DELOCALIZATION AND THE DIGITAL ERA: CAN ONLINE ARBITRATION PLATFORMS THRIVE WITHOUT A SEAT?

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ABSTRACT

We're living in a time where everything, from shopping to work, is moving online, so it's no surprise that dispute resolution is heading the same way. Traditionally, arbitration has always revolved around the idea of a "seat" i.e. a specific country whose legal system governs the arbitration process and ensures that the final award can be enforced. But what happens when the whole process takes place online, across borders, with no connection to any one country? Can arbitration survive without this territorial anchor?

This paper explores exactly that. It dives into the concept of "delocalization," where online arbitration platforms like Kleros and Modria aim to resolve disputes entirely in the digital space, without being tied to any national legal system. These platforms use tools like blockchain, AI, and smart contracts to offer quick, accessible, and often self-enforcing solutions, especially in cases involving cryptocurrencies, freelancing, or e-commerce.

However, while these innovations are exciting, the paper doesn't shy away from the hard truths. It unpacks the legal challenges these platforms face, such as enforcement hurdles, lack of judicial oversight, due process concerns and jurisdictional ambiguity. Courts around the world still expect awards to be linked to a particular country's legal system, and without that, enforcement becomes a serious problem.

The paper then offers a practical way forward. It suggests that instead of going fully "seatless," online arbitration platforms should consider hybrid models- operating digitally, but still anchored to a default national seat for legal recognition. It also explores how international instruments like the New York Convention, national courts, and policy reforms (like India's ODR push) are slowly opening up to more flexible, tech-driven arbitration models.

In the end, while a future of entirely delocalized arbitration may not be fully here yet, this paper argues that we're heading toward a hybrid path, where innovation and legal certainty can go hand in hand.

INTRODUCTION

We often hear that specifying the seat of an arbitration is extremely essential when drafting an arbitration agreement. But why is that so? 'This is because it is the seat that determines the procedural law applicable to the arbitration, provides a forum for judicial oversight and anchors the arbitral award within a national legal framework. This territorial linkage has long been seen as essential to ensure the validity and enforceability of arbitral awards under frameworks like the New York Convention of 1958 and national arbitration statutes.'[1]

However, as commerce and dispute resolution migrate to digital platforms, questions arise whether arbitral processes can "delocalize" i.e. operate wholly online and transcend attachment to any single national seat. Delocalization theory challenges the traditional model by arguing that international arbitration can operate autonomously, independent of any state's legal system.[2] The emergence of online arbitration platforms as **Kleros** and **Modria**, which resolve disputes using blockchain and AI without reference to national seats or procedural laws, brings this debate to the forefront. These platforms operate transnationally on the internet, which by its very nature has no physical geography.

This raises a novel question: **Can such online arbitration platforms thrive without any seat at all, or will they ultimately need to be tethered to a national seat for legal effectiveness?**

This paper will begin by explaining the importance of the seat in traditional arbitration, then explore how online arbitration platforms function, assess the advantages and practical feasibility of delocalized arbitration, and finally consider its future in the evolving legal and technological landscape.

THE ROLE OF THE SEAT IN TRADITIONAL ARBITRATION

In conventional arbitration, the "seat" plays a foundational role. When parties select a seat, they effectively choose the national law that will govern the procedure of the arbitral proceedings

[1] Soumil Jhanwar, 'Treatment of Seatless Clauses by Indian and English Courts: A Comparative Analysis' (2021) 14 NUJS L. Rev. 42 <https://nujslawreview.org/wp-content/uploads/2021/06/14.1-Jhanwar.pdf> accessed on 4 May 2025.
[2] Temitayo Bello, 'Cacophony of Delocalization; Emerging Trend in the International Commercial Arbitration' (2019) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3405423> accessed on 4 May 2025.

and vest primary jurisdiction in that country's courts for any supervisory matters.[3] For example, if parties agree to London as the seat of arbitration, the English arbitration law will govern the procedure and the English courts will have supervisory authority over the same. Without a seat, an arbitration would exist in a legal void with no clear procedural law or court oversight, a situation most legal systems historically deem unacceptable.

The primacy of the seat is also reflected in leading international instruments. The **UNCITRAL Model Law on International Commercial Arbitration 1985** (adopted by many countries, including India in its Arbitration and Conciliation Act 1996) is built around the seat concept. Article 20 of the Model Law provides that parties are free to agree on the seat of arbitration, and failing agreement, the arbitral tribunal shall determine the seat. Thus, even the Model Law's flexible regime assumes some seat must be designated to anchor the proceedings. The **1958 New York Convention** similarly ties an arbitral award to a national jurisdiction: it applies to the recognition and enforcement of awards that are made in the territory of a State other than the one where enforcement is sought (Article I), and it permits refusal of enforcement if an award has been set aside by "*a competent authority of the country in which, or under the law of which, that award was made*" (Article V(1)(e)).[4] This language clearly presupposes that an award is linked to a particular country, either the one where it was made (the seat) or the one whose law governs the arbitration.

Courts in most jurisdictions also accept that an arbitration must have a seat. In A v. B (2007),[5] the English High Court emphasized that an arbitration cannot hover in cyberspace and must be rooted in a national legal order. Likewise, the United States treats the seat as the "primary jurisdiction" under the Federal Arbitration Act, with enforcement courts playing only a secondary role.[6] In India, the Supreme Court in BALCO (2012),[7] definitively adopted the "territoriality principle," confirming that the jurisdiction of Indian courts is linked to whether

[3] Soumil Jhanwar, 'Treatment of Seatless Clauses by Indian and English Courts: A Comparative Analysis' (2021) 14 NUJS L. Rev. 42 <https://nujslawreview.org/wp-content/uploads/2021/06/14.1-Jhanwar.pdf> accessed on 4 May 2025.

[4] Cemre Kadioglu and Sadaff Habib, 'Virtual Hearings to the Rescue: Let's Pause for the Seat?' (*Kluwer Arbitration Blog,* 13 July 2020) <https://arbitrationblog.kluwerarbitration.com/2020/07/13/virtual-hearings-to-the-rescue-lets-pause-for-the-seat/?doing_wp_cron=1596091140.9944798946380615234375> accessed on 4 May 2025.

[5] A v B [2007] 1 Lloyd's Rep 237.

[6] Mark W Friedman, 'United States Arbitration Guide' (*IBA Arbitration Committee*, April 2024) <https://www.ibanet.org/document?id=United-states-country-guide-arbitration> accessed on 4 May 2025.

[7] Bharat Aluminium Co v Kaiser Aluminium Technical Services (2016) 1 SCR 364.

the arbitration is seated in India.

In summary, the seat in traditional arbitration is the legal bedrock: it anchors the arbitration to a national system which lends the process legitimacy and support. It has been the prevailing view that without a seat, an arbitration would struggle to operate coherently within the existing legal framework of international arbitration. The next sections will challenge this view in light of online arbitration platforms that, by their nature, operate across borders in the digital realm.

UNDERSTANDING ONLINE ARBITRATION PLATFORMS

Online arbitration platforms are a significant development within the broader field of Online Dispute Resolution (ODR). These platforms use digital tools to carry out arbitration processes, sometimes partially but increasingly in a fully virtual environment, from filing claims and appointing arbitrators to submitting evidence and delivering final awards online. Their appeal lies in efficiency, affordability and accessibility, especially for disputes emerging from e-commerce, online freelancing and cross-border digital transactions.

To understand how these platforms operate, it's useful to distinguish between different models of online dispute resolution. Some ODR systems focus on mediation or negotiation (non-binding processes facilitating settlement), whereas others proceed to binding arbitration if earlier stages fail.

'Modria is a prime example of an ODR platform that has incorporated an arbitration phase.

Modria's platform guides parties through a multi-step process: beginning with automated diagnosis of the dispute, then negotiation, then mediation, and finally arbitration if no settlement is reached. In the arbitration step on such a platform, a neutral decision-maker (which could be a human arbitrator or potentially an AI algorithm) renders a binding decision. The entire process is online i.e. all documents and arguments are submitted via web interfaces and even hearings (if any) are conducted by video conference.'[8]

'Another cutting-edge example of an ODR platform is **Kleros**, which represents a move

[8] Petros Zourdoumis, 'Modria and the Future of Dispute Resolution' (*ODR Europe*, 26 November 2015) <https://www.odreurope.com/news/articles/online-dispute-resolution/1172-modria-and-the-future-of-dispute-resolution#:~:text=One%20of%20Modria's%20products%20is,suggestions%20for%20solving%20the%20issue > accessed on 4 May 2025.

towards decentralization of arbitration using blockchain technology. Kleros doesn't rely on a central institution or any national legal system. Instead, it uses crowdsourced jurors (essentially arbitrators) who stake cryptocurrency and are randomly selected to decide disputes. These jurors review the evidence online and submit their decisions, which are then executed via smart contracts. In disputes involving crypto assets or digital services, the enforcement happens automatically on-chain and hence there is no need for any court interference at all.'[9]

Illustration: A freelancer is hired to design a logo and is paid in cryptocurrency. The money is kept in a digital escrow. After the work is submitted, the client refuses to release the payment, claiming it's not up to the mark. Both parties had agreed to use Kleros to resolve any disputes. Jurors on the Kleros platform review the submitted work and decide in favour of the freelancer. Based on this decision, the smart contract automatically releases the payment from escrow to the freelancer and hence no court or legal process is needed in this case.

However, while this may suffice for smart contract-based disputes, it poses a serious challenge when a losing party refuses to comply or when physical-world enforcement is needed. Recognizing this issue, Kleros has experimented with **hybrid approaches**. For instance, in a leasing dispute in Mexico, parties used Kleros to determine the substance of the case, but the award was issued by a formally appointed arbitrator in Mexico.[10] This allowed a traditional court to recognize and enforce the decision as a valid arbitral award.

Basically, while online arbitration platforms are transforming the way we resolve disputes, they still rely on the traditional legal system when it comes to enforcing decisions in the physical world.

BUT WHY DELOCALIZATION? UNDERSTANDING ITS APPEAL

EXPANSION OF PARTY AUTONOMY: One key argument in favour of delocalization is the expansion of party autonomy. By freeing the arbitration from the procedural constraints of any national legal system, parties gain the flexibility to design dispute resolution mechanisms

[9] Luis Bergolla, 'Kleros: A Socio-Legal Case Study of Decentralized Justice & Blockchain Arbitration' (2022) Ohio State Journal on Dispute Resolution <https://law.stanford.edu/publications/kleros-a-socio-legal-case-study-of-decentralized-justice-blockchain-arbitration/> accessed on 4 May 2025.

[10] Maxime Chevalier, 'Arbitration Tech Toolbox: Is a Mexican Court Decision the First Stone to Bridging the Blockchain Arbitral Order with National Legal Orders?' (*Kluwer Arbitration Blog*, 4 March 2022) <https://arbitrationblog.kluwerarbitration.com/2022/03/04/arbitration-tech-toolbox-is-a-mexican-court-decision-the-first-stone-to-bridging-the-blockchain-arbitral-order-with-national-legal-orders/> accessed on 4 May 2025.

that better align with their commercial realities. This includes the ability to adopt digital tools, select adjudicators outside traditional rosters, and set procedures that are faster and more cost-effective than those permitted under many national arbitration statutes.

NEUTRALITY: In international disputes, parties often struggle to agree on a seat, especially when each fears the home court advantage of the other. Delocalization removes this tension by positioning the arbitral process outside any single country's influence. Decentralized platforms like Kleros aim to embody this neutrality by using randomly selected jurors from a global pool, minimizing this potential geographic bias.

PROCEDURAL EFFICIENCY: Delocalization also enables procedural efficiency, especially in high-volume, low-value disputes where traditional arbitration is not viable. By avoiding the delays and expenses of court supervision, such as enforcement proceedings or interim relief, seatless arbitration platforms can resolve matters faster, often with limited or no legal representation.

SUPPORTS TECHNOLOGICAL INNOVATION: Finally, delocalization supports technological innovation. Platforms that operate entirely online using blockchain, smart contracts, and digital escrows can deliver binding decisions tailored for the digital economy. This is particularly useful in disputes arising out of cryptocurrency transactions or online freelancing contracts, where both the parties and the assets may exist purely in the digital sphere.

These advantages, however, do not come without risks, especially when awards must interact with the formal legal order. The next section explores how these benefits meet real-world legal constraints when enforcement is sought.

*DELOCALIZATION IN PRACTICE: CAN THESE PLATFORMS REALLY OPERATE WITHOUT A SEAT***?**

The idea of "seatless" arbitration, where no national legal system governs the process, has been discussed in legal circles for years, but it is only with the rise of digital platforms that this concept is being tested in real-world scenarios. These platforms hope to build a borderless dispute resolution system, one that does not rely on any country's legal framework. But whether such a system can actually work is still up for debate.

'Historically, the French courts have shown some support for delocalization, especially in well-known cases like *Hilmarton* (1994) and *Putrabali* (2007). In *Putrabali*, the French court enforced an award that had already been set aside in England. The court treated the award not as an "English" one, but as an international decision that could be independently enforced under French law. This position relies on the idea that international arbitration forms a separate legal order, one not strictly tied to the law of any single nation. France based this move on Article VII of the New York Convention, which lets countries enforce awards using more favorable domestic laws.'[11]

Still, it is important to remember that even these cases involved arbitrations that had a seat. The French courts enforced the awards despite annulment, but the arbitrations themselves were not entirely stateless. A truly seatless arbitration, like one that plays out entirely on a blockchain with no mention of national law, is something we have not quite seen tested in practice yet.

When such models are actually put to the test in the real world, a number of legal and practical challenges begin to emerge, including the following:

1. **ENFORCEMENT:** Platforms like Kleros, which attempt to operate without any declared seat, face significant hurdles when enforcement is sought in national courts**.** For instance, if a party loses a Kleros arbitration and refuses to comply, the prevailing party must approach a national court for enforcement. That court will inevitably ask under what law the award was made, and if no answer can be provided, the court is likely to reject enforcement. Article V(1)(e) of the New York Convention presumes a link between an award and the legal order of a state, either by place of arbitration or applicable law. A blockchain-based decision that lacks this connection may be deemed stateless and thus unenforceable under the Convention.

2. **REMOVAL OF JUDICIAL SAFEGUARD:** A second challenge is due process and procedural fairness. The absence of a supervisory court eliminates the standard mechanism for challenging arbitrator bias, fraud or denial of the opportunity to be heard. Seatless platforms may rely on automated rules or crowd-sourced decision-making, but these cannot replicate judicial oversight. For instance, if a smart contract

[11] Gilles Cuniberti, 'The French Like It Delocalized: Lex Non Facit Arbitrum' (*Conflict of Laws*, 24 July 2007) <https://conflictoflaws.net/2007/the-french-like-it-delocalized-lex-non-facit-arbitrum/#:~:text=This%20delocalization%20doctrine%20builds%20on,As%20usual%2C%20the%20Cour%20de> accessed on 4 May 2025.

enforces an award automatically, even where a party was not properly notified or could not submit evidence, there is no avenue for redress. In traditional arbitration, the courts at the seat serve as a safety valve; in a seatless system, that protection disappears.

3. **JURISDICTIONAL CONFUSION:** Seatless arbitrations can create jurisdictional confusion. In the absence of a seat, no national court has clear authority to offer interim measures or assist with evidence collection.[12] If a party needs an emergency injunction to prevent asset dissipation or document destruction, they must rely on courts in jurisdictions connected to the dispute. But without a seat, courts may be reluctant to act. There is no universally accepted rule on which court should support a seatless arbitration, and in many countries, courts may refuse assistance entirely if they cannot identify a link to the arbitration.

4. **ACCOUNTABILITY:** Accountability is another concern. Arbitrators on decentralized platforms may be anonymous or pseudonymous and may not be subject to any code of ethics, fiduciary duty or professional sanction. The use of tokens or crowd-voting systems to incentivize participation may encourage decision-making based on consensus or majority opinion rather than independent legal reasoning. Party autonomy is often cited to justify these models, but autonomy alone cannot guarantee fairness or legal legitimacy. The principle of minimum judicial control in arbitration is not only about safeguarding public policy but also about maintaining trust in the process.

5. **REGULATORY AND LEGAL COMPLIANCE:** Even where enforcement is not sought, regulatory and legal compliance issues arise. For instance, platforms operating in multiple jurisdictions must comply with data protection laws like the EU's General Data Protection Regulation (GDPR), which may conflict with decentralized data storage. Cross-border transmission of evidence and testimony may be restricted. Without a seat, there is no clear procedural law to reconcile these issues. In rare cases, self-enforcement mechanisms can work. In blockchain-based disputes, where assets are held in escrow or governed by code, a platform like Kleros can resolve the dispute and trigger a smart contract to transfer assets automatically. However, this model works

[12] Lakshmi Prasanna Bolem, 'Online dispute resolution- Its prospective in India' (2022) 8 IJL 173-180 <https://www.lawjournals.org/assets/archives/2022/vol8issue6/8-5-92-750.pdf> accessed on 4 May 2025.

only for limited categories of digital assets. For real-world enforcement, such as compelling a party to deliver goods or pay damages in fiat currency—court assistance remains necessary.

6. **PUBLIC POLICY CONCERNS:** Finally, public policy and arbitrability concerns present additional roadblocks. Without a seat, the arbitration does not conform to any jurisdiction's rules on what disputes can be arbitrated. A platform may decide a dispute involving intellectual property, antitrust violations, or even employment matters, areas where some countries prohibit arbitration altogether. When such an award is presented for enforcement, courts may reject it on the grounds that the subject matter was not arbitrable or that the procedure violated the forum's public policy.

   Even if online arbitration platforms manage to run smooth, tech-driven proceedings and deliver well-reasoned decisions, those awards might still be rejected by courts if they don't meet the basic legal standards expected in international arbitration. This makes their global enforceability shaky, and that legal uncertainty takes away from the reliability these platforms promise.

THE FUTURE OF DELOCALIZATION IN THE DIGITAL AGE – THE WAY FORWARD

While fully delocalized arbitration is still out of reach under current international arbitration law, there's growing room for more flexible, digitally oriented models of dispute resolution.

One way forward is through **flexible interpretation by national courts**. France has already taken the lead by enforcing awards that were annulled at the seat, treating international arbitration as a somewhat autonomous legal order. Article VII of the New York Convention lets courts apply more favorable domestic law, which could be used to justify the enforcement of awards that don't fully align with the Convention's territorial assumptions. A forward-looking court might, for instance, see no issue in enforcing a blockchain-based award, especially if doing so supports the Convention's underlying pro-enforcement bias.

A more practical solution that some platforms are already adopting is **the use of a default legal seat**. By pre-selecting a jurisdiction like Paris or Singapore as the seat, unless parties agree otherwise, platforms can ensure that their awards are tied to a legal system. In the Kleros-Mexico arbitration, a traditional arbitrator incorporated the blockchain jury's decision into a

formal award under Mexican law, making it enforceable through national courts.[13]

At the institutional level, organizations like UNCITRAL could issue **updated model rules for online arbitration.** These might include procedural safeguards, rules on data protection, and even a default seat provision. However, major changes to the New York Convention itself are unlikely. Its broad global acceptance is rooted in its consistency and reopening it would be legally complex and politically sensitive.

Reforms at the national level may also support this shift. France is aligning its arbitration laws more closely with transnational theory. U.S. courts, while generally conservative, have shown some openness in cases like *Chromalloy* and *Pemex*, where they enforced annulled awards on fairness grounds.[14] **India's 2020 ODR Policy Plan, spearheaded by NITI Aayog**, also recognises this shift, promoting ODR for accessible and seat-neutral dispute resolution in high-volume sectors like e-commerce and finance. By advocating a phased, inclusive rollout of digital justice mechanisms, the policy adds institutional support to the gradual evolution toward delocalised arbitration.

Overall, **the future seems to be hybrid rather than seatless**. Online platforms may continue to operate digitally but still tie themselves to a national legal seat to ensure enforceability. As legal systems evolve and courts grow more familiar with these technologies, we may see greater acceptance of these models, but within a framework that still recognizes the importance of legal anchoring.

CONCLUSION

While online arbitration platforms like Kleros and Modria offer efficient, borderless dispute resolution, their ability to thrive without a legal seat remains limited. For now, the most pragmatic path lies in **hybrid models: platforms may conduct proceedings online while designating a national seat to secure recognition and enforcement.[15]** This balanced

[13] Maxime Chevalier, 'Arbitration Tech Toolbox: Is a Mexican Court Decision the First Stone to Bridging the Blockchain Arbitral Order with National Legal Orders?' (*Kluwer Arbitration Blog*, 4 March 2022) <https://arbitrationblog.kluwerarbitration.com/2022/03/04/arbitration-tech-toolbox-is-a-mexican-court-decision-the-first-stone-to-bridging-the-blockchain-arbitral-order-with-national-legal-orders/> accessed on 4 May 2025.
[14] Lorraine Brennan, 'The Pemex case: the Ghost of Chromalloy Past?' (*Kluwer Arbitration Blog*, 15 October 2025) <https://arbitrationblog.kluwerarbitration.com/2014/10/15/the-pemex-case-the-ghost-of-chromalloy-past/> accessed on 4 May 2025.
[15] Raghav Saha and Harshit Upadhyay, 'Blockchain Arbitration in India: Adopting the Hybrid Model Envisaged by Mexican 'Kleros' Case' *(IndiaCorpLaw*, 14 June 2022) <https://indiacorplaw.in/2022/06/blockchain-

approach preserves innovation while ensuring awards remain legally viable. The digital era may eventually reshape arbitration norms, but the journey away from the seat will be slow and incremental.

arbitration-in-india-adopting-the-hybrid-model-envisaged-by-mexican-kleros-case.html> accessed on 4 May 2025.