

THE LEGAL REGIME SHAPING INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIA*

Abstract

This article titled the ‘analysis of legal and institutional frameworks shaping international commercial arbitration in Nigeria: implications, challenges, and pathways for enhancement’ analyzed the various laws and institutions regulating the application of international commercial arbitration and the implications, challenges, and pathways for enhancement of the application of International Commercial Arbitration. An arbitration agreement is the contractual basis for the resolution of disputes by the arbitration process. In the case of international commercial arbitration there is not only a dispute but a dispute of a commercial nature involving other nationals or countries. The main objective of this research was to analyze the legal and institutional frameworks of the International commercial arbitration in Nigeria, to identify the various ways that judicial decisions can contribute in shaping the practice of International Commercial Arbitration, to unveil the intricacies and the challenges shaping the practice of international commercial arbitration in Nigeria and to recommend the various ways to address the challenges. The article adopted doctrinal method of research where it focused on the text and contexts of Statutes, case laws and other legal materials. The doctrinal method is overwhelmingly adopted as the research method for legal research across the globe. Doctrinal method combines analysis and syntheses of legal doctrines, rules, principles of law as well as practical policy, arguments. The article found out that international commercial arbitration emerged as the best method for resolving disputes with international elements between states, individuals and corporations. It is the unique and inherent nature of party autonomy in international arbitration that guarantees factors such as neutrality, flexibility etc, and drives the parties’ choice for it as against the views that international arbitration thrives because of the woes of the Judiciary. In conclusion, the article recommended that laws regulating commerce in the oil and gas sector, aviation sector, construction sector, maritime sector, investment sector etc should contain provisions deliberately promoting arbitration. It was also recommended that to address some of the challenges of this application of International Commercial Arbitration there is the need for intensification of awareness to the general public of the workings of international commercial arbitration and the need for further reforms in the practice of international commercial arbitration. The article has contributed to knowledge by foregrounding the primacy of international commercial arbitration practice particularly highlighting its relevance to participants, practitioners, and stakeholders across various sectors where international commercial arbitration is routinely employed for resolving commercial disputes.

Keywords; Analysis, International, Commercial, Arbitration, Dispute and Resolution.

1. Introduction

The earliest attempt at consolidating the laws on arbitration in Nigeria was in 1914 when the first statute was enacted, that is, the Arbitration Ordinance of 1914, which applied to all parts of Nigeria¹ in view of the amalgamation of the Northern and Southern protectorates in that year, to form a country called Nigeria.² This Ordinance was modeled after the English Arbitration Act³ in view of its colonial history. Later that year, the ordinance was replaced by an Act, which in 1954, applied to all the regions in the country.⁴ The Ordinance was later re-enacted⁵ and made applicable to the Northern, Western, and Eastern Regions and to Lagos and the Southern Cameroons as if they were each a region.⁶ On 10th June 1958, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards came into force.⁷ As different United Nations member countries began to adopt the Convention, including Britain, Nigeria being a British Colony at the time, automatically adopted same. With the growth of trade and increasing importance of arbitration in the country, following international trade, the existing statute became inadequate to cope with the arbitration problems that were frequently arising; in order to meet the needs of the time and provide an up-to-date law on arbitration, the Arbitration and Conciliation Decree 1988 was promulgated.⁸ This Decree which came into effect on the 14th of March, 1988,⁹ regulates both domestic and international commercial arbitration and applies only to disputes arising from commercial transactions.¹⁰ This, being the extant law on arbitration in Nigeria, has the aim of providing a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to

*By Parida ABE-DAVID, LLB, BL, LLM, PhD Candidate, Faculty of Law, Bingham University, Karu; Senior State Counsel, Ministry of Justice, Nasarawa State, Email: paridadavid@gmail.com; and

*Magdalyn Mbadzandan DURA, LLB, BL, LLM, PhD, Professors and Dean, Faculty of Law, Bingham University, Karu, Nasarawa State

¹ O. Abiloye and J. Akolade, ‘Challenges in the Recognition and Enforcement of Foreign Arbitral Awards in Nigeria’, a paper presented at the 1st International Chamber of Commerce (ICC) African Regional Arbitration Conference held in Lagos, Nigeria, 19-21 June, 2016; <www.google.com/searchengine> accessed on 23rd November 2024

² O. P. Idornigie, *Commercial Arbitration Law and Practice in Nigeria*, (LawLords Publications 2015) 19

³ O. Abiloye and J. Akolade, ‘Challenges in the Recognition and Enforcement of Foreign Arbitral Awards in Nigeria’, a paper presented at the 1st International Chamber of Commerce (ICC) African Regional Arbitration Conference held in Lagos, Nigeria, 19-21 June, 2016; <www.google.com/searchengine> accessed 23 April 2025

⁴ This became the Arbitration Ordinance (Act) 1914; see Ibid.

⁵ It became the Arbitration Ordinance (Act), Cap 13 Laws of the Federation and Lagos 1958; C. A. Candide-Johnson and Olasupo Shasore, *Commercial Arbitration Law and Practice in Nigeria*, (LexisNexis 2012) 13

⁶ Section 1 (2); Ibid

⁷ This is also commonly known as the New York Convention; C.A. Candide-Johnson and Olasupo Shasore, *Commercial Arbitration Law and Practice in Nigeria*, (LexisNexis 2012) 13

⁸ J. O. Orojo and M. A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, (Mbeyi & Associates (Nigeria) Limited 1999) 3

⁹ Decree No. 11 of 14th March, 1988 (which is now Cap A18 LFN 2004)

¹⁰ ACA s 57 (1)

any award made in Nigeria or any contracting State arising out of international commercial arbitration.¹¹ The ACA is based on the United Nations Commission on International Trade Law¹² of Arbitration and incorporates the UNCITRAL Arbitration Rules as the First Schedule. This Act has been repealed by the Arbitration and Mediation Act (AMA) 2023. The AMA comprises of three Parts and Three Schedules, thus: (i) Part I¹³ deals with Arbitration; (ii) Part II¹⁴ deals with Mediation and its guidelines; while (iii) Part III¹⁵ contains Miscellaneous Provisions. In addition to the above, the AMA also has a First Schedule,¹⁶ Second Schedule¹⁷ and Third Schedule¹⁸ respectively.

2. National Legal Frameworks Shaping International Commercial Arbitration in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides the overarching legal framework within which international commercial arbitration operates, though it does not explicitly regulate arbitration in detail. The Constitution¹⁹ establishes the judicial authority of the Federation and vests it in the courts, including the High Courts and the Federal High Court, which have jurisdiction over matters arising from arbitral proceedings. This constitutional recognition ensures that arbitral awards and agreements operate within the broader framework of the rule of law. Section 6(6)(b) of the Constitution empowers the courts to determine questions as to civil rights and obligations, which includes the enforcement or setting aside of arbitral awards.²⁰ Thus, arbitration proceedings, though private, derive legitimacy from this constitutional underpinning that upholds judicial oversight. Furthermore, the 1999 Constitution situates arbitration within Nigeria's federal legislative competence. Item 62 of the Second Schedule, Part I (Exclusive Legislative List) empowers the National Assembly to legislate on matters pertaining to 'trade and commerce between Nigeria and other countries,' which extends to international commercial arbitration.²¹ Consequently, the *Arbitration and Mediation Act 2023* (which replaced the 1988 Act) derives its constitutional validity from this legislative authority. This constitutional allocation ensures that international arbitration, being a component of transnational commercial relations, remains under the purview of federal law, thereby guaranteeing uniformity in Nigeria's arbitration regime and preventing conflicting state laws from undermining international standards. Finally, the 1999 Constitution underlines Nigeria's commitment to international obligations by recognizing the application of treaties once domesticated by the National Assembly.²² Since Nigeria is a signatory to major arbitration conventions such as the *New York Convention (1958)* and the *ICSID Convention (1965)*, their enforceability in domestic law is constitutionally grounded in Section 12(1) of the Constitution, which mandates legislative domestication before international treaties have legal effect within Nigeria.²³ This constitutional provision ensures that international commercial arbitration operates within a dualist legal system—one that respects both domestic sovereignty and international arbitration norms. Accordingly, the 1999 Constitution forms the bedrock upon which Nigeria's arbitration framework, institutions, and judicial enforcement mechanisms rest.

Arbitration and Mediation Act 2023

The Arbitration and Mediation Act of 2023 was signed into law on the 26th of May, 2023 by the erstwhile President of the Federal Republic of Nigeria, Muhammadu Buhari. The Act repealed the Arbitration and Conciliation Act, CAP A18, Laws of the Federation of Nigeria 2004, which had been in force for approximately 35 years. The AMA establishes a comprehensive legal framework for the efficient settlement of commercial dispute resolution through arbitration and mediation. The scope of the AMA 2023 can be analyzed through its key provisions, which emphasize the structure, procedures, and enforceability of arbitration agreements and awards. The AMA 2023 clearly defines its scope by specifying the types of arbitration it governs be it International Commercial Arbitration arising from international commercial disputes making it crucial for cross-border transactions or Inter-State Commercial Arbitration arising from disputes between entities from different states within Nigeria, or Domestic Commercial Arbitration which encompasses all other commercial disputes within Nigeria, providing a framework for businesses to resolve their conflicts through arbitration. The Act incorporates the UNCITRAL Model Law on International Commercial Mediation and emphasizes the importance of expedited decision-making and clarity regarding jurisdictional issues. Furthermore, the Act reinforces the enforceability of international settlement agreements under the Singapore Convention²⁴, promoting a cohesive approach to resolving a diverse range of commercial disputes. The Act promotes impartiality and transparency in dispute resolution to foster a fair arbitration environment and also includes provisions for urgent decision-making to protect parties' interests pending arbitration. Arbitration agreements under the AMA 2023 are irrevocable, binding in nature, and remain valid despite the death or change in status of any party involved²⁵ whether due to bankruptcy, insolvency or other change in the circumstance of any party by whom the arbitrator was appointed. This ensures continuity and stability in

¹¹ See the short title to the ACA

¹² UNCITRAL Model Law

¹³ Section 1-66

¹⁴ Section 67-87

¹⁵ Section 88-92

¹⁶ This contains the Arbitration Rules

¹⁷ This contains the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

¹⁸ This contains the Arbitration Proceedings Rules 2020

¹⁹ Constitution of the Federal Republic of Nigeria (1999), s. 6(1)

²⁰ Section 6(6)(b)

²¹ Constitution of the Federal Republic of Nigeria (1999), Second Schedule, Part I, Item 62.

²² Section 12(1).

²³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID, 1965).

²⁴ Section 87 Arbitration and Mediation Act (AMA) 2023

²⁵ S.4 AMA 2023

commercial transactions, as parties can rely on the arbitration process without fear that their agreements could be unilaterally terminated due to external events such as death or insolvency.

Furthermore, Courts have the authority to refer disputes to arbitration, as long as the arbitration agreement is found to be valid and enforceable²⁶. This facilitates the swift transition of disputes from the court system to arbitration, reducing the burden on the judicial system. Arbitral proceedings may also continue even while a related action is pending in court, maintaining the separateness of arbitration from judicial processes and upholding the efficiency of the arbitral tribunal²⁷. Courts can also issue interim measures to protect the rights of parties, thus ensuring that arbitration does not lead to an imbalance of interests while disputes are being resolved. Parties have the flexibility to determine the number of arbitrators and in the absence of mutual agreement, the law defaults to a sole arbitrator²⁸ simplifying the process and reducing potential delays stemming from disagreements about tribunal composition. Section 7 of the AMA 2023 outlines the processes for appointing arbitrators, ensuring that parties have a significant say in who adjudicates their disputes. This is particularly relevant for maintaining trust and confidence in the arbitral process. The Act provides mechanisms to resolve deadlocks in arbitrator appointments, thus promoting efficient dispute resolution. The AMA 2023 explicitly states that a person's nationality does not preclude them from acting as an arbitrator unless otherwise specified by the parties²⁹. This promotes inclusivity and diversity within arbitration panels, allowing parties to select the most qualified and impartial arbitrators regardless of their national backgrounds.

The scope of the Arbitration and Mediation Act (AMA) 2023 is broad and strategically structured to enhance the effectiveness and reliability of arbitration in Nigeria. By accommodating both local and international disputes, ensuring the irrevocability of arbitration agreements, clarifying the roles of courts, and enabling efficient appointment of arbitrators, the AMA 2023 positions Nigeria as an attractive jurisdiction for arbitration. This comprehensive legislative framework addresses the needs of modern commerce while upholding essential principles such as fairness, efficiency, and party autonomy, which are critical to the integrity of arbitration as a means of dispute resolution.

3. International Legal Regime Shaping International Commercial Arbitration in Nigeria

UNCITRAL Model Law 1985

In evaluating any international legislative enactment regulating international commercial arbitration, the starting point is the UNCITRAL Model Law. This is so because until the General Assembly of the United Nations adopted the UNCITRAL Model Law, there was no international legal instrument so-called Real ting the UNCITRAL Model Law of 1985, the General Assembly recommended that: ...all states give due consideration to the UNCITRAL Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial practice³⁰. Similarly, in adopting the UNCITRAL Model Law of 2006, the General Assembly believed that the 'revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law' and:

... Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of the deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of international commercial disputes.³¹

The Model Law was adopted in 1985. At 25 January 2015 67 countries (or 97 jurisdictions) including Nigeria have adopted this Model Law either wholly or in a modified form.³² Others have amended their laws to take account of its provision.³³ In Nigeria, the legislative enactment is the Act.³⁴ In evaluating the UNCITRAL Model Law, a fortiori the various legislative enactments modeled on it, it is pertinent to ascertain the position of the various national laws prior to its adoption. It is instructive to observe that countries like the United Kingdom did not adopt the Model Law but passed a new law with similar and added provisions. The need for improvement and harmonization was based on findings that domestic laws are often inappropriate for international cases and considerable disparity exists between them. What can be garnered from this position is that there was a

²⁶ S.5(1) AMA 2023

²⁷ S.5(2) AMA 2023

²⁸ S.6(1) & (2) AMA 2023

²⁹ S.7 AMA 2023

³⁰ See General Assembly Resolution No. 10/72 of 11 December, 1985- Officials Records of the General Assembly, Fortieth Session Supplement No. 17 (A/40/17), Annex 1

³¹ See General Assembly Resolution No 61/33 et 4 December, 2006-Official Records of the General Assembly, Sixty-first Sensus, Supplement No. 17 (A/61/17), Annex 1

³² See Status of the UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments adopted in 2006. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration-status.html accessed on 25 January, 2024. See generally Peter Binder, *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions* (3rd edn, Sweet & Maxwell 2010) 13. See also *A Guide to UNCITRAL: Basic Facts about the United Nations Commission on International Trade Law*, Vienna, 2013 (n 6) 2, where the membership is broken down as follows: 14 African countries, 14 Asian countries, 8 Eastern European States, 10 Latin American and Caribbean States and 14 Western European and other States. See also Annex II to the Guide. The difference between countries and jurisdictions is understandable between in Canada and United States, individual states adopted the UNCITRAL Model Law

³³ See the English Arbitration Act 1996. See David St John Sution, *John Kendall and Judith Gill Russell on Arbitration* (21st edn, Sweet & Maxwell 1997) 640 for a comparison of the UNCITRAL Model Law with the English Arbitration Act, 1996

³⁴ Nigeria was the first African State to adopt the UNCITRAL Model Law with the promulgation of Decree No. 11 of 14 March, 1988, now the Act

perceived lacuna in various national laws governing international commercial arbitration. Before the emergence of the UNCITRAL Model Law, there were only conventions that covered some aspects of arbitration. These conventions did not fully address the need for improvement and harmonization. The disparity in various national laws on arbitration was not only in differences in individual provisions of the laws but also in terms of development and refinement. Some laws were outdated and others fragmentary. A case in point is the English Arbitration Laws. Apart from the 1899 Act that dealt with domestic arbitration, there were other Acts of 1950, 1975 and 1979 before the 1996 Act was passed. Even the 1996 Act is not comprehensive.

In Nigeria, the 1914 Arbitration Act was modeled after the English 1899 Arbitration Act. National Laws on arbitral procedure differed widely. Frustration, uncertainty and unexpected and undesired consequences flowed from the disparity between national laws. The UNCITRAL Model Law therefore provided a basis for the harmonization and improvement of the national laws. It covers all stages of arbitration from the arbitration agreement to the recognition and enforcement of the arbitral award. The provisions aim at reducing or eliminating the identified frustrations and difficulties. The legal regime presented by the UNCITRAL Model Law is geared towards international commercial arbitration without affecting any relevant treaty in force in any state adopting the Model Law. After diagnosing defects in national laws from the point of view of the special features and needs of international commercial arbitration, Herrmann asserted that the appropriate therapy can be readily deduced. Continuing, he asserted thus: 'Generally speaking the cure lies in meeting the special needs of modern international practice by a good and comprehensive legal climate for international arbitration and commends itself as a basis for harmonization of the presently disparate national law.'³⁵

The diagnosed defects are manifested in the following areas: firstly, in arbitration agreements. In some jurisdictions such agreements could be concluded orally while in some, must be in writing. Furthermore, in some jurisdictions an arbitration agreement is valid and effective if concluded after a dispute has arisen or the doctrine of separability may not be recognized. Secondly, in the case of appointment of arbitrators, the freedom of the parties may be restricted by a rule which disqualifies foreigners or women or which even requires court confirmation or party appointed arbitrators or prohibits the 'appointing authority' from appointing an arbitrator. Thirdly, in the conduct of arbitral proceeding, there is disparity between rule of procedure and the applicable law of evidence. Furthermore, there exist system differences between common law (adversarial style) and civil law (inquisitorial style). Fourthly, regarding delivery of an arbitral award, one finds the rule that as a necessary condition for validity or enforcement, all arbitrators must sign. As regards setting aside of an arbitral award, a variety of grounds existed in different jurisdictions while recognition and enforcement were subject to multi-lateral conventions.³⁶

One fundamental contribution of the UNCITRAL Model Law in remedying these defects is the principle of 'party autonomy'. The UNCITRAL Model Law recognizes and gives effect to the agreement of the parties. Accordingly, Article 19(1) of the Model Law provides thus: 'Subject to the provisions of this law the parties are free to agree on the procedures to be followed by the arbitral tribunal in conducting the proceedings. This basic principle is found in many articles the UNCITRAL Model Law. The words 'the parties are free to agree...' or 'unless otherwise agreed by the parties and similar words are found in many provisions.'³⁷ However, there are mandatory provisions and restrictions on grounds of public interest and policy.³⁸ Similarly, court intervention is expressly excluded except as specified in the law.³⁹ Under Article 7(2) of the Model Law, the arbitration agreement must be in writing.

The principle of fair hearing and equality of the parties is also guaranteed by the UNCITRAL Model Law. Accordingly, Article 18 provides thus: 'The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case. This provision complies with the fundamental requirement of procedural justice.'⁴⁰ A breach of these requirements is one of the grounds for setting aside an arbitral award.⁴¹ In practice, the issue of equality may not be attainable because of the inequality of the bargaining powers of the parties. One other salient feature of the UNCITRAL Model Law is that the arbitral tribunal may rule on its own jurisdiction and the fact that the principle of separability is recognized.⁴² More fundamentally, unless the parties agree otherwise, no person shall be precluded from being an arbitrator by reason of his nationality and parties are free to agree on procedure for such appointment. One defect of national laws and the conflict of laws rule is the determination of the applicable law. The UNCITRAL Model Law grants the parties the freedom to choose the applicable substantive law. Accordingly, Article 28(1) of the UNCITRAL Model Law provides that:

The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not its conflict of law rules.

³⁵ G. Herrmann 'The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions' in Sarcevic in 16) 9. Professor Herrmann was the Secretary-General of the UNCITRAL Secretariat at Vienna, Austria between 1991 and 2001

³⁶ Ibid

³⁷ See also Art 20 and 22 of the Model Law. More particularly see Arts JD. 10, 11(1), 13(1), 17, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 31(2) a of the Model Law where you will find similar provisions. The UNCITRAL Model Law has 36 Articles. Such provisions are also known as 'default provisions' or the 'two-level system' or the 'fall back provisions'

³⁸ Arts. 8, 12-14, 27, 35 Ibid

³⁹ Art 5 Ibid

⁴⁰ See also Art 24 Ibid dealing with oral bearing and written proceedings

⁴¹ Art 34(2)(a) (i) Ibid

⁴² Arts 11 and 16 Ibid

However, when the parties have not designated the applicable law, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable. Furthermore, if expressly authorized by the *amiable compositeur* (in fairness and good conscience).⁴³ The UNCITRAL Model Law has de-localised arbitral proceedings. In other words, it has reduced the importance and impact of the place of arbitration by treating all arbitration agreements and awards as uniform irrespective of the place of arbitration.⁴⁴ Similarly recognition and enforcement of arbitral awards have a universal scope of application.⁴⁵ According to Herrmann:

The Model Law regime on recognition of arbitration agreements takes Article 11(3) of the 1958 New York Convention as a basis (Articles 8(1) and adds two rules favoring, arbitration... The expected benefits of the Model Law's uniform treatment are probably greater when it comes to recognition and enforcement of arbitral awards.⁴⁶

Paulsson puts it thus: 'By treating awards rendered in international commercial arbitration in uniform manner irrespective of where they were made, the Model Law draws a new demarcation line between 'international' and 'non-international' awards instead of the traditional line between 'foreign' and 'domestic' awards'.⁴⁷

New York Convention 1958

The 1958 New York Convention was adopted in New York on 10 June, 1958 and entered into force on 7 June, 1959. The first countries to sign the New York Convention were Belgium, Costa Rica, El Salvador, Germany, India, Israel, Jordan, The Netherlands, Philippines and Poland. Since the adoption, the membership⁴⁸ has grown steady to 154 countries with the State of Palestine becoming the 154th State Party on 9 January, 2015.⁴⁹ The 1958 New York Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges State Parties to ensure that such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of State Parties to give full effect to arbitration agreements by requiring courts to deny parties access to court where they are in contravention of their agreement to refer the matter to an arbitral tribunal.⁵⁰ Consequently, the 1958 New York Convention is not concerned with the formulation of legal rules regulating international commercial arbitration, *per se*. Rather as the name suggests it is a convention regulating the recognition and enforcement of foreign arbitral awards. Nevertheless, in the words of Justice Akpata:

The New York Convention of 1958 is regarded as the most important international treaty relating to international commercial arbitration. It is an improvement on the Geneva Convention of 1927 because it provides for a much more simple and effective method of obtaining recognition and enforcement of foreign arbitral awards. It is therefore in essence applicable to international arbitration agreements rather than purely domestic arbitration agreement.⁵¹

The two basic actions contemplated by the 1958 New York Convention are the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.⁵² It is noteworthy that when the Convention came into effect on 10 June, 1958, Nigeria was not a subject of international law but an object. Being a colony of Britain at that time, Nigeria could not have acceded to it.⁵³ However, Nigeria acceded to it on 17th March, 1970⁵⁴ and with the promulgation of the Arbitration and Conciliation Act in 1988, the Convention was made the Second Schedule to the Act. Accordingly, Section 54(1) of the Act provides thus:

Without prejudice to sections 51 and 52 of this Act where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (herein after referred to as 'the Convention') set out in the second schedule to this Act (Decree) shall apply to any award made in Nigeria or in any contracting state: (a) provided that such contracting state reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention; (b) that the Convention shall apply only to differences arising out of legal relationship which is contractual.

⁴³ Art. 28(2) and (3) *Ibid*

⁴⁴ Arts. 8 and 9 *Ibid*

⁴⁵ Arts. 35 and 36 *Ibid*

⁴⁶ G. Herrmann 'The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions' in Sarcevic in 16) 9

⁴⁷ See Model Law Art 1 and New York Convention Art 1, as discussed earlier in section 1 of the Introduction (Terminology – 'International commercial arbitration & foreign arbitral awards'). See also the Explanatory Note on the Model Law (UN Doc A/40/17) para 46

⁴⁸ The 1958 New York Convention Countries can be found a <<http://www.newyorkconvention.org/contracting-states/list-of-contracting-states>> accessed on 25 January, 2024

⁴⁹ See the State of Palestine accedes to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards <<http://www.unis.unvienna.org/unis/en/pressrels/2015/unis/211.html>> accessed on 9 January, 2024

⁵⁰ <http://www.uncitral.org/uncitral/de/uncitral_textstarbitration/NY> Convention, html accessed on 9 January, 2024

⁵¹ E. Akpata, *The Nigerian Arbitration Law in Focus* (West African Book Publishers Lid 1997) 5

⁵² See Arts 1, II (1), (2) and (3), III, IV, V (1) and (2), VI, and VII (1) of the 1958 New York Convention

⁵³ Britain still maintains such accession on behalf of the following countries: Hong Kong, Isle of Man, Bermuda, Belize and Cayman Islands, Guernsey, and British Virgin Islands. See <<http://www.newyorkconvention.org/contracting-states/list-of-contracting-states>> accessed on 5 January, 2024

⁵⁴ UN Document No. A/CN. 9/462 of 19 May, 1999 22

Thus, the Convention has provision for reciprocity and commercial reservation.⁵⁵ According to Justice Akpata. 'By the provisos to section 54(1). Nigeria has taken advantage of the reciprocity provisions contained in paragraph 3 of Article 1 of the Convention.⁵⁶ Professor Ezejiyor shares a similar view. In his analysis, Professor Ezejiyor observes thus:

Nigeria has made the reciprocity reservation so that only awards made in a contracting state which undertake to recognize and enforce awards made in other contracting states, including Nigeria (known as 'Convention Awards'), will be recognized and enforced in Nigeria. The reciprocity reservation apparently narrows the scope of the New York Convention.⁵⁷

We do not totally disagree with the learned author on this. This position is informed by the fact that Article 1(3) of the Convention makes specific provision on this thus:

When signing, ratifying or acceding to this Convention, or notifying extension under Articles X hereof any state may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state. It may also declare that it will apply the convention to differences arising out of legal relationships whether contractual or not, which are considered as commercial under the national law of the state making such declaration.

Nigeria has mainly taken advantage of this provision and declared that the Convention is applicable to legal relationships of contractual nature. Ezejiyor accurately captured the situation when he observed that: 'therefore a Convention award arising out of a dispute founded on tort, for example, would not be recognized and enforced in the country. However, restricting the scope of the Convention's application in the Act to differences arising only out of contractual legal relationships is clearly in breach of a treaty obligation of Nigeria requiring that the New York Convention be applicable in Nigeria 'to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the Laws of the Federal Republic of Nigeria.⁵⁸ Section 54 of the Act is therefore clearly inconsistent with the Declaration that Nigeria deposited at the UN in 1970. Section 54 of the Act should be reviewed.

United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules 1976

The UNCITRAL Arbitration Rules which were adopted by the UNCITRAL in April, 1976 was approved by the United Nations General Assembly in December, 1976.⁵⁹ In Nigeria, the Rules are set out as Schedule 1 to the Act. However, that of UNCITRAL can be used for international arbitration. According to Section 53 of the Act: 'Parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in Schedule I to this Decree, the UNICITRAL Arbitration Rules or any other international arbitration rules acceptable to the parties'.

In effect, Nigerian Arbitration Rules are by and large *ipsissima verba* the UNCITRAL Arbitration Rules 1976 though there are minor differences between them. The UNCITRAL Arbitration Rules are generally used for ad hoc arbitration in contradistinction to other institutional arbitrations. This is not to say that the other institutions do not use them but that the third world countries are the main beneficiaries. One major weakness of the UNICITRAL Rules, therefore, is that they do not provide for the administration of the arbitration. In other words, apart from the Rules, there is no institutional framework for carrying out its functions. This lacuna is filled by the concept of 'Appointing Authority' The Appointing Authority' may be an institution or person. Essentially, the appointing authority' comes in by way of third-party intervention. Thus, such a third party assists the arbitrating parties, for instance, when they cannot agree on a sole arbitrator, or the chairman of a three-member tribunal or a respondent fail to appoint an arbitrator that he is entitled to appoint, when an arbitrator is challenged or in connection with the fixing of the fees of an arbitrator. Quite unlike other institutional rules with either professional or regional representation, the UNCITRAL Arbitration Rules has global representation in their formulation and this involvement ensures global acceptability There are three categories of other arbitral institutions that are using the UNCITRAL Rules. The first category comprises those institutions which have adopted the UNCITRAL Rules as their own institutional rules for international cases. The second category comprises those arbitral institutions which, while having their own commercial arbitration rules, act as appointing authority and provide administrative services in cases conducted under the UNCITRAL Rules. The third category comprises arbitral institutions which in UNCITRAL arbitrations act only as appointing authority.

Like other Arbitration Rules, the UNCITRAL Arbitration Rules 1976 were revised in 2010.⁶⁰ Nigeria is yet to adopt the UNCITRAL Arbitration Rules 2010.

Considering the long presence of English authority in Nigeria, before and after the United Kingdom created Nigeria,⁶¹ both countries are co-signatories to some international commercial arbitration conventions. Although, there are past international legal regimes that commenced and terminated to which the United Kingdom subscribed even before the independence of

⁵⁵ Art 1(3) of the New York Convention

⁵⁶ E. Akpata, *The Nigerian Arbitration Law in Focus*, (West African Book Publishers, 1997) 1 Lagos: Publishers Ltd

⁵⁷ G. Ezejiyor, *The Law of Arbitration in Nigeria* (Longman Nigeria Limited 1997) 178

⁵⁸ Nigeria's Treaties in Force, 1970-1990, Vol.2, No. 24, p 269 for the Declaration which Nigeria deposited with the UN Secretary General in 1970. See also Orojo & Ajomo (n 1) 309

⁵⁹ UN General Assembly Resolution No. 31/98 of 15 December, 1976

⁶⁰ See UN General Assembly Resolution 65/22 of 6 December, 2010 – Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17), chap. V, sect. c

⁶¹ Obilade Ibid

Nigeria in 1960.⁶² It must be stated that Nigeria has no known obsolete international commercial arbitration regime considering its young age and non-repeal or amendment of extant international commercial arbitration regimes. Both countries share almost the same international commercial arbitration legal regimes. The legal regimes are considered below.

Geneva Protocol 1923

In 1923 the first international commercial arbitration treaty, i.e. the Protocol on Arbitration Clause⁶³ (hereinafter referred to as the 1923 Geneva Convention), was negotiated and drafted in Geneva, Switzerland.⁶⁴ This permitted the insertion of arbitration clause/agreement into agreement and execution of same domestically. It created the basis of arbitration, being the foundation upon which a dispute may be sent to arbitration and arbitrators may entertain such and have their awards enforceable. With this, arbitration clauses became recognised and protected by contracting states, and United Kingdom was one of the contracting states.⁶⁵ The execution of arbitration clauses locally in originating states was adverse to international trade since such involves other countries. Also, the Geneva Protocol only applied to arbitrations made between parties who were both subject to jurisdictions that had ratified the treaty. Courts had difficulty in determining what constituted jurisdiction. In complying with the jurisdiction component, some courts held it to be a nationality requirement, while others held it to be 'a requirement of residence, domicile or usual place of business.'⁶⁶ Then, there was a need for an urgent expansion of the Convention to aid international commercial arbitration.⁶⁷

Geneva Convention 1927

In a bid to advance international commercial arbitration, on 26 September 1927 was signed a new convention, known as the 'Convention on the Execution of Foreign Arbitral Awards'⁶⁸ (hereinafter referred to as the 1927 Convention) which commenced and became effective on 25 July 1929.⁶⁹ This caused contracting states to enforce arbitration awards in their countries, and this was the magnet that attracted countries to international commercial arbitration.⁷⁰ Its shortcoming was the condition/procedure for such enforcement of international commercial arbitration. Specifically, the double exequatur principle required an award to be firstly recognised by a judicial court of an originating country before such can be enforced in another country.⁷¹ The Geneva Convention attempted to ameliorate the deficiencies of the Geneva Protocol while promoting international commercial arbitration. However, without substantive enforcement provisions, this treaty also lacked the actual power needed to allow for the recognition and enforcement of both arbitration clauses and awards.⁷² It must be mentioned that the United Kingdom was a signatory to this Convention.⁷³ This also brought in a need for better conventions to ease enforcement of international commercial awards and promote international commercial arbitration generally.

Modern *Lex Mercatoria*

Long before, and even after, the existence and commencement of conventions and treaties on international commercial arbitration, there has been (and arguably there still is) a body of law regulating international commercial arbitration known as '*Lex Mercatoria*' (Merchant law).⁷⁴ It exists as an amalgamation and coalition of globally accepted principles that govern and regulate international commercial relations, including public international law, certain uniform laws, the principles of law, international organizations' rules, the customs and usages of international trade, standards, contracts, and arbitral case law. '*Lex Mercatoria* has been variously called mercantile law, law merchant, commercial law, international law of contract, international trade law, or transnational law'.⁷⁵ '*Lex Mercatoria* has been variously called mercantile law, law merchant, commercial law,

⁶² 1923 Geneva Protocol, 1927 Geneva Convention and 1958 New York Convention

⁶³ The Geneva Protocol on Arbitration Clauses was promulgated by the fourth assembly of the League of Nations on September 24, 1923. The depositary of this convention is at Secretary-General of the United Nations

⁶⁴ Zhang Ibid

⁶⁵ L. Daradkeh, Recognition and Enforcement of Foreign Commercial Arbitral Awards Relating to International Commercial Disputes: Comparative and Enforcement and Jordanian Law) September 20 Article University of Leed 2005) 11 <<https://etheses.whiterose.ac.uk/494/2/DX231171.pdf>> accessed 12 September 2022

⁶⁶ Jane Volz and Roger Haydock, 'Foreign Arbitral Awards: Enforcing the Award against the Recalcitrant Loser William Mitchell Re view (1996) 21(3) 867-937, 875 <<https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=2190&context=wmlr>> accessed 12TH September 2022

⁶⁷ Zhang (n.2) 4

⁶⁸ Convention on the Execution of Foreign Arbitral Awards, signed at Geneva, September 26, 1927, date of entry into force on July 25, 1929

⁶⁹ Zhang Ibid

⁷⁰ *ibid.* Quoting Gary Born: 'The Geneva Protocol and Convention did not merely make international arbitration agreements and awards as enforceable as their domestic counterparts.

Rather, these instruments made international arbitration agreements and awards more enforceable than domestic ones, establishing pro-arbitration standards that did not then exist in many domestic legal systems, for the specific purpose of promoting international trade and investment'

⁷¹ Lawrence Craig, 'Some Trends and Developments in the Laws and Practice of International Commercial Arbitration', Texas International Law Journal (1995) 30 9 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/tlj30&div=8&id=&page=>> accessed 12 September 2022. Convention (Geneva Convention), open for ratification by states which had signed the Protocol, was ratified by even fewer states than the Protocol, and suffered from the disability that an award rendered in a Convention state was required to be recognized in another Convention state only if it had first been judicially recognized whether it had been rendered. This requirement of 'double exequatur' greatly limited its utility'

⁷² Volz and Roger Ibid

⁷³ Daradkeh Ibid

⁷⁴ I. Oraegbunam, 'Enforcement in Nigeria of International Commercial Arbitral Awards Based on *Lex Mercatoria*' *International Journal for Business and Law Research* (2015) 3 (1) 53-59, 53

⁷⁵ *Ibid*

international law of contract, international trade law, or transnational law'.⁷⁶ *Lex Mercatoria* is 'that system of customary law that developed in Europe during the Middle Ages and regulated the dealings of mariners and merchants in all the commercial countries of the world until the 17th century.'⁷⁷ The unique feature of *lex mercatoria* is that it was a transnational, speedy, informal, supported freedom of contract and is a reflection of common mercantile customs, administered by merchants themselves earlier and promoted by mercantile cooperation and the special jurisdiction of the mercantile courts, business practice and the special courts of the great markets and fairs.⁷⁸ It must be mentioned that there exists a division among scholars on the existence, applicability and enforceability of *Lex Mercatoria* in any country owing to some claims that the law is not certain, defined and owned per se but rather stateless.⁷⁹ *Lex mercatoria* is supported and promoted in international commercial arbitration by several international conventions and national legislation. Section 47(5) of the Arbitration and Conciliation Act provides for *lex mercatoria*.⁸⁰ In the same vein, it is provided for in Article 28(4) of the UNCITRAL Model Law, Article 17.2 of the International Chamber of Commerce Rules of 1998, Article 42 of the ICSID (International Centre for Settlement of Investment Disputes) Convention and Article 33(3) of the UNCITRAL Arbitration Rules of 1976. By provision of application of *lex mercatoria* in UNCITRAL model law, all countries that adopted the Model have equally adopted the *lex mercatoria* and arbitrators are empowered to apply the same even where parties to arbitration have not expressly agreed to such.⁸¹

Both the United Kingdom and Nigeria adopted the UNCITRAL Model Law and are equally signatories to ICSID Convention, hence bound to enforce the *lex mercatoria*. *Lex mercatoria*, as seen actively developed in the United Kingdom and other merchant states, is still in operation in the United Kingdom and also Nigeria, as provided in the respective national arbitration statutes.⁸² Awards arising from *lex mercatoria* are legally binding and enforceable. The 1958 New York Convention in both Articles I & V is silent on *Lex Mercatoria*. There is nothing in the Convention suggesting that *Lex Mercatoria* is unenforceable. The only vitiating factors by which *Lex Mercatoria* awards cannot be enforced are grounds for setting aside arbitral awards generally, and they include issues of misconduct, public policy, lack of fair hearing, and error of law. Finally, the unrest regarding enforceability and existence of *Lex mercatoria*, among other challenges, has affected the acceptability of *lex mercatoria* across the world, aside from Nigeria and United Kingdom.

4. Institutional Frameworks Shaping International Commercial Arbitration in Nigeria

United Nations Commission on International Trade Law

In a work of this nature, it is apposite to discuss albeit briefly the origin and mandate of the United Nations Commission on International Trade Law (UNCITRAL). In an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely acknowledged. The UNCITRAL, established by the United Nations General Assembly⁸³ plays an important role in developing that framework in pursuance of its mandate to further the international trade by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law. Those areas include dispute solution, international contract practices, transport, insolvency, electronic commerce and procurement and sale of goods.⁸⁴ UNCITRAL has universal membership and has specialized in commercial law reform worldwide for over 40 years, UNCITRAL is formulating modern, fair, and harmonized rules on commercial transactions. These include:

- i. Conventions⁸⁵, model laws⁸⁶ and rules⁸⁷ which are acceptable worldwide.
- ii. Legal and legislative guides⁸⁸ and recommendations of great practical value.
- iii. Updated information on case law and enactments of uniform commercial law.

⁷⁶ Ibid

⁷⁷ B. Garner, *Black's Law Dictionary* (7th edn, West Group 1999) 893

⁷⁸ Oraegbunam, Ibid

⁷⁹ Oraegbunam, Ibid

⁸⁰ Oraegbunam, Ibid; 'section 47(1) of the Arbitration and Conciliation Act provides that the arbitral 'tribunal shall decide the dispute in accordance with the rules in force in the country whose laws the parties have chosen as applicable to the substance of the dispute'. Section 47 (3) provides that where the laws of the country to be applied is not determined by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considered applicable. Again, section 47 (4) states that the arbitral tribunal shall not decide ex aequo et bono or as *amiable compositeur* unless the parties has expressly authorized it to do so. More importantly, section 47 (5) provides that in all cases, the tribunal shall decide in accordance with the term of the contract and shall take account of the usages of the trade applicable to the transaction.'

⁸¹ Idornigie, Ibid.

⁸² Arbitration and Conciliation Act, 1988 for Nigeria and Arbitration Act, 1996 for United Kingdom.

⁸³ See General Assembly Resolution No. 2205 (XXI) of 17 December, 1966, Annex I

⁸⁴ See A Guide to UNCITRAL: Basic Facts about the United Nations Commission on International Trade Law, Vienna, 2013 <http://www.uncitral.org/uncitral> accessed on 25th January 2024

⁸⁵ These include the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Convention on the Limitin Period in the International Sale of Goods, 1974 as amended in 1980, UN Convention on the Carriage of Goods by Sea, 1978 -the Hamburg Rules, the UN Convention on Contracts for the International Sale of Goods, 1989 and UN Convention on the Use of Electronic Communications in International Contracts, 2005

⁸⁶ These include the UNCITRAL Model Law on International Commercial Arbitration, 1985 and 2006, UNCITRAL Model Law on Electronic Commerce, 1996, UNCITRAL Model Law on Electronic Signatures and UNCITRAL, Model Law on International Commercial Conciliation, 2002

⁸⁷ These include the UNCITRAL Arbitration Rales 1986 and 2010: UNCITRAL Conciliation Rules, 1980 and Uniform Rules on Contract Clauses for an Agreed Sun Due upon Failure of Performance, 1983

⁸⁸ These include UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2000 and UNCITRAL Model Legislative Provisions on Privately Finance Infrastructure Projects, 2003

- iv. Technical assistance in law reform projects.
- v. Regional and national seminars on uniform commercial law.⁸⁹

In the Explanatory Note to the UNCITRAL Model Law, the UNCITRAL gave a background information on what led to the UNCITRAL Model Law. These include inadequacy of domestic law and disparity between national laws. Consequently, the salient features of the UNCITRAL Model Law include specialized procedural regime for international commercial arbitration and delimitation of court assistance and supervision. The UNCITRAL Model Law has provided substantial uniformity in the areas of arbitration agreement, composition of arbitral tribunal, jurisdiction of arbitral tribunal, conduct of arbitral proceedings, making of award and termination of proceedings, recourse against award and recognition and enforcement of awards. All these will be examined in this work. With the growing success of international commercial arbitration, a number of dedicated institutions became established across the globe providing services to deal with disputes in the specified discipline of arbitration. Mention will only made of some of these which include the followings as it affects International Commercial Arbitration: -⁹⁰

- (i) The London Court of International Arbitration (established 1892)
- (ii) The Stockholm Chamber of Commerce (established 1917)
- (iii) International Chamber of Commerce (established 1919)
- (iv) American Arbitration Association (established 1926)
- (v) China International Economic and trade Arbitration Commission (1956)
- (vi) Hong Kong International Arbitration Center (established in 1985)
- (vii) Singapore International Arbitration Center (established 1991)

International Chamber of Commerce (ICC)

The International Court of Arbitration of the International Chamber of Commerce (ICC) was created in 1920, shortly after the First World War and in 1989 the name was changed to the 'International Court of Arbitration' in order to reflect its multinational membership. The first ICC case was decided in 1923 and since then it has become a leading international arbitration institution both in terms of volume of cases and significance of disputes. The seat of the ICC court is in Paris but only one-third of ICC arbitrations are actually held in that city. The ICC Court of arbitration has Rules of Arbitration, the extant ones came into force on 1 January, 2012. In the absence of any agreement by the parties as to the number of arbitrators, the Court will normally appoint a sole arbitrator. In the case of three-man tribunal, the parties appoint an independent arbitrator and the Court appoints the chairman, on the recommendation of the National Committee where such a committee exists. Where there is no National Committee, the court will appoint the tribunal. One of the criticisms against the Court is the use of Terms of Reference. The Court normally draws out terms of reference signed by the arbitrators and parties. The main criticisms are that they are time-consuming and without commensurate benefits. Another criticism is that awards rendered by ICC arbitrators are not communicated to the parties directly. Such awards are scrutinized and approved by the ICC Courts. Through this process, the arbitrators are asked to clarify, reconsider or re-draft awards. In a three-man tribunal, this can be time-consuming and frustrating to the parties as there is a significant time lag between the completion of hearing and the receipt of awards. It should be noted that the ICC Court of Arbitration does not settle disputes itself. Its function is to provide a forum for the settlement by arbitration of business disputes of an international character in accordance with its Rules. Since 1990, an interesting innovation in the procedure is the adoption of Rules for a Pre-arbitral Referee. This procedure gives to the parties provisional relief until the matter is finally decided. Other than the Terms of Reference and scrutiny of awards, the Rules provide for:

- a. Multiple parties, multiple contracts and consolidation,
- b. Case Management Conference.
- c. Emergency Arbitrator.
- d. Time Limit for Final Award.

International Centre for Dispute Resolution (ICDR)

The ICDR is the international division of the American Arbitration Association (AAA). The AAA was established in 1926 to study, promote and organise the private resolution of disputes through the use of arbitration and other techniques.⁹¹ The ICDR provides dispute resolution services around the world in locations chosen by the parties and the arbitral proceedings can be conducted in any language chosen by the parties. Unique features of the ICDR include:

- i. International Expedited Procedures.
- ii. Joinder and Consolidation.
- iii. Time within which an award shall be made.

World Intellectual Property Organisation (WIPO)

The WIPO has an Arbitration Centre based in Geneva and also has Arbitration Rules. This is a specialized institution in the area of intellectual property. It was established in 1994. Its extant rules came into effect on June 1, 2014. Its unique feature include:

- i. Preparatory Conference.

⁸⁹ See <<http://www.uncitral.org/unctural>> accessed on 25 January, 2024

⁹⁰ See their websites which provides detailed information are as follows: ICC – <http://www.iccwbo.org/>; LCIA <<http://www.lcia-arbitration.com/lcia/lcia/index.html>> accessed November 20th 2024; AAA - <<http://www.adr.org/index2.1.jsp>> accessed November 20th 2024. For brief descriptions of major international arbitration institutions; Gary Born, 'International Arbitration and Forum Selection Agreements' 44-55 (1999) von Mehren, 'Rules of Arbitration Bodies Considered from a Practical Point of View', 9 J. Int'l Arb. 105 (1992); Tiefenbrun, 'A Comparison of International Arbitral Rules', 15 Boston C. Int'l & Comp. L. Rev. 25 (1992)

⁹¹ N. Blackaby and C. R. Partasides and Hunter on International Arbitration (5th edn, Oxford University Press, 2009)

- ii. Joinder and Consolidation.
- iii. Currency and Interest.
- iv. Time Period for Delivery of Award

London Maritime Arbitrators Association

This is another specialized arbitral institution. It is concerned with maritime disputes arising from charter parties and carriage of cargo (bill of lading). Historically, the majority of contractual shipping disputes have long been resolved by arbitration rather than through the courts.⁹² Their arbitration rules are known as The LMAA Terms, the latest being that of 1 January, 2012. One unique feature of the LMAA Terms is the provision for Preliminary Meetings. It also draws a line between appointment fee and interim fees on the one hand and booking fees. Appointment fee is payable on appointment by the appointing party or by the party at whose request the appointment is made. An arbitrator may in his discretion require payment of his fees to date at appropriate intervals and if the appointment and interim fees are unpaid for more than 28 days after the demand, the arbitrator has a right to resign for non-payment. Booking fees are paid for days reserved for hearing.

The Courts

The courts play a supportive role in international commercial arbitration by facilitating the arbitral process and ensuring its effectiveness. National courts often intervene at the preliminary stage to compel arbitration where parties have entered into a valid arbitration agreement but one party refuses to submit to arbitration. This power is grounded in the principle of *kompetenz-kompetenz*, which allows the arbitral tribunal to determine its own jurisdiction, while courts retain residual authority to determine the existence and validity of the arbitration agreement. In Nigeria, this is exemplified under Section 4(1) of the *Arbitration and Mediation Act 2023*, which mandates courts to refer disputes to arbitration when a valid arbitration agreement exists, thereby upholding the autonomy of the parties and promoting international commercial certainty.⁹³ Another crucial role of the courts is the granting of interim measures to protect the subject matter of the arbitration or to maintain the status quo pending the constitution of the arbitral tribunal. Courts may issue orders for the preservation of assets, evidence, or injunctions to prevent irreparable harm that could frustrate the arbitral process. This judicial assistance ensures that arbitration remains effective even before the tribunal commences its proceedings. Internationally, Article 9 of the *UNCITRAL Model Law on International Commercial Arbitration (1985)* recognizes this power, and it has been adopted in various jurisdictions, including Nigeria and the United Kingdom.⁹⁴ By offering interim relief, courts play a stabilizing function that reinforces the credibility and enforceability of the arbitral mechanism. Finally, courts have a supervisory and enforcement role in international commercial arbitration, particularly in the recognition and enforcement of arbitral awards. Under the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958*, to which Nigeria is a signatory, national courts are obligated to recognize and enforce foreign arbitral awards, subject to limited exceptions such as incapacity or public policy concerns.⁹⁵ This supervisory jurisdiction also extends to setting aside awards where there has been procedural misconduct, excess of jurisdiction, or violation of due process. Courts thus ensure that arbitration remains aligned with principles of fairness and legality, providing a necessary check without undermining the autonomy of arbitral tribunals.

Multi-Door Court House in Nigeria

Multi-door Court House is comprehensive justice administration centre rooted in the concept of a courthouse that makes available to parties various door wherein each represents a dispute resolution mechanism, in addition to the already existing windows and doors referred to as 'litigation'. This system is a forum that caters for different court-connected alternative methods for the resolution of disputes like giving disputing parties the option of choosing the appropriate forum that is convenient to resolve their disputes.⁹⁶ In the same light, Multi-Door Courthouse can also be described as a forum that provides an innovation aimed at offering an institutional framework for resolution of disputes by ADR whether arising from cases instituted in the Court system or aside of it.⁹⁷ It is generally a court-annexed ADR centre established by government either solely or in conjunction with NGO so as to facilitate access to justice.⁹⁸ The Multi-Door Courthouse mechanism was introduced into Nigeria on 2001 through the negotiation and Conflict Management Group (NCMG). This mechanism came as a result of the challenges of delay and general disaffection which characterized the adjudicatory process faced by parties in Nigeria. There are two major way by which matters are activated before the Multi-Door Courthouse. There are:

- (a) A judge refers an existing dispute that he considers suitable for ADR. Under this, a Judge or Magistrate may refer a case to the centre. These are referred to as 'Court referred cases'. Once these cases are resolved, they are sent back to the reference court for the 'terms of settlement' to be entered as the Judgment of the referring court; or
- (b) Walk-in cases- here, disputants/parties apply directly to the centre for the resolution of their disputes, with or without first commencing court action.

⁹² J. Tackaberry and A. Marriott. *Bernstein's Handbook of Arbitration and Dispute Resolution Practice* (4th edn, Sweet & Maxwell 2003) 743

⁹³ *Arbitration and Mediation Act 2023* (Nigeria), s. 4(1)

⁹⁴ *UNCITRAL Model Law on International Commercial Arbitration* (1985), Art. 9

⁹⁵ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1958), Art. III-V

⁹⁶ See. M.M. Akanbi, 'Kwara Multi-Door Courthouse an Idea Whose Time has Come', a paper presented during the inauguration of the Committee on the proposed Kwara State Multi-Door Courthouse on Tuesday, 29th July 2008; see also Favour Onoriode Ebbah, 'The Responsibilities of Judges, Lawyers and Disputants to the Multi-Door Courthouse: A Case Study of Delta State', *Journal of Arbitration*, vol. 16, Number 1, June, 2021, 25

⁹⁷ A. O. Rhodes-Vivour, 'Mediation (A face Saving Device) Concept in Nigeria: The Journey so far', in Favour Onoriode Ebbah, *Ibid*

⁹⁸ See, B. Bukar, 'Emerging Trends in Alternative Dispute Resolution: from Mono Door to Multi-Door', (2003) 79, No.1 *Arbitration in Favour Onoriode*

Under the multi-door system, a specific Judge is appointed or nominated by the Chief Judge to oversee all matters that are brought before the centre. An ADR Judge has the powers to endorse agreements reached in cases that come to the centre and ensuring that any agreements reached is given the same status as a full judgement of the court. However, any court-referred case is usually sent back to the same court to endorse the parties' terms of settlement as a judgment of the court. In a walk-in case, the ADR Judge will endorse the terms of settlement and giving it weight as a High Court Judgment pursuant to the terms of settlement reached by the parties to the dispute. The said judgment entered by virtue of the terms of settlement will be executed and enforced under the supervision of the High Court Judge who function as the ADR Judge. It is important to note that proceedings in a Multi-Door Courthouse need not be by the representation of lawyers on behalf of the parties. There is no mandatory requirement that legal practitioner must represent parties at the centre. However, parties can also engage a lawyer to represent him/her.

Arbitral Tribunal

The arbitral tribunal serves as the central adjudicatory body in international commercial arbitration, playing the vital role of impartial decision-maker between disputing parties. Appointed by mutual agreement or in accordance with institutional rules, the tribunal derives its authority from the arbitration agreement itself—a reflection of the principle of party autonomy.⁹⁹ Its primary responsibility is to interpret and apply the terms of the arbitration agreement and the applicable substantive law to resolve disputes fairly and efficiently. The tribunal ensures that both parties are accorded equal treatment and a full opportunity to present their cases, consistent with the principles of natural justice.¹⁰⁰ In this sense, the arbitral tribunal functions as a private yet judicially recognized forum that substitutes for state courts in resolving international commercial disputes. Beyond adjudication, the arbitral tribunal plays a procedural and managerial role by organizing the arbitration process, setting timelines, and determining the admissibility, relevance, and weight of evidence presented by the parties.¹⁰¹ This procedural flexibility allows the tribunal to adapt proceedings to the complexities of international trade and differing legal systems. Many institutional arbitration rules, such as those of the *UNCITRAL Arbitration Rules (2010)* and the *ICC Rules (2021)*, empower tribunals to conduct proceedings in a manner that ensures efficiency and cost-effectiveness.¹⁰² In Nigeria, the *Arbitration and Mediation Act 2023* further strengthens this function by granting tribunals authority to determine procedural rules and make interim measures to preserve assets or evidence.¹⁰³ Through these powers, the tribunal maintains control over the process, balancing procedural rigor with commercial practicality. Finally, the arbitral tribunal performs the determinative and enforcement-oriented role of issuing the arbitral award, which constitutes the final and binding resolution of the dispute. The award, once rendered, has the same force and effect as a judgment of a national court upon recognition and enforcement under the *New York Convention (1958)*.¹⁰⁴ The tribunal must ensure that the award is reasoned, free from procedural irregularities, and compliant with the parties' agreement and applicable law to prevent annulment or refusal of enforcement.¹⁰⁵ In essence, the arbitral tribunal not only delivers justice in a neutral and specialized forum but also sustains the credibility and finality that define international commercial arbitration as a preferred dispute resolution mechanism.

5. Conclusion and Recommendations

It cannot be overemphasized that the application of international commercial arbitration laws in Nigeria has brought a lot of improvements in international trade or business. The scope of disputes eligible for international arbitration is broad, especially since most arbitration laws, including the Nigerian Arbitration and Mediation Act, recognize that arbitration is deemed international if the parties so agree, regardless of other factors. Moreover, there is no exhaustive list defining what constitutes 'commercial' for arbitration purposes. International commercial arbitration offers numerous inherent advantages, such as neutrality, procedural flexibility, privacy of proceedings, speed, cost-effectiveness, and universal enforceability of awards. However, certain challenges to the application of international commercial arbitration, including the necessity to uphold the principles of equality and due process, compliance with public policy, and the potential for court intervention in exceptional circumstances, such as disputes over arbitrator appointments or requests for urgent preservative orders. Challenges to international commercial arbitration practice in Nigeria include a lack of arbitration and ADR culture, insufficient international arbitration centres, outdated national legislation, anti-arbitration injunctions, and difficulties in recognizing and enforcing international arbitral awards. Despite Nigeria's commitment to the New York Convention, which mandates the recognition and enforcement of foreign awards from other signatory countries, there remains a need for a liberal approach to enforcement, particularly concerning public policy grounds for setting aside foreign awards. The practice of international arbitration in pro-arbitration countries demonstrates that judicial support is crucial for its growth. This raises important questions about the willingness of Nigerian courts to enforce arbitration agreements, issue anti-suit injunctions favoring foreign arbitral proceedings, and adopt a liberal stance in recognizing and enforcing foreign awards. Until these questions are addressed affirmatively, it is uncertain whether Nigeria can be classified as a pro-arbitration country capable of competing with jurisdictions like Singapore, France, and the USA. In summary, while international arbitration offers significant advantages—such as increased participation, effective cost and time management, encouragement of foreign investment, and the maintenance of business relationships—this work concludes that party autonomy in international arbitration is not absolute. Numerous

⁹⁹ B. Gary Born, *International Commercial Arbitration*, 3rd ed. (Kluwer Law International, 2021), p. 212

¹⁰⁰ *UNCITRAL Model Law on International Commercial Arbitration* (1985, as amended 2006), Art. 18

¹⁰¹ D. M. Julian Lew, Loukas A. Mistelis & Stefan M. Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International, 2003), pp. 512–514

¹⁰² *UNCITRAL Arbitration Rules* (2010), Art. 17; *ICC Arbitration Rules* (2021), Art. 22.

¹⁰³ *Arbitration and Mediation Act 2023* (Nigeria), ss. 28–33

¹⁰⁴ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1958), Art. III

¹⁰⁵ Redfern, Alan & Hunter, Martin, *Law and Practice of International Commercial Arbitration*, 6th ed. (Oxford University Press, 2015), pp. 537–540

challenges, including a lack of arbitration culture, outdated legislation, jurisdictional issues, public policy concerns, and enforcement problems, continue to impede the full realization of an effective practice of International Commercial Arbitration laws in Nigeria.

This study proffers following recommendations which will improve the laws and institutions of the practice of international commercial arbitration in Nigeria:

- i. There is the need for establishment of clear statutory guidelines that specify limited circumstances under which judicial intervention in arbitration matters, particularly regarding jurisdictional issues is permissible. Courts should adopt a more deferential approach, allowing arbitration tribunals to address their own jurisdiction. This would help prevent unnecessary court involvement, ensuring that arbitration remains efficient and self-contained. Implement educational programs for arbitrators, mediators, and legal practitioners regarding the immunity provisions in the AMA 2023 and also define the standard for 'bad faith' more explicitly within the legislative framework to ensure that arbitrators and mediators understand the bounds of their immunity. This can reduce ambiguity and foster greater understanding and adherence to best practices in arbitration and mediation.
- ii. Nigerian courts must develop a practice of rejecting the temptation of venturing into a strict interpretation of arbitral clauses. The decision by the court in *Guthrie v. Kwara State Government*¹⁰⁶ to venture into determining whether the difference between the parties was a dispute per se for the purpose of arbitration is unsupportable and anti-arbitration. The courts must be liberal in interpreting arbitration agreements. Where the arbitral proceedings have commenced already, the courts should be wary and prudent when dealing with applications seeking anti-arbitration injunctions. The approach of the Singapore court in the case of *Mitsu Engineering v. Easton*¹⁰⁷ where the court declined jurisdiction to entertain such application but reserved the right or power to set aside the award, is highly recommended. In order to address the issue of delay in enforcing arbitral awards, the level-by-level report system adopted in the Chinese courts is highly recommended. In this connection, where the application is brought before a Nigerian High Court, the court will forward its decision to the Court of Appeal which may agree, disagree, or amend the decision of the lower court and forward the same to the Supreme Court for final assessment and approval. The Supreme Court's position will then be forwarded to the High Court which will give the same as its ruling. This will help to reduce the delay inherent in appealing cases in Nigeria.
- iii. Laws regulating commerce in the oil and gas sector, aviation sector, construction sector, maritime sector, investment sector, etc., should contain provisions deliberately promoting arbitration. Parties should be careful in drafting their arbitration agreements to avoid loopholes that may hurt their true intention, especially considering the fact that we are yet to witness the transition of our judiciary into a pro-arbitration judiciary.
- iv. There are only a handful of international arbitration centers in Nigeria. Apart from the need to establish more institutions, there is a greater need to improve and monitor the capacities of the existing centers. This will certainly require intensive funding. This researcher recommends that the government and well-meaning Nigerians should give full support to these institutions both financially and otherwise. This researcher recommends the intensification of awareness to the general public of the workings of international arbitration and the new AMA 2023. More articles, journals, textbooks, magazines, newspapers, and other research works on issues bordering on international arbitration should be encouraged. Strategic seminars, workshops, trainings, symposiums and other educational programs touching on issues of international arbitration and the new provisions of the AMA 2023 should be organized for judges, lawyers, law students, and the general public. In order to curb the inherent lack of arbitration culture and the breach of arbitration clauses by parties, the courts should be inclined to award damages against any party who brings an action in gross neglect of the arbitration clause.
- v. To increase trust in the arbitration process under the AMA 2023, there should be enhanced regulatory oversight. Implementing standards for transparency and accountability in the conduct of arbitrators, as well as a code of conduct for arbitrators, can help in ensuring ethical practices and maintaining the integrity of the arbitration process. Establish Training and Certification Programs for Arbitrators: The AMA should encourage the establishment of consistent training and certification programs for arbitrators. These programs would ensure that arbitrators are equipped with the necessary skills and knowledge to manage complex arbitrations effectively, particularly in multi-party disputes.

¹⁰⁶ (2017) LPELR-50575 CA

¹⁰⁷ (2004) SGHC 26