concluded an agreement with the Government of the Republic of Kenya in 2007, to establish its Fifth Regional Arbitration Centre in Nairobi to cater to the needs of the Eastern and Southern parts of the African continent. It was informed that the establishment and functioning of the Nairobi Regional Arbitration Center was ongoing and the Attorney General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Centre.\(^8\)

AALCO provides its expertise and assistance to its Member States in the appointment of arbitrators and other matters related to the conduct of arbitration. Its centers provide the opportunities for training of arbitrators as well. The directors of the centers present their reports on the functioning of the centers at the Annual Sessions.

1.3. Co-operation with the United Nations, its Agencies and other International Organizations

The AALCO’s activities have been broadened from time to time to keep pace with the needs and requirements of its Member Governments and this has been especially so in recent years in the fields of international trade law matters and economic relations. The AALCO, as the only organization at inter-governmental level embracing the two continents of Asia and Africa, has also oriented its activities to complement the work of the United Nations in several areas. In the light of the Organization’s growing status and functions, the General Assembly by a Resolution, adopted at its thirty-fifth Session in 1980 decided to accord AALCO Permanent Observer Status at the United Nations. Following that, an item on “Co-operation between the United Nations and the Asian-African Legal Consultative Organization” is placed biannually on the agenda of the General Assembly.

The Organization has established close relations with the United Nations, its Agencies and several intergovernmental Organizations and concluded formal co-operation Agreements with many of them (Article 6 of the Statutes). These include: United Nations (UN), International Maritime Organization (IMO), United Nations Environment Programme (UNEP), United Nations Industrial Development Organization (UNIDO), International Atomic Energy Agency (IAEA), World Intellectual Property Organization (WIPO), United Nations High Commissioner for Refugees (UNHCR), United Nations University (UNU), United Nations Institute for Training and Research (UNITAR), Office of the United Nations High Commissioner for Human Rights (OHCHR), International Organization for Migration (IOM), International Committee of the Red Cross (ICRC), League of Arab States, Commonwealth Secretariat, Council of Europe, and the Organization of African Unity (OAU) now termed as the African Union (AU). These agreements provide for mutual consultation, exchange of documentation, representation and organization of joint meetings.\(^9\)

We can understand here that the organization has strong relation with other influential international organizations.

This has something to tell us about it. There is no doubt about the significance of membership to it for any regional dispute resolution center. Therefore the author of this paper advises the Addis Ababa Chamber of Commerce, if it claims to be regional commercial and investment resolution center, is a member to AALCO. This may enable it get international recognition, reputation and cooperation as well.

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\(^5\) Ibid

\(^6\) Ibid

\(^7\) Verbatim record of the third meeting of delegations of aalco member states held on thursday, 21 june 2012 at 04.30 pm. Verbatim Record of the Fifty-First Annual Session: Abuja, 2012

\(^8\) Verbatim record of the third meeting of delegations of AALCO member states held on thursday, 21 june 2012 - p.253

\(^9\) Verbatim record of the third meeting of delegations of aalco member states held on thursday, 21 june 2012 at 04.30 pm. Verbatim Record of the Fifty-First Annual Session: Abuja, 2012
1.4. The Lagos commercial dispute resolution center

The Centre maintains cooperation agreements with major institutions such as the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) and the Chartered Institute of Arbitrators UK. Under such agreements, arbitration proceedings under the auspices of some of the institutions can be held at the seat of the Centre. The Lagos Centre has Special features which make it advantageous for parties to arbitrate under its auspices and Rules. It is a recognized International arbitral institution. It is independent and neutral. It renders assistance in the enforcement of awards made under its Rules. Nigeria having acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, arbitral awards made under the Rules of the Centre are enforceable internationally, in countries, which are parties to the Convention. Foreign lawyers are not prohibited from appearing in arbitration proceedings held under the Rules and auspices of the Centre and awards made under the Centre's auspices are confidential.

Commercial transactions which can be settled by arbitration or other ADR methods include the supply or exchange of goods or services, distribution Agreements, commercial representation or agency, construction works, investment, banking, insurance, carriage of goods or passengers by air, sea, rail or road, telecommunication business, oil and gas business, solid Mineral business etc. Disputes arise in the course of carrying on such commercial transactions as enumerated above.

It is plain that Ethiopia is not different. Disputes of the above type will be indispensable in the horn of Africa as inter-state trade would increase. This is very true as there are regional economic integration attempts in the region. It is clear again that Ethiopia is the most populous state in the region meaning it could be huge potential market place where in much investment and commercial transactions emanate.

2. Legal and Institutional frameworks of dispute resolution in Ethiopia

2.1. The FDRE constitution

The FDRE constitution declares that, “everyone has the right to bring a justiciable matter to, and to obtain decision or judgment by, a court of law or any other competent body with judicial power”. It is possible to argue from this provision that arbitral tribunal is given recognition under the Ethiopian legal system at least impliedly.

The phrase any other competent body with judicial power includes administrative tribunals and arbitral tribunals among other things. Therefore, there is ample legal framework for the informal justice sector as its existence and significance is recognized in the supreme law of the land.

2.2. Traditional dispute resolutions and ADR in Ethiopian laws

Ethiopia is a nation of diverse languages, religions, and cultures. Each group has its own traditional methods of resolving family, civil, and criminal conflicts. These dispute resolution mechanisms involve an elder of the community investigating and facilitating resolution of disputes. The majority of these conflicts are settled by out of court settlement mechanism and fear of consequent social isolation is enforcement to this mode. In a country majority of population gives much concern to belongingness to a community. Hence there is greater compliance to what is ordered than refusal.

More than half of a century has gone since Ethiopia has transplanted its modern codes from the continental and the common law legal system. Studies show that these modern codes have not penetrated the tradition yet. John H. Merryman & David S. Clark has elaborated the situation in the following way.

The degree to which a legal system seeks to penetrate and control social life is often quite different from the extent to which it actually does so. For example, a large number of Ethiopians live much of their lives relatively free of any substantial contact with the official legal system, which actually applies with most force to an urban middle class and rapidly loses its power as one move down the socio-economic scale and away from the major cities. In a substantial number of such nations as Ethiopia, Kenya and Indonesia, the paper legal system will look much like that of France or Spain or Italy, or England or the United States of America. But if one looks at the actual role of law in the lives of important elements of the population the resemblance is only superficial.

As we can understand from the above paragraph the society in Ethiopia is keeping using the customary dispute resolution mechanisms even if the country enacted modern codes. The Ethiopian legal regime gives ample recognition to alternative dispute resolution mechanisms. Provisions are there in the civil code and the civil procedure code, for example concerning arbitration. Therefore both the legal system and the Ethiopian culture and tradition are ADR friendly though there are further measures to be taken so as to improve this private justice system.

2.3. Institutions of dispute resolution

In institutionalized dispute resolution, entities or organizations or associations which are established solely or incidentally to serve as a forum for the disposition of disputes serve to solve the disputes. These duly registered institutes work not only as a forum to facilitate the smoother bargaining between the disputants but also work in fostering of arbitration and introducing the ADR options for the society and judicial offices. The existence of these institutes to the minimum helps the society to use the ADR options backed by framed rules.

A branch under Addis Ababa Chamber of Commerce and the Ethiopian Arbitration and Conciliation Centre (EACC) are the two institutions practicing institutionalized ADR in Ethiopia. However, currently EACC has stopped its functioning. These institutes dispose disputes by arbitration and they have framed rules to guide the proceeding.

2.3.1. Ethiopian Arbitration and Conciliation Centre (EACC)

Ethiopian Arbitration and Conciliation Centre (EACC) was established by a group of Ethiopian lawyers, with the aim of providing an alternative mechanism for private dispute resolution. The Center provides arbitration and mediation services on commercial, labor, construction and family disputes. It is an independent body and facilitates the

10 ibid
11 ibid
12 ibid
resolution of disputes in a non-adversarial atmosphere, by providing a service that is less costly and time saving than court litigation. EACC was registered at the Ministry of Justice of the FDRE, as a non-profit juridical entity. The Center was inaugurated on the 7th of August 2004.

The EACC was established as a non-profit organization under Ethiopia’s Civil Code in August of 2004. One of the primary objectives of the organization is to promote and facilitate the use of alternative dispute resolution in Ethiopia. Other objectives of the organization include:

- To conduct training for arbitrators, conciliators and mediators
- To provide to the needs of the community by assisting with the resolution of commercial, family, estate, contract, tort, and labor disputes
- Where appropriate, to encourage the participation of foreign arbitrators or mediators in the resolution of disputes

Litigation in Ethiopia is tiring with disputes dragging for years and the cost of legal redress rising with the progress of the case. In line with this the USAID trade diagnostic states:

In addition to the lack of commercial insight in the legal community, two key issues are the excessive length of time it takes to achieve a final decision in the courts and the generally inexperienced pool of judges that decide the cases. Significantly, the most prevalent form of commercial dispute resolution in Ethiopia is informal mediation and arbitration.

This nature of the formal litigation system and the prevailing dispute resolution practice may create another good prospect to the development of the private justice system. However on the other side it may be obstacle to its development as arbitration requires the courts support. The EACC aims at addressing these shortcomings of the formal legal system. Arbitration and mediation allow parties to have direct involvement in the resolution of their cases and encourage them to settle their disputes within a reasonable period, without incurring unnecessary costs.

EACC has organized three mediation training sessions for Ethiopian professionals. The first session took place in January 2005, the second in March 2005, and the third and most recent training session took place in December 2005. Trainings have paramount importance to promote the prevalence of modern or disciplined ADR. The volume of such trainings and its intensity should increase so that Addis Ababa will be regional commercial and investment resolution center in the eastern Africa.

Within Ethiopia the EACC has entered into Cooperation Agreements with the Bar Association, the Women Lawyers’ Association, the Employers’ Federation, the Civil Engineers’ Association, and the Consultants’ and Architects’ Association. The EACC has committed to provide ADR training to these groups and in return they have agreed to use ADR to resolve internal disputes.

Ethiopia’s Civil Code provides for arbitration and mediation; however, there is currently no umbrella law that institutionalizes ADR within Ethiopia. The EACC took the initiative, in collaboration with the Supreme Court and the Ministry of Justice, to draft a law on ADR which, if accepted in its proposed form, would institutionalize ADR within Ethiopia’s legal system.

2.3.2. Addis Ababa chamber of commerce

Established in 2002, the Addis Ababa Chamber of Commerce & Sectorial Associations Arbitration Institute (AACCISA) is a pioneer and the first of its kind in the country. It was setup with the aim of realizing and providing Arbitration and other Alternative Dispute Resolution (ADR) mechanisms legally mandated to the Chamber since 1947. It provides technical and advocacy services to help business people start, run, and grow their businesses. The AACCISA also plays a major role in voicing the business concerns to the government. With over 7,000 registered members, the AACCISA is the largest and oldest chamber of commerce in Ethiopia. It is the only representative body that speaks with authority on behalf of the business community. The AACCISA is an autonomous non-governmental, non-political and non-profit organization that acts on behalf of its members. Since, its establishment it has served its members in promoting socioeconomic development and commercial relations with the rest of the world. Its major objective is to promote the establishment of conditions in which business in general and in Addis Ababa in particular can prosper. The AACCISA is today one of the most dynamic civil society organizations representing business in Ethiopia and is active in matters of importance extending beyond its regional geographic base.

The AACC strives to strengthen the relationship and cooperation of itself and its members with counterpart organizations and partners in the sectors of International Trade, and Investment. Thus, the Chamber serves as a link between its members and foreign companies by hosting trade missions and providing forums for the exchange of opinions. It also organizes trade missions to different countries and facilitates the establishment of business contacts. The Chamber receives visitors from various countries and organizes business trips for its members abroad.

AACCISA provides its customers the following services:

- Facilitating the settlement of commercial disputes in accurate accord with the arbitration rules of the chamber;
- Organize and offer workshops, seminars and training services on arbitration and ADR mechanisms;
- Providing adjudication services for construction disputes;
- Providing mediation/conciliation services;
- Providing advisory services concerning commercial arbitration and other ADR mechanisms in Ethiopia;
- Providing the Arbitration institute good offices to ad hoc arbitration services at a reasonable cost;
- Conducting studies on arbitration and ADR procedures;
- Serving as an appointing authority when so designated in commercial contracts;

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16 ibid
19 Ethiopian commercial law and institutional reform trade diagnosis. P. 6
20 Supra note 21.
21 The center’s vision
22 ibid
• Contract drafting and reviewing services;

2.3.3. How can we give our institutions international character?

Likewise its importance in domestic relations, ADR has been and is an important means of dispute settlement not merely as an alternative but as a basic method. When we say international disputes we are not referring to a single phenomenon or instance where the disputants are from different sovereign nations, but much more than this, in fact. This days it is common to see parties of the same nation working in their home land submit their disputes to arbitration or mediation tribunals established in foreign country or sometimes according to the rules of international documents. The importance of international ADR documents and institutions are becoming great even in such domestic disputes by giving it the flavor of international character. Institutions established according to the laws of a nation are developing in to an international forum where lots of disputes from different nations are referred. To such an end, the institution under UN umbrella, i.e., UNCITRAL and an overview of its documents, the 1958 New York Convention, the document and institution under the International Chamber of Commerce (ICC) and the Permanent Court of Arbitration (PCA) and its founding conventions will have important influence.

Therefore the quality of the service given by the institutions has a lot to do with their recognition and reputation in the international arena. In addition to this the ratification of international conventions by Ethiopia may increase international acceptance of our dispute settlement institutions.

4. The need for regional dispute settlement center in Addis Ababa

4.1. The need to correct the imbalance

In the early years of international commercial and investment dispute settlement, there was an increasing criticism raised by the developing world against it. Some of the major arguments of the developing world against commercial arbitration were that the practice of arbitration was configured in such a way as to consistently favor the economic interest of the developed world.24 Secondly, the applicable law under the disputes i.e., the doctrinal configuration of international law is working against the interest of the third world. In short, the developing countries contend that there exists institutional and doctrinal bias in international commercial dispute settlement.

The developing states and their nationals traditionally generally perceive the international arbitral process as a system that operates to their disadvantage especially regarding the following issues:25

I. **Locus for arbitration**: the preferred venues for resolving international disputes involving developing states, predominantly take place outside their jurisdictions, with the accompanying inconveniences.

II. **In the choice or appointment of international arbitrators or conciliators (mediators)**: there is a general deficiency in the developing states of individuals with the relevant knowledge, skill and experience needed for international dispute resolution and the institutions, which specialize in, or are devoted to, facilitating alternative dispute resolution (ADR). Developing states, for one reason or another, mostly prefer to appoint their non-nationals as arbitrators, conciliators or even as representatives.26 This is so even if these states are in fact- as in the first instance is the case - given the autonomy to appoint their arbitrators, conciliators or representatives. Amongst other reasons or excuses, these states may lack individuals with sufficient knowledge, exposure and contacts to be appointed as international arbitrators or conciliators.

III. Expense of dispute resolution by alternative means:

there is also the issue of the excessively prohibitive costs of dispute resolution, especially when proceedings take place abroad before arbitrators, conciliators or representatives that charge at the market rates of the traditional venues used for arbitration and alternative dispute resolution.27

IV. Arbitration and ADR are neglected areas:

for a long time, arbitration and ADR were largely neglected areas in developing states. These states generally lack adequate legal regimes and infrastructures for the efficient and effective organization and conduct of arbitration and conciliation. Some of those states may also not be parties to all or some important multilateral treaties relevant to international dispute resolution.28 The laws of developing states are often neglected by some international arbitrators and or some investors, who might simulate apparent ignorance or insufficiency of those laws to justify their non-application to disputes arising within the territorial jurisdiction of the enacting state.29

V. Some Statistics on the WTO dispute settlement System’s Use

In recent years, academics have increasingly supply statistics on the use of the WTO dispute settlement system to examine who are the primary participants and which of them are most successful.30 A number of scholars have examined how “developing countries” have failed compared to “developed countries.”

The statistics show that the United States and EC remain by far the predominant users of the WTO legal system, and thereby are most likely to advance their larger systemic interests through the judicial process and through bargaining in its shadow.31 Although their proportion of total WTO complaints has somewhat declined in the last few years, they continue to be the system’s predominant users. Overall, during the WTO’s first ten years (as of November 2004), collectively the United States and EC were complainants in about 45% of the complaints filed and defendants in 47% of the total.32

At this moment, developing countries still have justified reservations about the international arbitral process. However, in the contemporary international economic order, this process has become both inevitable and indispensable. Fortunately,

24 R. Rajesh Babu, Senior Legal Officer, Asian-African Legal Consultative Organization (AALCO), New Delhi., International Commercial Arbitration and the Developing Countries.

25 ibid

26 ibid

27 ibid

28 ibid

29 ibid

30 By Gregory Shaffer, Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed, and its Impact on Bargaining. P. 5

31 ibid
there is a rapid change occurring in Africa: the importance of arbitration is being recognized and basic structures for arbitration are being established.33

For instance the AALCO dispute resolution scheme wants to correct the perceived imbalance in the existing international arbitral order and to develop the arbitral and ADR processes in the developing countries. It aims at creating stability and confidence in commercial relations by providing adequate means for resolving commercial disputes under a fair, relatively inexpensive and speedy procedure. The role of the Regional Centres is to reduce the need to arbitrate in far off venues.34 They promote the use of commercial arbitration and conciliation, render advice and assistance on dispute resolution matters and promote a wider use and application of the UNCITRAL Arbitration and Conciliation Rules.

4.2. The most populous state in the region

Addis Ababa is the capital city of Ethiopia, a country containing about 85 million populations, which is also the seat of African union. This is almost more than double of Kenya’s population size which is about 42 million. The eastern Africa region is made up of 11 countries including Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauricio’s, Seychelles, Somalia, Tanzania and Uganda.35 The population in the region was estimated 209.9 million in 2003 and consists 23.6% of the continents population.36 Ethiopia therefore comprises more than 35% of the region’s population. The country is the most populous state in eastern Africa. Therefore it has significant number of economic actors in the region. This has very significant meaning to international investors as it provides for market for goods and services.

4.3. Biggest economy in the region

Even though there is no consensus some report that Ethiopia is getting the most economically strong state in eastern Africa. Some others argue that it is the second strong economy next to Kenya. In any ways the state is one of those states having promising prospect for investment and trade destination in the region.37

Eastern Africa had the lowest share of Foreign Direct Investment (FDI) flow out of the five African regions in 2008 and 2009, attributable to the civil conflict and governance challenges. Sudan attracted the highest share of FDI, mostly in the oil sector, followed by Uganda and Ethiopia.38 The flow is likely to improve in the medium term due to: (i) potential new investment in oil and mineral exploration in South Sudan, Uganda and Ethiopia; (ii) intensified reforms in business led by Rwanda; and (iii) on-going large infrastructure projects in corridor investments. A number of these investments are expected in the form of public-private-partnerships.39

Interestingly, Ernst & Young had earlier on produced a forecast on Ethiopian economy—Ethiopia 2023—which was presented at the Corporate Council on Africa (CCA) in September 2009 in Washington D.C., and which projected that Ethiopia will in 2016 exceed Sudan to become the fourth largest economy in sub-Saharan Africa. He added that Ethiopia will then only have to exceed Angola to become the third largest economy in the region in 2023.40

4.4. Addis Ababa as a diplomatic center

Addis Ababa is a seat of more than hundred embassies41 which is great in number.42 This has a lot to say as to its suitability for regional investment and commercial dispute resolution center. Plus to that the hospitality industry is also promising thereby creating fertile condition to host dispute settlement panels and discussions. In addition to this its nature as seat of many international institutions like AU and the like can create considerable deal of confidence on the parties to a dispute. Moreover, the parties to a dispute may be enabled to get ample chance of selecting neutral third parties from these international institutions.

Another related fertile condition is the ease to get safe and comfortable air transport. As it goes without say any dispute settlement needs some sort of parties’ appearance before the dispute settlement body. The parties are required to present their version of the dispute, present evidences and witnesses and in all these activities they may go and come. Therefore efficient transportation infrastructure is of significant importance. If Addis Ababa becomes a center for dispute resolution, there could be no problem in this regard. It is well known that Ethiopian Air Lines is the most competent, dependable and safe air way not only in Africa but also in the world.

4.5. Increasing cross border trade and investment and regional economic integration efforts

African development bank is striving to create regional economic integrations in the continent. The Bank’s Eastern Africa strategic objective is to create a well-connected, economically prosperous and peaceful region by providing support to: (a) the public sector to implement measures that facilitate the flow of capital, goods and services across the East African market; and (b) to the private sector, which invests in and finances economic activities and infrastructure across the region.43

William Rowley notes:

“Economic liberalization and technological change have been altering the global economy. In particular, business has responded to the fall of trade barriers by expanding abroad and forging cross-border partnerships and joint ventures of every description. The growing multiculturalism of business and trade alone would have jet-propelled growth in international arbitration. But, because of the uncertainties inherent in court processes and because, for most international transactions, no national court is likely to be acceptable to both sides, the stage

33 Amazu A. Asouzu , Some Fundamental Concerns and Issues about International Arbitration in Africa.p. 82
34 ibid
36 ibid
38 ibid
39 ibid
was set for processes and institutions more suited to resolving trans-border disputes.44

As interstate or intra-regional trade increase, obviously cases from international transactions increase. There is also more general tendency to use ADR mechanisms in international transactions than domestic cases. In line with this Nacimiento and etals state that:

“[F]rom the available data, some general inferences can be drawn. First, it is evident that there is a much stronger incentive to resort to arbitration in international cases than in purely national transactions.”45

Unsurprisingly, the concept and number of international commercial arbitrations have grown enormously. In the last five years, ICSID has seen a 150 percent increase in the number of arbitrations filed over the total number of cases instituted in its first 35 years.46

The country is also on the way of acceding to the world trade organization which would give ample experience of dispute resolution. Obviously, this could add something to the existing opportunity.

I. Eastern Africa power pool

It is regional intergovernmental body based in Addis Ababa with the mission of pooling of electrical energy resource in coordinated and optimized manner to provide affordable sustainable and reliable electricity in the region.47 It has been adopted by COMESA in 2006 as a special institution for provision of electrical energy in the region. It is formed by about 7 countries and its head is in Addis Ababa. Its members are Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Libya, Sudan, Rwanda and Tanzania. Eritrea, Somalia, Uganda and Djibouti would be potential members.48 As the head of this organization is here in Addis Ababa in the long run it could probably have dispute resolution organ.

5. Investment dispute resolution in Ethiopia

Investment disputes may rise between the host state and the home state of the investor. Disputes may rise also between the host state and the investor. Now let us see some of the mechanisms devised by the country to solve the probable disputes. Bilateral investment treaties Ethiopia has concluded with other countries stipulate different mechanisms of investment disputes between Ethiopian Government and other contracting party. They are diplomatic channels, joint commission, and ad hoc arbitration. Let us discuss each of them in a little bit further.

5.1. Diplomatic channels

In the present time, investment disputes are governed by the provisions of bilateral investment treaties. A number of treaties provide that contracting parties will undertake consultations on matters relating to the investment treaty. Thus, parties may opt for any formal proceedings to settle their disputes amicably. Some provisions of bilateral investment treaties explicitly provide a forum for the resolution of disputes.49 For example, the bilateral investment treaty concluded by Ethiopia and the Government of the People’s Republic of China provides that the representatives of the parties shall hold meetings in Addis Ababa and Beijing to:

i) implement the agreement;
ii) exchange information on law and investment opportunities;
iii) resolve investment disputes;
iv) exchange ideas to promote investment;
and other relevant issues(Art. 12).

In general, there is an opportunity for contracting parties to resolve their disputes before it is submitted to third parties. Most investment treaties provide that the disputes shall be settled through negotiation between the governments of the contracting parties. In other words, disputes shall be resolved through diplomatic channels.50

The investment agreements to which Ethiopia is a party incorporate such a mechanism. For example the agreement we cited above provides under Article 8(1) that investment disputes “shall, as far as possible, be settled by consultation through diplomatic channel.” Thus, it is a requirement that a dispute be brought between the ambassador of one of the contracting parties and the relevant ministry of the other party. The matter could be settled by the experts of both countries where the need arises, i.e. where the matter includes technical issues.51

Any dispute that might arise between the contracting parties i.e. state-state dispute with regard to the interpretation and application of the agreement must be settled by consultation through diplomatic channel. Thus, diplomacy has a great role in solving investment disputes.

Commercial disputes may be resolved out of court i.e. through alternative dispute resolution (ADR). Commercial persons, including investors chose arbitration because it appeared to be a good way of resolving disputes in the past. At present, arbitrators are selected based on usage and only because other methods seem even worse. As Nariman52 explains, arbitration, conciliation and mediation are in reality different forms of dispute resolution mechanisms outside courts.53

5.2. Joint commission

It the dispute cannot be settled through diplomatic channel,54 it must be given to a joint commission constituted

45 Nacimiento and etals, Germany as a Place for International and Domestic Arbitrations – General Overview. P.6
46 Ibid
48 http://www.eappool.org/eng/members.html
50 Ibid, p. 123
51 Ibid
52 P. C. Rao and William Sheffield; Alternative Dispute Resolution: What it is and how it works, 2005, p. 61
53 Ibid, p. 45
54 As cited in Tesfaye Abate, Under the Bilateral Agreement between Ethiopia and China it must be submitted to the arbitral tribunal if the dispute is not settled within 6 months while it must be submitted to a joint commission under the agreement between Ethiopia and Belgian-Luxemburg Economic Union if it cannot be settled through diplomatic channel.
by representatives of both parties. The joint commission is empowered to convene without undue delay at the request of the first party to take action.55

Therefore one can notice that the Ethiopian legal system has the exposure to the international commercial and investment dispute settlement mechanisms operational at these days. However, this does not mean that the nation has full-fledged regime to address all the problems in the area. Among other things Ethiopia has not ratified the New York Convention of the 1958 yet.

5.3. The New York Convention of 1958 and Washington convention of 1966

Ethiopia did not ratify this convention and the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States. Of course Ethiopia has provisions concerning enforcement of foreign arbitral awards in the civil procedure code.56 There are also bilateral treaties concerning how to solve investment disputes. The writer of this paper is of the view that ratification of these conventions would boost Addis Ababa’s prospect of becoming investment and commercial dispute resolution center. Fortunately Ethiopia has ratified Convention for the Pacific Settlement of International Disputes (1899 and 1907) and the Permanent Court of Arbitration (PCA).57 The international bar association conference was held in New Delhi in October 2011. The international arbitration session dealt extensively on the enforcement of foreign arbitral awards. In particular, being signatory to the UN Convention on the Enforcement of Foreign Arbitral Awards of 10th June, 1958 (New York Convention) was used as a yardstick to ascertain arbitration friendly countries or otherwise.58

It was the prevailing opinion that it would be difficult to enforce foreign arbitral awards in countries who are not signatories to the New York Convention; hence such countries would certainly not be arbitration friendly. Obviously, the ease or otherwise of the enforcement of foreign arbitral award by a successful party in a country has a direct link on consideration of that country for foreign direct investment. The issue was also raised in the meeting held in Nigeria, Abuja and attendants stated that it is their opinion that AALCO members who are not yet parties to the New York Convention should consider doing so; in order to enhance a favorable foreign direct investment climate in their countries.59

6. Conclusion and recommendation

Dispute resolution in Ethiopia can generally be categorized into formal and informal. Solving disputes outside the regular courts system can be said informal or private justice system. The general focus of this paper is to examine the different aspects of the private justice system in relation to commercial and investment dispute resolution and the potential of Addis Ababa to become regional commercial and investment dispute settlement center.

Addis Ababa is a seat of more than hundred embassies and international organizations thereby evidencing its consequent convenience to host investment and commercial dispute resolution panels. In other words Addis Ababa stands third by hosting many diplomatic institutions both in number and sphere of influence. The fact that the city is seat of many international institutions can create considerable deal of confidence on parties to a dispute as they may be enabled to get ample chance of selecting neutral third parties from these international institutions.

In addition to the availability of international hotels together with international organizations, Ethiopian airlines that has positive image in Africa and in the world could boost Addis Ababa’s prospect to become investment and commercial dispute resolution center.

Moreover Ethiopia is the most populous state in the region. Therefore it provides potential market place to international investors. Intra region trade and investment is growing at these days in the region due to the efforts to create regional economic integration. We can mention in relation to this the efforts of East Africa Power Pool and Common Market for East and South Africa (COMESA). Therefore Addis Ababa as the capital of the most populous state probably has great chance of success to become regional commercial and investment dispute settlement center.

It is also good to mention that Ethiopia is arbitration and mediation friendly state. The constitution and other piecemeal legislations have ample provisions about alternative dispute resolution mechanism. The traditional practice in urban and rural areas is also favorable to ADR development. Although they are at the baby stage there are institutions of arbitration and mediation charged with commercial, investment and other dispute settlement. The country is also on the way of acceding to the world trade organization which has apple experience of dispute resolution. This could add something to the existing opportunity.

Recommendations

1. It is good to ratify the 1958 New York convention of the enforcement for foreign arbitral awards. Of course one may argue that Ethiopia has provisions in the civil procedure code as to enforcement of foreign arbitral awards. However the foreigners will not have the tolerance to see each and every detail of the domestic law rather they simply check whether Ethiopia ratified that convention or not. Therefore since Ethiopia’s failure of ratification may create bad image of arbitration non-friendliness I suggest ratification of the convention to increase Addis Ababa’s prospect to become dispute settlement center.

2. There is also international organization playing prominent role in the Asia and African continent in relation to creation and development of commercial and investment dispute settlement centers. This organization is called Asian-African Legal Consultative Organization (AALCO). It succeeded in establishing about three regional dispute settlement centers in Egypt, Nigeria and Kenya under its auspices. Becoming a member to this international organization could have its own significance to create regional commercial and investment dispute settlement center or to give the available institutions international character.

3. Ethiopia’s accession to the WTO will also provide additional fertile ground for Addis Ababa to become regional investment and commercial dispute settlement center. The
The author of this paper considers accession to WTO only from vantage point of commercial and investment dispute settlement.

4. The author of this paper also suggest to have full-fledged legal regime in the area and intensive training be given to the lawyers in general so that they will be in a position to give effective and efficient service of representation. It is also important to consider the ways how the existing institutions of mediation and arbitration get international reputation and recognition. Obviously the quality of service given will have something to do to their reputation and recognition as well give them international character.

7. Bibliography

1. Yona Shamir, alternative dispute resolution approaches and their application, Israel Center for Negotiation and Mediation (ICNM).
3. Susan Franck, Challenges Facing Investment Disputes: Reconsidering Dispute Resolution in International Investment Agreements, P.150
4. Verbatim record of the third meeting of delegations of aalco member states held on Thursday, 21 June 2012 at 04.30 pm. Verbatim Record of the Fifty-First Annual Session: Abuja, 2012
7. R. Rajesh Babu, Senior Legal Officer, Asian-African Legal Consultative Organization (AALCO), New Delhi, International Commercial Arbitration and the Developing Countries,
8. By Gregory Shaffer, Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed, and its Impact on Bargaining.

Internet cites
2. http://dspace.cigilibrary.org/jspui/bitstream/123456789/28127/1/Developing%20country%20use%20of%20the%20WTO%20dispute%20settlement%20system.pdf?1

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