

INTERNATIONAL ARBITRATION AS A MEANS OF GLOBAL GOVERNANCE: ITS DEVELOPMENT AND LIMITATIONS*

Abstract

Development of international arbitration over the last decade in the business world has made international arbitration one of the emerging means of global governance. International arbitration through its efficiency demonstrated in cases like Yukos Award, Chevron v Ecuador, the Egypt Court of Cassation has showed how arbitration trends are being accommodated and complied by countries and the recent case of P & ID v Nigeria case demonstrated that even a failed arbitration also serves as a directory to the court. The principles of fairness, neutrality, efficiency in justice delivery of International Arbitration has made it a normative structure and legal culture in resolving the commercial and investment disputes making International Arbitration a norm in the Global Village. This work made a study of the legal framework and Institutional framework of international arbitration, the contending principles and evidences in International Arbitration to show the effectiveness of international arbitration and how it became a normative structure. The study adopted doctrinal methodology and analytical approach with the aid of statutory enactment, case law, textbooks, and journal articles. It is the findings that the Global Governance of International Arbitration has a draw back by too much interference by the court either at the stage of arbitral proceedings or at the stage of enforcement of award or drawback of complexity in arbitration agreement or difficulty in enforcement of awards.

Keywords: International Arbitration, Global Governance, Commercial Arbitration and Investment Arbitration

1. Introduction

International Commercial trade and Investment¹ Trade which involves commercial transactions have been the oldest form of legal relations among states and pivotal pitch of bilateral and multilateral agreements in the global village. They also extend global relations among states and locomotive engine ²for enactment and implementation of legal instruments in the global village. The international trade and Investment³ trade has over the years extended to transaction of business among companies in different countries also known as multinational companies that transact business across borders⁴. Due to the unique nature of the international trade and investment involving transactions between parties from different countries or transaction that are carried out in more than one county in the case of trade and in the event of investment disputes –transactions involving a nation host and foreign investor, none of the parties in the international trade agrees to submit the settlement of dispute when it arises to the court of the other party's country nor agrees to be bound by the laws and court decisions of the other party's country. This difficulty or non-acceptance of parties being bound by the laws and decisions of a foreign country or the laws of the other party's state led to the legal culture of using International Arbitration as a resolution mechanism for disputes in international trade and investment which underscores the concept of International Arbitration.

International Arbitration as an emerging tool of Global Governance explains the establishment of legal culture on internationalism whereby an autonomous, global system of governance occurs due to the shared dedication of international arbitrators in serving the interests of commercial parties⁵. These legal cultures are the contractual theory, the jurisdictional theory, the hybrid or mixed theory and the theory that arbitration is a unique form of resolution mechanism for dispute resolution⁶. Despite these unique nature of the international trade disputes and investment disputes that underscores the arbitration resolution mechanism emerging as a tool of global governance, there are challenges of national courts of state parties being adamant and having passive involvement on the legal cultures of international commercial arbitration specifically in enforcing awards emanating from international commercial arbitral proceedings leading to severe damage and injustice to the parties to the dispute.

This work studies international arbitration as a means of global governance by discussing international commercial arbitration in settlement of trade and investment disputes, how it is an emerging tool of global governance through its 4 legal cultures, the contending theories of International Commercial Arbitration as a tool for global governance, the codified laws and established institutions of International Commercial Arbitration. The benefits, advantages of international commercial arbitration as an emerging tool of global governance, the challenges of international commercial arbitration as an emerging tool of global governance and the mechanisms and procedures in navigating the challenges.

2. Sources of International Arbitration Laws

International Arbitration laws are principally concerned with the legal rules or norms regulating how the arbitration agreement would be complied to base on the substantial compliance principle of contract, the conduct of the arbitrators in arbitral

*By Emmanuel O. C. OBIDIMMA, PhD, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. E-mail: eoc.obidimma@unizik.edu.ng, Tel: 08034003436

*Obinna MBANUGO, PhD, Senior Lecturer Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. E-mail: o.mbanugo@unizik.edu.ng, Tel: 08037749145; and

*Mmesoma Anita OLI, LL.M Candidate, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. E-mail: mmesomaa609@gmail.com, Tel: 09022336653

⁴S Nappert, 'The International Arbitration as a Tool of Global Governance: The Use (and Abuse) of Discretion', (2017), ([https://papers.ssrn-id299...198150\(1\)](https://papers.ssrn-id299...198150(1))) accessed on 26th October, 2024.

⁵J Kartan, '4 International Arbitration culture and Global Governance' (2014) Oxford Academic (<https://academic.oup.com>) accessed on 2nd November, 2024.

⁶*Ibid.*

proceedings, how arbitral proceeding is to be conducted, time frame, the seat of arbitration and legal status of the arbitral award. The principal sources of International Arbitration are:

Conventions: These are set of rules to solve issues that affect a larger part of the nation. International Convention serve as a primary source of international arbitration laws by establishing frameworks for the recognition and enforcement of arbitral awards, as well as providing guidelines for the conduct of arbitration⁷. Convention can be either multilateral or bilateral. A core example of the multilateral convention in International Arbitration is the New York Convention of 1958. The New York Convention also known as the convention on the Recognition and Enforcement of Foreign Arbitral Award is a United Nation agreement that came into effect on 1959 and is considered to be a fundamental instrument for international arbitration. The New York Convention is one of the most important international conventions in the field of arbitration. It establishes a framework for the recognition and enforcement of arbitration agreement and arbitral awards⁸. The objective of the New York Convention is to ensure that arbitration awards made in one member state are recognized and enforced in other member states and to further encourage the resolution of international disputes through arbitration other than litigation⁹.

Another primary convention of international arbitration is the International Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) 1965. The ICSID Convention is an international treaty established to facilitate the resolution of investment disputes between foreign investors and host states. It was adopted under the auspices of the world bank in 1965 and entered into force on October 14, 1966¹⁰. The purpose of this convention is to promote international investment by providing a neutral forum (that is arbitration mechanism) for resolving disputes to encourage foreign investment and reduce political and legal risks¹¹. The ICSID Convention has it as an objective of having a legal framework for dispute resolution thereby creating procedures for arbitration and conciliation of disputes between states and investors and also de-politicization of investment disputes by allowing disputes to be resolved through international mechanisms rather than local courts or political channels¹².

Treatise and International Agreements: Treaties are usually agreement between countries that often contains clauses allowing foreign investors to require investment international arbitration. These treaties often have provisions relating to the enforceability of international arbitration awards. A classic example of treaty under international arbitration is the United Nations Commission on International Trade law (UNCITRAL) Model Law on International Arbitration¹³. The UNCITRAL Model law is a comprehensive legal framework designed to assist countries in developing modern arbitration laws that harmonize the international standards. This legal framework applies to international commercial arbitration that involves parties from different countries or cases where the arbitration agreement designates a foreign state¹⁴. This law promotes the liberalization of trade at the global village, adopts arbitration as its resolution mechanism for expediency and fairness and further promotes party autonomy by allowing the parties to agree on key aspects like arbitration rules, procedure and appointment of arbitrators¹⁵. The UNCITRAL Model Law further defines the form and enforceability of arbitration agreements, supports the severability of arbitration clause being independent of the main contract¹⁶ and supports the competence-competence doctrine of arbitrators having power to decide their own jurisdiction including objections to the validity of the arbitration agreement¹⁷. The UNCITRAL Model law further protects the Arbitral proceeding of achieving fairness and the dispute being resolved timeously by providing for minimal court intervention by courts being able to intervene in limited circumstances such as appointing arbitrators, enforcing arbitral award and setting aside arbitral award on certain grounds¹⁸.

Domestic Legislation: The provision of fundamental objectives and directive principles of state policy in Nigeria Under Section 19¹⁹ of the Nigerian Constitution where the constitution promotes respect for international law and treaty obligations²⁰. In compliance to the said provision, Nigeria is being a signatory to New York Convention²¹ and United Nation Commission for international Trade Model law²² which are two focal instruments of International Arbitration and ratifying them made it to be inculcated in the Arbitration and Mediation Act which is the extant law in Nigeria Arbitration.²³ This makes domestic laws one of the primary sources of International Arbitration

⁷New York Convention 1958.

⁸ F. Nigel, 'The New York Convention: An Analysis of Application and Impact', (2017) *Journal of International Dispute Resolution*, Vol.34, No.2, pp.205-218.

⁹*Ibid*.

¹⁰ 'Introducing ICSID: International Settlement of Investment Disputes- The Global Leader in International investment dispute settlement', (2021) <https://icsid.worldbank.org> accessed on 23rd December, 2024.

¹¹*Ibid*

¹²*Ibid*.

¹³United Nations Commission on International Trade Law (UNCITRAL) Model law on International Arbitration 1985 as amended in 2006.

¹⁴ United Nation Commission on International Trade Law (UNCITRAL) Model law on International Arbitration 1985 as amended in 2006, Preamble.

¹⁵*Ibid*, Article 19.

¹⁶*Ibid*, Article 7.

¹⁷*Ibid*, Article 16.

¹⁸*Ibid*, Article 5

¹⁹ The Constitution of Federal Republic of Nigeria 1999 (as amended), Section 19.

²⁰*Ibid*.

²¹ New York Convention, 1958.

²² United Nation Commission for International Trade Model Law

²³ Arbitration and Mediation Act 2023.

3. Factors Driving the Rise of International Commercial Arbitration in the Globalisation Era

The forces of globalization have generated an increased number of international contracts, which in turn lead to enormous increase in complex commercial disputes²⁴. These increase in commercial disputes came with the force of fueling the development of international arbitration as preferred choice for business men for resolution of their commercial disputes. This has further led to the de nationalization and glo-localization of arbitration, both procedurally and substantively. These forces of globalization have also opened the door to the application by arbitral tribunals of general principles of international commercial arbitration, common to all nations and have contributed to the development of international arbitration culture²⁵. International Commercial Arbitration (ICA) has evolved over the centuries as a mechanism to resolve disputes in cross-border trade especially its remarkable rapid growth and increase in International Trade after the World War II that spurred the development of the ICA, with businesses increasingly turning to arbitration to resolve cross-border disputes²⁶. Its development reflects the need for neutral, efficient and enforceable solutions in an increasingly interconnected world which underscores the principle of bare minimum in the international law²⁷. The relevant factors are:

Globalisation of Trade: Globalization has led to exponential growth in international trade with businesses operating across multiple jurisdictions. This increased complexity often leads to disputes arising from diverse legal systems and business practices of which ICA offers neutrality by allowing parties to avoid litigation in national courts which may favour domestic parties or be unfamiliar with international trade practices or further lead to technicalities in litigation making the commercial dispute more complex and not feasible to resolve or causing undue delay that might lead to injustice in resolution of the dispute²⁸. The globalisation of trade drives the use of international commercial arbitration to address complex cross-border issues for ICA's neutrality, efficiency and most importantly enforceability. Some classical examples demonstrating how globalisation of trade drives the rise of ICA include the case of *Airbus v SK Hynix*, Airbus filed a claim against SK. Hynix²⁹, a southern Korean semiconductor company over alleged breaches of chain supply of which the case was resolved through arbitration under the International Chamber of Commerce (ICC) Arbitration Rules³⁰. This showcases how arbitration is used to manage disputes in complex global supply chains ensuring efficiency and enforceability. Also, in Gas Price Disputes in Europe which is the European Energy Companies like Gazprom³¹ and its customers often face disputes over long-term gas supply particularly to pricing and delivery terms are commonly resolved by arbitration under institutions like Stockholm Chamber of Commerce³².

Harmonization of Legal Frameworks in International Commercial Arbitration: Two basic legal texts have primarily contributed to the expansion and generalization of ICA: The UNCITRAL Model Law, which provides countries with a legal template in order to implement and harmonize their regulations and statutes with regard to arbitration³³. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), also known as the New York Convention, is one of the key instruments in international arbitration. It concerns the recognition and enforcement of foreign arbitral awards and referrals by a court to arbitration. It has 156 parties³⁴. These legal frameworks further led to the efficiency and customization in ICA by resolving commercial disputes within a reasonable time as juxtaposed the lengthy court proceedings which is essential for a fast-moving global trade, for example disputes in the global chain supply sector requires a fast-track resolution method to avoid disruptions. ICA legal frameworks have also a customizable procedure that allows parties to choose rules, languages, venue and arbitrators that are catering to the diverse needs of global businesses³⁵.

Institutional Growth: Arbitration institutions have also played a very important role in the expansion and development of arbitration as a dispute resolution mechanism. These institutions are structured to provide efficiency and procedural predictability and can help with the appointment of arbitrators, and even have fixed fee structures. Examples of such institutions include: the International Court of Arbitration of the International Chamber of Commerce (ICC), which has developed an International Court of Arbitration (ICA) with headquarters in Paris and National Committees in nearly 60 countries; the American Arbitration Association (AAA) and the International Institute for Conflict Prevention & Resolution (CPR), both based in New York City; the London Court of International Arbitration (LCIA) and the Swedish Chamber of Commerce (SCC). In relatively younger markets, arbitration institutions with greater local familiarity are growing. The Hong Kong International

²⁴ B. Hanotiau, 'International Arbitration in a Global Economy: The Challenges of the Future', (2011) Vol. 28 (2) *Journal of International Arbitration* <https://kluwerlawonline.com> accessed on 8th January, 2025.

²⁵ *Ibid.*

²⁶ R. D Hill, 'The History of International Arbitration', (2008) 11(2) *International Arbitration Law Review* <https://jusmundi.com> accessed on the 8th Day of January, 2025.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Airbus Group Arbitration Proceedings with SK Hynix under the ICC Rules', (2015) *Global Arbitration Review* <https://globalarbitrationreview.com> accessed on the 11th day of January 2025.

³⁰ *Ibid.*

³¹ S. R. Norman, 'Energy Disputes in Arbitration', (2018) *European Energy Law Review* <https://www.ogel.org> accessed on 11th day of January, 2025.

³² *Ibid.*

³³ J.M Alanso, 'Globalisation of International Arbitration', *Baker MCKenzie Arbitration Year Book* (Amsterdam, 2017) 12

³⁴ *Ibid.*

³⁵ *Ibid.*, p.13

Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC) and the Dubai International Arbitration Centre (DIAC).

4. The rise of International Investment Dispute Arbitration in the Globalization Era

The growth of international investment over the past few decades has been accompanied by a corresponding increase in disputes between foreign investors and host states. These disputes often arise from complex interactions between national laws, international treaties, and the broader economic interests of both the investor and the state. Foreign investors, seeking to protect their assets, are often wary of the risks posed by political instability, changes in regulation, expropriation, and other forms of interference by the host state. Conversely, host states have an interest in regulating investments in a way that protects public interests, ensures sustainable development, and preserves state sovereignty³⁶. These competing interests have created a need for a robust, neutral, and efficient mechanism for resolving disputes. International arbitration has emerged as the preferred method for resolving these disputes due to its neutrality, enforceability, and flexibility. Unlike litigation in national courts, arbitration offers a forum where disputes can be resolved impartially, without the potential bias of domestic legal systems. Arbitration also allows for greater confidentiality, which is often valued by both investors and states. Moreover, arbitration awards are generally easier to enforce internationally than court judgments, thanks to treaties such as the New York Convention and the ICSID Convention, which provide mechanisms for the recognition and enforcement of arbitral awards across borders. The rise of international investment arbitration has been driven in large part by the proliferation of Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), and multilateral agreements that include provisions for the protection of foreign investments. These treaties typically include investor-state dispute settlement (ISDS) mechanisms, which allow foreign investors to bring claims against host states for alleged violations of treaty obligations, such as expropriation, denial of fair and equitable treatment, and discriminatory practices.

5. The Evolution of International Arbitration: Judicialization and Arbitration Governance

One expects that rising contractually based trade and investment across borders will generate the context for disputing, and a steady stream of adversarial disputes will activate and sustain the judicialization process. This furnishes the basic empirical indicators of our inquiry, which can now be summarily stated. The first indicator concerns the nature of arbitration as a mechanism of Trade Dispute Resolution³⁷. As judicialization proceeds, the adjudicatory aspects of arbitration will be strengthened, weakening those associated with mediation. If so, a second set of indicators is implied. We can expect the process to generate institutions-procedures, substantive principles and rules, and precedent-based argumentation and justification—that will enable arbitrators to govern, in the face of rising adversarialism³⁸. The effectiveness of arbitral governance will depend on the development of elements of hierarchy, at the very least, in the form of commitment devices that keep disputants in the system. Third, governance entails the capacity of arbitrators to recognize the ‘social’ and the ‘public’ interest, and to impose it in the form of applicable law—on present and future parties. This outcome, again, depends upon the construction of hierarchical authority.³⁹ Notably, the importance of exogenous factors like arbitration enforcement laws that have driven the judicialization of the arbitral order over the past century, including the huge expansion in transnational trade and investment, and the attendant rise of adversarial legalism. From today’s standpoint, we know that the process has generated three prominent, systemic outcomes: (a) arbitral centers now operate as full-fledged substitutes for national courts; (b) transnational firms strongly prefer to arbitrate rather than to litigate their disputes; and (c) most states in the major trading zones have adopted strong, pro-arbitration policies⁴⁰. Judicialization refers to the process through which third-party dispute resolution [TDR] emerges in a community, and develops authority over its institutional evolution. It predicts that TDR (which is arbitration) will develop as a mechanism of governance insofar as specific causal relationships are forged between three factors: (a) dyadic exchange (e.g. contracts); (b) triadic dispute resolution (including reason-based decision-maker which the arbitrator or arbitral tribunal as the case maybe); and (c) normative structure (that is, the procedural and substantive norms that govern exchange or contract)⁴¹.

6. Challenges, Limitations and Restriction on the International Arbitration as a Means of Global Governance

Despite the fundamental principles that makes International Arbitration a governance means and central that holds in the Global Sphere there are challenges, limitations and restrictions that creates adverse effect in the governance of International Arbitration in the global sphere. Some of these challenges include:

Contract Drafting Issues in Contemporary Practice

Two current concerns about contract drafting issues in contemporary practice. These are: (1) choice of law issues in international arbitration agreements; whether choice of law applies to both substance of the dispute or to the arbitral proceeding and, (2) the incorporation of “trade norms” in commercial contracts and the application of such norms in the arbitration of disputes arising

³⁶Koustav Bhattacharjee ‘Resolving Dispute in International Investment Through Arbitration: A Comparative Analysis’ (2024) 6 (6) *International Journal for Multidisciplinary Research* <https://www.ijmfr.com> accessed on 13th January, 2025, pp1-2.

³⁷ A.C Sweet & F. Grisel, ‘The Evolution of International Arbitration: Judicialization, Governance and Legitimacy’, (2017) *Oxford Academic* <https://academic.oup.com> accessed on 13th January, 2025.

³⁸*Ibid*

³⁹*Ibid*

⁴⁰ A.C Sweet & F. Grisel, ‘The Evolution of International Arbitration: Judicialization, Governance and Legitimacy’, (2017) *Oxford Academic* <https://academic.oup.com> accessed on 13th January, 2025.

⁴¹ A.C Sweet & F. Grisel, ‘The Evolution of International Arbitration: Judicialization, Governance and Legitimacy’, (2018) 58 (1) *American Journal of Legal History* 159-160 <https://academic.oup.com> accessed on 30th January, 2025.

under such contracts⁴². Contracting drafting involving international arbitration is an area where making broad generalizations is difficult because, of course, the individual language and specific commercial context of each contract gives it a particularized quality that is difficult to apply broadly to other contracts in other contexts. Nevertheless, certain generally applicable principles can be identified, and these principles will be useful in construing and applying the language of specific contracts⁴³. First, arbitration is itself essentially consensual in nature. That is, parties are compelled to arbitration only to the extent that they have bound themselves in contract to do so. This is the principle of party autonomy⁴⁴. Second, under most legal systems, this consensual characteristic extends itself, among other things, to the realm of choice of law. Third, in applying contract analysis to commercial undertakings that include an obligation to arbitrate disputes, we analyze that obligation as if it were an entirely separate obligation, distinct from any other contractual obligations between the parties. This third principle is usually referred to as the separability doctrine. One consequence that is related to this doctrine, and which is articulated in arbitration rules themselves⁴⁵, is the so-called *Kompetenz-Kompetenz* doctrine. That is, once a determination is made that parties have undertaken an obligation to arbitrate, a national court should respect the exclusive authority of the arbitral panel to determine the extent of its own jurisdiction, as well as the merits of any claims based on the underlying contract between the parties⁴⁶. These principles, at one level, seem straightforward and almost unremarkable. Yet much ambiguity and controversy result from the interplay of these three concepts. If arbitration is fundamentally consensual in nature, does this mean that the parties completely control the choice of law, even to the extent of dictating the essential public policy of how and when a court should refer them to arbitration? Can consensual party autonomy control the exercise of *Kompetenz* by the arbitral process that the parties have chosen? Two areas of controversy may illustrate ways in which these principles interact. These areas share a common theme: sometimes, the complexity or uncertainty of contract drafting itself creates ambiguity about the choices that the parties have actually made. This ambiguity may then call into question the appropriate way in which these three principles should be applied in a particular case⁴⁷.

Cross-Cultural Difficulties in Arbitral Practice

Cross-cultural differences that may affect arbitral proceedings remain, for example, in such areas as examination of witnesses; the active or passive role of the tribunal; use of written pleadings and oral submissions; use of expert evidence; and, proof and application of foreign law and transnational commercial law. Further harmonization may be useful, and common law and civil law arbitral practitioners would benefit from study of competing legal traditions. As the ordeals of a Chinese business man who has been shaped through the Chinese culture and beliefs might likely affect the arbitral proceedings with a company of another state or indigene of another state who have also been sharpened by the culture and beliefs of the other state⁴⁸.

Complexities and Difficulties in Enforcing the Arbitral Award by National Courts

The New York Convention is the bedrock upon which international arbitration is founded; it is the most important international treaty in the recognition and enforcement of foreign arbitral awards. While it is difficult to generalise the challenges facing recognition and enforceability of arbitral awards across the region, it is arguably a common theme that the challenges stem from the different levels of development of arbitration regimes in the various unharmonised African countries. Where similar regimes do exist, the decisions reached by local courts when it comes to the recognition and enforceability of arbitral awards may vary⁴⁹. For example, Article 34 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law⁵⁰ on International Commercial Arbitration (which forms the basis of various national arbitration laws in Africa) mirrors Article V of the New York Convention⁵¹, which provides for seven grounds upon which a party can rely on to oppose recognition and enforcement of an arbitral award, notably the public policy ground. Although this may feature in the various national arbitration laws, there has been a liberal and inconsistent approach when it comes to its interpretation that may affect the recognition and enforcement of arbitral awards from one jurisdiction to the other.⁵² A good example of this diversion in interpretation is the construction of what goes against public policy under Mauritian law. In the Mauritian Supreme Court decision of *State Trading Corporation v Betamax Limited*⁵³, the Court considered that, under the Mauritian Public Procurement Act 2006 (PPA), the applicant was a 'public body' and the contract of affreightment (CoA) entered into by the respondent and the applicant was a 'major contract' which should have been considered and approved by the Central Procurement Board. Consequently, the CoA

⁴² M.P Malloy, 'Current Issues in International Arbitration', (2002) (15) (7) *Global Business and Development Law Journal* 43-54 <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1580&context=globe> accessed on 4th February, 2025.

⁴³ M.P Malloy, 'Current Issues in International Arbitration', (2002) (15) (7) *Global Business and Development Law Journal* 43-54 <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1580&context=globe> accessed on 4th February, 2025.

⁴⁴ *Ibid.*

⁴⁵ American Arbitration Association International Arbitration Rules, 1997 Article (15) 10), International Chamber of Commerce Rules of Arbitration 1998, Article (6) (2); London Court of International Arbitration Rules 1998, Article. (23)(1); UNCITRAL Arbitration Rules 1976, article (21) 1.

⁴⁶ M.P Malloy, *Op. Cit.*

⁴⁷ M.P Malloy, 'Current Issues in International Arbitration', (2002) (15) (7) *Global Business and Development Law Journal* 43-54 <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1580&context=globe> accessed on 4th February, 2025.

⁴⁸ M.P Malloy, 'Current Issues in International Arbitration', (2002) (15) (7) *Global Business and Development Law Journal* 43-54 <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1580&context=globe> accessed on 4th February, 2025.

⁴⁹ A. Abdallah, 'Challenges with Recognition and Enforcement of Arbitral Awards', *International Bar Association Legal Brief* (November, 2021) <https://www.ibanet.org/challenges-with-recognition-enforcement-arbitral-awards-Africa> accessed on 4th February, 2025.

⁵⁰ United Nations Commission on International Trade Law (UNCITRAL) Model Law 2006, Article 34

⁵¹ New York Convention 1958, Article V.

⁵² A. Abdallah, 'Challenges with Recognition and Enforcement of Arbitral Awards', *International Bar Association Legal Brief* (November, 2021) <https://www.ibanet.org/challenges-with-recognition-enforcement-arbitral-awards-Africa> accessed on 4th February, 2025.

⁵³ *State Trading Corporation V Betamax Limited*, 2019 SCJ 154

was considered to have been illegally awarded, in breach of the mandatory procurement rules of the PPA and was therefore in conflict with the public policy of Mauritius. There being no dispute that the PPA provisions had not been followed, the Court set aside the final award for contravening the public policy of Mauritius⁵⁴. Similarly, in the Egyptian case of Court of Cassation⁵⁵, the defendant (the prevailing party in the arbitration) obtained an order from the Cairo Court of Appeals permitting it to enforce a London Court of International Arbitration (LCIA) award which, in the absence of the agreement of the parties, ordered the appellant to pay a compensation with an interest rate of 8 per cent and a compounded post-award interest rate of 4 per cent. In response, the appellant challenged the Court of Appeal's enforcement order before the Court of Cassation⁵⁶. The Court of Cassation affirmed that, without the agreement of the parties, Article 227 of the Civil Code would apply. This provision caps the interest rate at 5 per cent. Such a percentage is considered a rule of public policy that cannot be contravened. In accordance, the Court partially rejected the enforcement of the LCIA award and ordered the interest rate to be reduced to 5 per cent per annum.

The unique contexts of the different African countries shape how they construe grounds that parties can rely on to oppose the recognition and enforcement of an arbitral award⁵⁷. Further, the recognition and enforcement of foreign arbitral awards is usually dependent on national courts. It is not uncommon for national courts in Africa to be unsupportive of international arbitration. An example of such an instance is where, despite many African countries adopting the UNCITRAL Model Law⁵⁸ and ratifying the New York Convention⁵⁹, their arbitration statutes and judicial attitude is not pro-enforcement.

7. Conclusion and Recommendations

It is apposite to reiterate that International Arbitration in being the best tool for resolving the commercial/Trade and investment disputes has led to it being a normative structure or norm for resolving such disputes thereby emerging as a means of Global Governance. This Momentum is gained through the pivotal regulatory framework and international arbitration conventions like New York Convention, United Nations Convention for International Trade Law and Convention on Investment Disputes between State and Nationals Other State that has continued to serve as a directory to the both the disputing parties and arbitrators. Also, the relevance of the rise of international commercial arbitration and investment arbitration in the globalization era aids the effectiveness of International Arbitration and it being a means of Global Governance. However, the International Arbitration in effectively being a means of global governance is challenged with factors of complexity in international contracts, difficulties of cultural differences in trans-border disputes and the complexity in enforcement of arbitral awards of which there is need to amend the regulatory framework in order to streamline and incorporate the essential principles to resolve these challenges and restrictions that hinder the effectiveness of International Arbitration as a means of Global Governance. The conclusion drawn from this study is that adopting arbitration for resolution Mechanism has made huge positive difference in the regulation of commercial Disputes and Investment Disputes making it the threshold for an effective global economy. In the light of the above, the following recommendations are hereby made:

- Creation and Enactment of comprehensive convention on contract agreements for Arbitration that would inculcate and streamline cultural differences, the extent the parties' agreement would cover in addition to already existing convention on contracts like Convention on Contract on Sale of Goods, Labour Clauses and Convention on the Use of Electronic Communications.
- The amendment of the relevant legal instruments on international arbitration which include the New York Convention, United Nations Convention for International Trade Law and Convention on Investment Disputes between State and Nationals Other State for streamlined provision of *Lex Situs* and Choice of Law on regulation of both substantive and procedural issues in arbitration process.
- The creation of arbitral body to spearhead on revaluation and reviewing of arbitration agreement before the commencement of arbitral proceedings that is different from the already existing case management system in arbitration like International Chamber of Commerce that sees to the uploading and sharing of documents and also schedule hearings among others.
- Incorporation of management cultural difference manual For Arbitration Process in addition to the already existing Seminars, Workshops and Trainings on understanding cultural differences.
- Incorporation of Delocalization principles through incorporating an enabling provisions and directory on minimal intervention or interference by national courts in the Arbitration Conventions and Arbitration Institutional Rules in order to aid enforceability of arbitral award.
- Incorporation of a streamlined provisions on arbitrable disputes in international arbitration legal framework and Arbitration Legal Framework at the National level to enhance the protection of public policy and enable enforcement of arbitral awards.

⁵⁴ A. Abdallah, *Op. Cit.*

⁵⁵ Egyptian case of Court Challenge No. 282 of 89 JY

⁵⁶ A. Abdallah, 'Challenges with Recognition and Enforcement of Arbitral Awards', *International Bar Association Legal Brief* (November, 2021) <https://www.ibanet.org/challenges-with-recognition-enforcement-arbitral-awards-Africa> accessed on 4th February, 2025.

⁵⁷ *Ibid.*

⁵⁸ United Nations Commission on International Trade Law (UNCITRAL) Model Law 2006

⁵⁹ New York Convention 1958.