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研究課題名（和文）Critical Considerations for Institutional Design of Consumer Online Dispute Resolution
研究課題名（英文）Critical Considerations for Institutional Design of Consumer Online Dispute Resolution
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研究成果の概要（和文）：研究は、オンライン紛争解決（ODR）に焦点を当て、分野におけるベストプラクティスの特定と、新しい紛争解決システムの問題点や短所を明らかにすることを目的としていました。ODRは、紛争のコストを大幅に削減し、消費者と企業の両方に効率的で迅速かつ低コストの紛争解決ツールを提供する大きな可能性を持っています。しかし、適切な法的枠組みと制度的支援がなければ、ODRは一般の人々に知られることはなく、その可能性を十分に発揮することができません。研究は、効果的なODRシステムの設計の鍵は、法的または技術的な観点からの洗練ではなく、そのユーザーフレンドリーさにあることを示しました。

研究成果の学術的意義や社会的意義
現在、低額の消費者紛争（オンラインプラットフォームに対するクレームなど）のほとんどはオンラインで発生しており、したがってODRと見なされることがあります。しかし、立法者はまだODRに関連する法整備の過程にあります。この研究は、一方で効率的かつ低コストの紛争解決ツールの発展を可能にし、他方で独立性、公平性、透明性、公正、自由、合法性といった基本的な原則が効率の名の下に犠牲にされないようにするための適切な制度的枠組みを作成するための効果的な提案を提供します。

研究成果の概要（英文）：The research, which focused on Online Dispute Resolution (ODR), was aimed at identifying the best practices in the field, as well as the problems and shortcomings of a relatively new system of dispute resolution. ODR has a great potential to significantly reduce the cost of disputes, and to provide both consumers and businesses with an efficient, timely, and inexpensive tool for settling their differences. However, without proper legislative framework and institutional support, ODR will remain unknown to the general public and will not be able to fully express its potential. The research demonstrated that the key for designing an effective ODR system does not lie in its refinement from a legal or technical perspective, but rather on its user-friendliness. Both legislators and institutions involved are also encouraged to invest on education about ODR, in order to permit a complete understanding of the system, essential to build trust among its users.

研究分野：比較法

キーワード：ODR ADR Dispute Resolution Consumer Law

Research Report
2019年度 基盤研究(C)
Critical Considerations for Institutional Design of Consumer Online Dispute Resolution
Grant no. 19K01368
Researcher: Giorgio F. Colombo, Professor of Law, Nagoya University

1 . 研究開始当初の背景

The research, titled Critical Considerations for Institutional Design of Consumer Online Dispute Resolution started on April 1st, 2019 and ended on March 31st, 2024. The research was originally scheduled to finish on March 31st, 2022, but thanks to the generous understanding of the JSPS in light of the tragic COVID-19 pandemics, it was possible to extend the research period twice, which was extremely helpful.

The research focused on recent developments and present situation of ODR (Online Dispute Resolution) in the European Union, also in connection with the recent legislative activities (and specifically the so-called ODR Regulation).

The research moved from the general observation that, while online dispute resolution is widely practiced and it is the default system for many providers of internet-based services (*e.g.* Amazon; Google, etc.), a) there is a surprising lack of academic research on this topic and b) the potential of ODR is not yet fully appreciated by States and legislators. Hence, the need of a specific analysis of the issue.

The legislative background of the research was constituted by the EU Regulation No 524/2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (ODR Regulation), which had a significant impact on the dispute resolution environment in Europe. This assessment, however, served as a basis for a broader reflection on the still unexpressed potential of ODR.

The research also encapsulated the following starting points:

First: nowadays, nearly all dispute resolution processes incorporate some level of technology and occur at least partly online. Lawyers frequently use email for communication, and online procedures have become the norm for filing consumer complaints. If we were to adopt a broad definition of Online Dispute Resolution (ODR), almost every dispute could be considered an online dispute.

Second: State-run dispute resolution systems are increasingly being replaced by a variety of privately managed procedures. Most complaints against web-based services (such as social networks, sharing economy platforms, and dating apps) are handled almost exclusively through the internal procedures of the respective companies. The implications of this significant shift of judicial activities (broadly speaking) from the State to private entities have yet to be fully comprehended. Legislators still hold onto the notion—though largely accurate—that dissatisfied clients, consumers, or users can ultimately turn to a State court (at least within the EU).

Third: As the distinction between consumers and professional users becomes increasingly blurred, it is important to recognize that many insights gained from consumer (*i.e.*, business-to-consumer or B2C) ODR can also be applied, with necessary adjustments, to commercial (*i.e.*, business-to-business or B2B) contexts.

Fourth: The main goal of ODR in Europe was to offer consumers an effective mechanism for resolving cross-

border disputes. However, lessons learnt from this system could also be employed in a domestic setting.

2 . 研究の目的

The general idea behind ODR is to provide citizens with a simple and cost-effective system for dispute resolution, a smooth implementation would be crucial. There is also a general benefit for the system: more litigation driven outside of the court system means cost savings for the State and a relief for overburdened judges, resulting in overall quicker and better management of disputes.

However, it is crucial to remember that dispute resolution *in itself* is a significant prerogative of the State. It is not appropriate to abdicate this function to private actors simply because it is convenient. Moreover, alternative dispute resolution is supposed to respect the following principles (as spelt out, for example, in the Directive 2013/11/EU on alternative dispute resolution for consumer disputes): (i) expertise, independence, and impartiality; (ii) transparency; (iii) effectiveness; (iv) fairness; (v) liberty; and (vi) legality. The emergency

The purpose of the research was therefore to carry out a comprehensive analysis of:

- Technical features of the legislation about ODR, with a specific focus on the EU but also a comparative view of other experiences;
- impact of EU Regulation No 524/2013 on online dispute resolution for consumer disputes;
- survey of “best practices” carried out by States and/or ODR institutions.

The purpose of the research was therefore double-fold: from one side, to provide a solid and convincing *theoretical* analysis of the problem, the recent developments, and likely outcomes in the near future. From the other side, was to provide with *practical* suggestion on how to make ODR effective.

3 . 研究の方法

From a methodological perspective, the research relied on many tools, coming from different specializations: civil procedure, sociology of law, comparative law, and practical experiences of people professionally involved in ODR, etc.

As for the methodology, the research may be divided into three main tasks: 1) reading and review of the existing literature on the subject (preliminary, and updated during the research itself) and institutional reports; 2) interviews and joint discussions (such as workshops and research meetings) with scholars and professionals involved in research or practice of ADR and arbitration; 3) critical comparative law analysis of the raw data (both qualitative and quantitative) acquired through 1) and 2).

1 – Literature review and quantitative analysis

ODR is a rapidly evolving field. It was necessary to keep up-to-date with the latest research and developments. There are indeed some important theoretical contributions to the field that are still fundamental, but this kind of research required a constant attention to literary production on the topic. Also, the research included a significant component of analysis of quantitative reports produced by institutions (such as the EU). Those are fundamental for several reasons: for example, they provide hard data that can validate or challenge theoretical perspectives found in academic literature. This data-driven approach ensures that conclusions and

recommendations are grounded in actual performance metrics. Moreover, quantitative reports often include evaluations of ODR systems, highlighting what works and what does not. This information is crucial for policymakers, researchers, and practitioners aiming to develop effective and efficient ODR frameworks. They also often provide guidelines and best practices based on comprehensive data analysis. These insights can inform the development of new ODR systems or the improvement of existing ones. During the research I availed myself of several documents produced by the EU Commission, such as the European Commission Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Application of Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes.

2 – Exchange with scholars and professionals involved in research or practice of ADR

This part of the research was implemented in two kinds of venues: international conferences and research meetings/workshops.

During the research period, I had the opportunity to attend and/or speak at several events (excluding unrelated academic events, during which I still managed to meet ODR experts and discuss the topic with them). The venues and events were carefully selected to facilitate discussions with ODR experts both in Japan and internationally. My participation was not limited to legal conferences alone; insights from scholars in related fields such as economics and sociology were crucial for a comprehensive understanding of the issue. Presenting partial research results at these events allowed me to receive valuable feedback and suggestions from accomplished colleagues, significantly refining my conclusions.

Regarding research meetings, I was able to connect with leading ODR experts mostly (but not exclusively) in Europe and Japan. I also engaged with members of legislative committees, including politicians and scholars. These discussions provided insight into the political and strategic issues underlying legislative reforms.

3 – Critical comparative law analysis

After acquiring the theoretical and practical insight necessary to formulate informed findings, I processed the information and presented the results in both writing (see *Publications*, below) and orally (see *Presentations*, below).

One of the most interesting features of the research is that it was based on the analysis of a single legislative document, valid for the entire EU (a Regulation), but the analysis highlighted very different national approaches to the same provisions. That proven to be particularly useful when extrapolating best practices and trying to provide comparative solutions applicable in Japan.

4 . 研究成果

As mentioned, the research was primarily aimed to:

- acquire a complete and structured picture of ODR in the EU from a legal – technical point of view;
- inquiry about the opinion of the academic and practitioners' community on present-day situation;
- asses the best practices in ODR as to properly understand the impact of recent reforms.

The research, as expected, was quite easy during the first phase (1 – Literature review), while became more complex as well as more interesting during the second and third phase. As mentioned, it was also deeply affected by the COVID-19 pandemics. Notwithstanding the necessity to restructure the research plan, the situation of emergency created by travel restrictions and limitations to in-person meetings made the topic of ODR more relevant than ever. Hence, this extremely unfortunate and tragic situation made the research results even more valuable for scholars, practitioners, and legislators.

The main findings are consistent with the research hypothesis: a tool which was primarily conceived for cross-border consumer disputes is proving to be effective also in domestic situations. The implications for the Japanese legislator are significant. Moreover, I was able to identify a key criticality: no matter how good the legal design, the key factor for the success of ODR lies in its user-friendliness. Several national examples confirm this fact.

The research was also able to expand the analysis on a) the difficulties of creating legislation which could be acceptable to all the relevant stakeholders and b) a substantially different approach between civil law (especially in the EU) and common law jurisdictions (especially the US). The EU seems less concerned with the merits of ODR from a technical perspective, and focuses on using them to keep disputes out of the court system. The US tend to study more in detail the structure of the procedure, and stressed the merits of ODR in itself. Also, it seems that the EU legislator is significantly less concerned with the technology behind ODR systems as long as they are user-friendly to an acceptable extent, whereas several ODR providers in the US underline the technological advancement of their platforms. This comparative finding is significant because it could provide guidance to other countries based on the digital literacy of their population as well as on the accessibility of suitable tools and platforms.

As mentioned, part of the results of my research was successfully presented in several national and international venues. The research project also showcased several presentations from leading experts in the field.

Information gathered during the research was published in what is arguably the most prestigious journal of international civil procedure.

5. 主な発表論文等

〔雑誌論文〕 計1件（うち査読付論文 1件／うち国際共著 1件／うちオープンアクセス 0件）

1. 著者名 Colombo, Giorgio Fabio	4. 巻 11
2. 論文標題 What We Talk About when We Talk About Consumer ODR. The EU ODR Regulation and Its Preliminary Lessons	5. 発行年 2021年
3. 雑誌名 International Journal of Procedural Law	6. 最初と最後の頁 256-272
掲載論文のDOI（デジタルオブジェクト識別子） なし	査読の有無 有
オープンアクセス オープンアクセスではない、又はオープンアクセスが困難	国際共著 該当する

〔学会発表〕 計12件（うち招待講演 8件／うち国際学会 2件）

1. 発表者名 Colombo, Giorgio Fabio
2. 発表標題 Consumer ODR in the European Union
3. 学会等名 JAA Research Division（招待講演）
4. 発表年 2022年～2023年

1. 発表者名 Colombo, Giorgio Fabio
2. 発表標題 Opening Remarks: International Arbitration and Legal Harmonization
3. 学会等名 UNCITRAL Asia Pacific Day 2022（招待講演）
4. 発表年 2022年～2023年

1. 発表者名 Yu, Julia Jiyeon
2. 発表標題 The Arbitrability of IP disputes in East Asia
3. 学会等名 UNCITRAL Asia Pacific Day 2022（招待講演）
4. 発表年 2022年～2023年

1. 発表者名 Watanabe, Mayu
2. 発表標題 Expanding Access to Justice with Technology: the Potential of Online Dispute Resolution
3. 学会等名 Invited Lecture (招待講演)
4. 発表年 2022年～2023年

1. 発表者名 Colombo, Giorgio Fabio
2. 発表標題 Online Dispute Resolution (ODR) nell'ambito della normativa europea e italiana
3. 学会等名 Invited lecture, University "G. D'Annunzio" Pescara (招待講演)
4. 発表年 2021年～2022年

1. 発表者名 Colombo, Giorgio Fabio
2. 発表標題 What We Talk about when We Talk About ODR
3. 学会等名 UNCITRAL Asia-Pacific Day 2020
4. 発表年 2020年～2021年

1. 発表者名 Colombo, Giorgio Fabio
2. 発表標題 Online Dispute Resolution (ODR) nell'ambito della normativa UE [ODR in EU Law]
3. 学会等名 Invited lecture, University "G. D'Annunzio" (招待講演)
4. 発表年 2020年～2021年

1. 発表者名 COLOMBO Giorgio Fabio
2. 発表標題 Cultural Expertise and Commercial Arbitration
3. 学会等名 Workshop Cultural Expertise in Europe: Collaborative Teaching Design (招待講演) (国際学会)
4. 発表年 2019年

1. 発表者名 COLOMBO Giorgio Fabio
2. 発表標題 Cultural Expertise and Commercial Arbitration
3. 学会等名 Oxford University Centre for Socio-Legal Studies (招待講演)
4. 発表年 2019年

1. 発表者名 COLOMBO Giorgio Fabio
2. 発表標題 The State of Japanese Law Studies in Italy
3. 学会等名 ANJeL in Europe Symposium (国際学会)
4. 発表年 2019年

1. 発表者名 COLOMBO Giorgio Fabio
2. 発表標題 ADR ed eresia: l'Italia come nuovo modello di cultura dell'Alternative Dispute Resolution?
3. 学会等名 日伊比較法研究会第4回大会
4. 発表年 2019年

1. 発表者名 COLOMBO Giorgio Fabio
2. 発表標題 ADR in the XXI Century: beyond Harvard, but Where to?
3. 学会等名 UNCITRAL Asia Pacific Day 2019
4. 発表年 2019年

〔図書〕 計0件

〔産業財産権〕

〔その他〕

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6. 研究組織

氏名 (ローマ字氏名) (研究者番号)	所属研究機関・部局・職 (機関番号)	備考
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7. 科研費を使用して開催した国際研究集会

〔国際研究集会〕 計1件

国際研究集会 UNCITRAL Asia-Pacific Day 2020	開催年 2020年～2021年
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8. 本研究に関連して実施した国際共同研究の実施状況

共同研究相手国	相手方研究機関
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