The relevance of arbitration in international relations

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This research is prompted by the rapidly growing need for arbitration, considering that disputes are generally inevitable part of human interaction arising from commercial transactions, and the resolution of such disputes is obviously a very crucial aspect of the operation of the international system. Though the traditional method of settling business disputes has been litigation, but the accumulation of cases in the courts as a result of prolong litigation, constant adjournment, and loss in time and other material benefits has become unconscionable in international relations. Arbitration, which is the reference of a dispute or difference between parties for determination in a judicial manner by a body other than a court of competent jurisdiction, has become a widely accepted and potent means of settling disputes and has developed with the rise of international commercial transactions. Almost all international contracts invariably provide for settlement by arbitration of disputes arising from their performance. Thus, the paper recommends that the procedural rules of conflict resolutions should be determined by the agreement of the parties, by the arbitral tribunal, and by the laws of the place of arbitration and not necessarily by adjudication.

Keywords: Arbitration, Disputes, International Relations

INTRODUCTION

The international society is characterized by conflict of interests, and the means of stabilizing these interests is the establishment of international law with a corresponding increase of interdependence of states. War was a dominant feature of the old international order as a legitimate mode for the settlement of disputes between and among states. States resorted to war for the protection of their nationals abroad, self-preservation and even for recovery of debts. The modern international law has revolutionized the outdated rules of warfare after bitter experiences of two world wars. At the moment, war is no longer considered as an instrument for settling disputes.

Every human society is riddled with contradictions which, given certain conditions assume an antagonistic character, which if not resolved may explode into a conflagration. The existence of law is however one thing, its efficiency is another. There is indeed no society without law.

In international relations, the contradictions assume the form of colonialism, neocolonialism, imperialism, hegemonism, underdevelopment, racism, etc. The question then arises as to whether man must be ruled by law from cradle to grave and for eternity. In other to perfect society, the alternative to disputes and emergence of war have been substituted into a new dimension of conflict settlement referred to as ARBITRATION which is the focus of this paper.

The developing countries have for instance continually clamoured for a new international economic order arguing vociferously that the existing international economic order is unjust, yet the order is founded by law. However, the most familiar function of international law is the regulation of the conduct of states.

In nearly all trade agreements, provisions are made for conciliation, or arbitration, wherever disputes of any kind arise. International agreements are presumptively favorable to arbitration. The condition which invites arbitration is one in which a number of persons of equal, or nearly equal, power disagree obstinately concerning a right, privilege, or duty, and refuse to come to terms with themselves. The condition which prompts appeal to arbitration is found finally in society's desire to eliminate force as a sanction of right, and to introduce effectively, the principles of ethical order into the settlement of disputes among its members. Courts, rule of law and procedures have propose the protection of order and justice by compelling men to settle vital differences in a
peaceful manner.

It is equally important to note that while the elements of conflict remain in society, the possibility of disputes also remain. Hence, at best, arbitration is a makeshift, one of the highest importance no doubt, but it does not eradicate the evils to which it is applied (Ury et al., 1988).

**Conceptualization**

**International relations**

...International relations refer to all forms of interactions between the members of separate societies, whether government-sponsored or not. International relations would include the analysis of foreign policies or political processes between nations, but with its interest in all facets of relations between distinct societies, it would include as well as studies of international trade unions... (Holsti, 1977).

The arena of study of international relations is the international system. It studies the evolutions and structure of international societies, the actors in the international scene, the pattern of their behaviour, the driving forces behind such behaviour, and the problems of international planning.

Apart from political science, international relations draws upon such diverse fields as economics, history, law, philosophy, geography, sociology, anthropology, psychology and cultural studies (Eminue, 2001). It involves a diverse range of issues, from globalisation and its impacts on societies and state sovereignty to ecological sustainability, nuclear proliferation, nationalism, economic development, terrorism, organised crime, human security, and human rights.

...the starting point of international relations is the existence of states, or independent political communities, each of which possess a government and asserts sovereignty in relations to a particular portion of the human population (Bull, 1977).

Nations have always related with one another since the creation of man and the study of this unique area of nation's relationship is international relations.

As long as two or more nations come together, there must be conflict of interest in their interactions. Therefore, the methods for settling international disputes must be provided. These methods are generally in two forms, vis, the diplomatic means such as negotiations, mediation, inquiry and conciliation on the one hand; where the parties retain control of the disputes and are at discretion to accept, reject, or propose settlement, and the legal means of settlement on the other hand, such as arbitration and judicial settlement where the expected outcome is a binding decision, usually on the basis of international law (Merrills, 1998).

**Arbitration**

Arbitration refers to the use and assistance of neutral third party in conflict, who hears the evidence from both parties, and thereafter renders a decision, usually called an award, which is expected to be binding on the parties (Best, 2006). Best considers arbitration as a step higher than mediation in the conflict management spectrum. He argued that though conflicting parties to a dispute may agree to settle for arbitration as a non violent means of resolving their disputes, such parties actually loss control of their situation as compared to the parties who decide to choose mediation or other lower levels of conflict management strategies. To him, “arbitration is similar to mediation, and close to adjudication but different from both” (109).

Arbitration is one of the means available for the settlement of disputes and like judicial settlement; it is employed in situations where expected decisions are suppose to be binding. The concept of arbitration implies a non judicial legal technique for resolving disputes by referring them to a neutral party for a binding decision.

However, while judicial settlement is based on the reference of a dispute to the international court or other similar tribunals, arbitration requires the parties themselves to set up the machinery to handle the dispute(s) between them (Wetter, 1979). Arbitration is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer the dispute to one or more persons (the arbitrators or arbitral tribunal) by whose decision (the award) they agree to be bound.

In the United States and some other countries, the term is sometimes used in the context of describing Alternative Dispute Resolution (ADR), a category that more commonly refers to mediation; a form of settlement negotiation facilitated by a neutral third party.

**Arbitration is a procedure for the settlement of dispute, under which the parties agree to be bound by the decision of an arbitrator whose decision is, in general, final and legally binding on both parties. The process derives its force principally from the agreement of the parties and, in addition, from the state as supervisor and enforcer of the legal process. So, where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons of their choice, in a judicial manner, the agreement is called an arbitration (Orojo and Ajomo, 1999).**

It is more helpful however, to simply classify arbitration as a form of binding dispute resolution; equivalent to litigation in the courts and entirely distinct from the various forms of non-binding determinations by experts.

**Arbitrations is today most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions. It is also used in some countries to resolve other types of disputes,**
such as labour disputes, consumer disputes or family disputes, and for the resolution of certain disputes between states and between investors and states (Gray and Kingsbury, 1992).

Although all attempts to determine disputes outside of the court are literally considered as ‘Alternative Dispute Resolution’ (ADR), ADR in the technical legal sense, is the process whereby an attempt to reach a common middle ground through an independent mediator as a basis for a binding settlement. In direct contrast, arbitration is an adversarial process to determine a winner and loser in relation to the rights and wrongs of a dispute.

It is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed will be final and binding. Arbitration is not the same as judicial proceeding (although in some jurisdiction, court proceeding are sometimes referred to as arbitrations), Alternative Dispute Resolution (ADR), experts determination, and mediation. By their nature, the subject matter of some disputes are not capable of arbitration. Matters relating to crimes, status, and family law are generally not considered to be arbitrable. However, most other disputes that involve private rights between two parties can be resolved using arbitration. In some disputes, parties of claims may be arbitrable and other parts not. For instance, in a dispute over patent infringement, a determination of whether a patent has been infringed could be adjudicated upon by an arbitration tribunal, but the validity of a patent can not; as patent are subject to a system of public registration, an arbitral panel would have no power to order the relevant body to rectify any patent registration based upon its determination.

International arbitration has for its object the settlement of disputes between states by judges of their own choice on the basis of respect for law. Recourse to (international) arbitration therefore implies an engagement to submit in good faith to the award.

All these attempt to provide an alternative to a forceful solution to conflict, be it political, diplomatic, or judicial, as there exist an intimate connection between international security and peace, considering that a secured world; where disputes are settled peacefully and amicably between states may well, always tend to be a peaceful world.

METHODODOLOGY

This paper draws on a qualitative approach which gave the researcher an insight of the phenomenon. Within the qualitative inquiry framework, the case study design informed data generation and analysis procedures. The design was reflected in what Creswell (1998) referred to as ‘bounded system’ which aims at a detail exploration of the problem under study and particularly using published and online data.

Historical development of international arbitration

Arbitration is a well known process of settling disputes. It is almost as old as man himself. (Orojo and Ajomo, 1999). Arbitration is one of the first methods established for the peaceful settlement of disputes and laid foundation for the establishment of permanent judicial institutions. The development of contemporary international arbitration can be traced to the Jay Treaty of 1794 which led to the establishment of three arbitral commissions to settle questions of claims emanating from American Revolution. In the 19th C, the Ghent Treaty of 1814 where the United States and Great Britain agreed to settle certain disputes between them by arbitration through disinterested third party national commissioners was also created (Merrills, 1998).

International commercial arbitration between traders of different countries has long been recognized by the business community, and the legal profession as a suitable means of settling trade controversies out of court. Controversies between sovereign states and disputes that are a bit difficult to be settled by diplomatic negotiations or conciliation are mostly referred, by the government of both parties, to the decision of a neutral third party who decides on the dispute with a binding force upon the conflicting parties. Such arbitration between states has a long history. Instances could be found in both classical times and in the medieval period when the Pope was often called upon to act as an arbitrator particularly because the effect of an influential neutral party was needed in settling the dispute.

Towards the end of the 19th C, as arbitration became popular as a vital judicial mechanism, sound awards based on the advice of the jurists became fundamentally relevant. Consequently, the arbitral decisions of the king of Italy in the Clipperton Island case of 1931 were often settled on the basis of international law (Clipperton, 1931).

There are several multilateral treaties that provide for the settlement of international disputes by arbitration, including the Geneva General Act for the settlement of dispute of 1928, the convention on the recognition and enforcement of foreign arbitral awards of 1959 which provided for the enforcement of foreign arbitral awards on the territory of the contracting parties, all adopted by the league of Nations, and reactivated by the United Nation General Assembly in 1949. This Act provides for the settlement of various disputes after unsuccessful efforts at conciliation. Prior to this period, the Hague convention of 1899 established a list of arbitrators tagged-the Permanent Court of Arbitration, and created a bureau with premises, library and staff, which existed to facilitate arbitration and other forms of peaceful settlement of disputes.
Generally speaking, the history of when the formal non-judicial arbitration of disputes first began can not exactly be known. The first law on arbitration under the English law was the 1697 Arbitration Act but by the time it was assented to, arbitration was already common. The first recorded judicial decision relating to arbitration was in England in 1610. However, the noted Elizabethan English Legal Scholar, Sir Edward Coke made reference to an earlier decision dating from the reign of Edward IV, which ended in 1483. (Redfern and Hunter, 2004). The set back of this early arbitration, where a party to a dispute, could withdraw the arbitrators mandate’s right up to delivery of the award, if things appeared to be going against them, was rectified in the 1697 Act.

Within the early 20th C, countries such as France, the United States, among others, began to provide laws that sanctioned and even promoted the use of private adjudication as an alternative to what was perceived to be inefficient court systems. As earlier noted, the industrial revolution and the growth of international trade brought more sophistication to the process of dispute settlement which eventually led to the establishment of a variant international arbitration as a mechanism for resolving disputes under the international commercial contracts.

The place of arbitration in international relations

...an international arbitration necessarily involves external factors which should make it unattractive to parties. The arbitration may be conducted wholly or partially abroad, vital evidence may have to be obtained from sources external to the country and the arbitrators may be foreigners. All these are bound to make the process rather repulsive. The question then is, why in spite of this, parties do resort to international arbitration? The answer is that they do so, not because they necessarily like it. They usually resort to arbitration as a pis aller - the best action to take in the circumstance. This derives from the fact that foreigners almost exhibit an amazing lack of confidence in the judicial processes of other countries. The result is that when nationals of different countries enter into a business transaction, none of them would want any dispute that might arise from it to be settled by judges of the other’s country, in accordance with the prevailing legal system… (Ezejiofor, 1997).

International arbitration is the established method today for resolving disputes between parties to international commercial agreement. As with arbitration generally, it is a creation of contract, which implies the parties decision to submit any dispute(s) to private adjudication by one or more arbitrators appointed in accordance with the rules, that the parties themselves have agreed to adopt, usually by including a provision for the same in their contract.

Parties should often seek to resolve their disputes through arbitration because of a number of perceived potential advantages over judicial proceedings.

Others have argued that the fact that an arbitration company may handle many cases for a corporation while an individual rarely goes through arbitration twice may bias the arbitrators in favour of the company, and because most arbitral procedures are not public, there may be no provision for an individual to be represented by counsel, may also work against the individual. These potential disadvantages make the ethics and professionalism of arbitrators even more important.

The practice of international arbitration has developed so as to allow parties from different legal and cultural background to resolve their disputes, generally without the formalities of their underlying legal systems. Disputing parties cannot have recourse to a neutral international court for a private law dispute because there is no such court.

In international commercial transactions, where the parties are from different sovereign nations or where the sovereign nations themselves are involved, the recourse to international arbitration becomes vital to international relations for reasons of national prestige. States and their agencies do not easily submit to the jurisdiction of foreign courts. They therefore see the machine of international arbitration as a leeway for the settlement of dispute between them and foreign business organisation.

For purposes of emphasis, for international commercial transactions, parties may face many different choices in deciding a mechanism for settling dispute arising from the contract. To remain silent may amount to subjecting oneself to the dictates/courts of the disaffected party that may initiate legal proceedings where it can obtain jurisdiction. The alternative to silence therefore is to specify arbitration as a method of binding dispute resolution, considering that if litigation (courts) is chosen, they may encounter difficulties: The first is that they may be confined to choosing one or the others courts, as the courts of a third country may decline the invitation to devote their resources to deciding a dispute that does not involve any of that country’s citizens, companies, or national interests.

The second difficulty is that judicial decisions are not very ‘portable’ in that it is difficult and sometimes impossible to enforce a court decision in a country other than the one in which it was rendered.

Another relevant feature of international arbitration is that, it is not limited to any particular legal procedure or practice, except at the instance of the parties. Instead, international arbitration is better seen as a hybrid form of dispute settlement which has led to its own non country specific standards of ethical conducts which are believed to apply in international proceedings and; more to the point, to the arbitrators who are appointed to conduct them (Dezalay and Garth, 1998).

The adoption of arbitration also becomes vital to the context of international relations for the purposes of the
preservation of good business, interpersonal relations and international peace. In situation where sovereign states or their agencies have good relationship which they wish to preserve, arbitration becomes the best option since its proceedings is a relatively friendly one. Disputes could be resolved by arbitration while the parties relationship continue unimpaired. Infact, some contracts provides for successive arbitration of disputes arising from a contract while the performance of the contract continues. This is unlikely in the case of litigation in view of the confrontation and sometimes uncompromising stance of the parties.

The resolution of disputes under international commercial contracts in widely conducted under the auspices of several major international institutions and the rule making bodies. The most visible ones include the International Chamber of Commerce (ICC), the International Centre of Dispute Resolution (ICDR), the Singapore International Arbitration Centre (SIAC), the International Court of Justice (ICJ), the International Chamber of Commerce (ICC), the International Centre for the Settlement of Investment Disputes (ICSID), etc.

The ability to resolve disputes in a neutral forum and the enforceability of binding decisions are often referred to as the main relevance of international arbitration to international relations over the resolution of disputes in domestic courts. An international award originating in a country that is a party to the New York convention of 1958 may be enforced in any other country that is also a signatory, as if they were rendered by domestic courts. For instance, the parties from country x and y have agreed to resolve their disputes in country z, and all three countries are parties to New York Convention, this will mean that even though the arbitration will take place in country z, the resulting award can be enforced in any of the countries x or y, as if it were a court decision rendered in the domestic courts of that country. Thus, an international award has substantially greater legal executory force than a domestic court decision. In contrast, there is no such equivalent treaty for the international recognition of court decisions and this is a plus to the maintenance of international peace and collective security.

The last few decades have seen the promulgation of numerous Bilateral investment treaties, as well as multilateral investment treaties, all commonly referred to as BITs, which are designed to encourage investment in signatory countries by offering protections to investors from other signatory states. One relevant factor of the BITs is that they provide investors with the ability to resolve dispute with the host states before the International Centre for the Settlement of Investment Disputes (ICSID) (Redfern and Hunter, 2004).

The composition of the arbitral tribunal can vary enormously, with a sole arbitral sitting, two or more arbitrators, with or without a chairman or umpire and various other combinations. In most jurisdictions, an arbitrator enjoys immunity from liability for anything done or omitted while acting as an arbitrator unless the arbitrator acts in bad faith. Arbitrators are not bound by precedent and have great leeway in such matters as active participation in the proceedings, accepting evidence, questioning witnesses, and deciding appropriate remedies. Arbitrators may visit sites outside the hearing room, call experts witness, seek out additional evidence, decides whether or not the parties may be represented by legal counsel, and perform many other functions not normally within the purview of a court.

Arbitrators have wide latitude in crafting remedies in the arbitral decision, with the only real limitation being that they may not exceed the limits of their authority in their award. An example of exceeding arbitral authority might be to award one party to a dispute the personal automobile of the other party when the dispute concerns the specific performance of a business-related contract. It is this great flexibility of action which combines with costs, usually far below those of litigation that makes international arbitration so relevant and attractive in international relations.

**RECOMMENDATIONS/CONCLUSION**

The application of arbitration remains very important within the context of international relations. Ensuring effective arbitration and to increase the general credibility of arbitration process, arbitration should sit as a panel of at least three arbitrators. The panel, of course, should consists of an expert in the legal area within which the dispute falls, such as contract law in the case of a dispute over the terms and conditions of a contract, an expert in the industry within which the dispute falls, such as the construction industry, in the case of dispute between a home owner and his general contractor, and an experienced arbitrator. We should note that the credibility of an arbitrator rests upon reputation and experience level in arbitrating particular issues, or expertise in a particular field. They may not necessarily be members of the legal profession.

Though critics of arbitration argue that arbitration can be unfair to the individual when faced with a dispute with a corporation, considering that the choice of arbiter may be spelled out in a contract in which the individual has no power to negotiate or as the arbitration panel may contain industry experts who may be more sympathetic to the industry than to the individuals.

The paper reveals that arbitration is a makeshift, and represents the society’s desire to eliminate force as a sanction of right, and to introduce effectively, the principles of ethical order into the settlement of disputes among member nations.
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