A CRITICAL EVALUATION OF INTERNATIONAL COMMERCIAL ARBITRATION
WITHIN THE NATIONAL LEGAL SYSTEM

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1. INTRODUCTION

Over the years, there has been an increase in trade across borders between countries. With advancement in technology resulting in a new global business paradigm, various trade and governmental bodies such as the World Trade Organisation (WTO), the Economic Community of West Africa (ECOWAS) have intensified efforts to end protectionism, establish liberalized cross borders and put an end to the prevalence of beggar-thy-neighbour economic policies.\(^1\)

While these efforts have been hugely successful, trade barriers are being erected in an unlikely place—international commercial arbitration.\(^2\) These trade barriers have been erected because of conflicting national arbitral rules, applicability of substantive and procedural law, forum shopping, unenforceability of arbitration agreements and resulting arbitral awards especially against state parties.\(^3\) The outcome of the legal straits experienced by foreign investors in settling arbitration issues with their local partners led to a series of international interventions aimed at rectifying the problem.\(^4\) Prominent among these are the internalization of the arbitration rules in the arbitration law of all signatory states under the auspices of the United Nations Commission on International Trade Law (UNCITRAL) and the establishment of the International Chambers of Commerce (ICC) Rules of Arbitration.\(^5\)

2. DEFINITION OF TERMS

**Commercial Arbitration:** The most notable definition of commercial arbitration is that set out in Article 1(1) of the UNCITRAL Model Law. This provides that:

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the term ‘commercial’ should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature
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2 Ibid p.98
3 Ibid
5 Ibid p.1
include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreements; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreements or concessions; joint venture; carriage of goods or passengers by air, sea, rail or road.”

**International Arbitration** broadly covers any reference to arbitration involving parties in different states. However as defined in Article 1(3) of the UNCITRAL Model Law, an arbitration is international if:

(a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states;

(b) One of the following places is situated outside the state in which the parties have their places of business,

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

(c) The parties have expressly agreed that the subject matter of the arbitration related to more than one country.

For the purposes of the UNCITRAL definition, if a party has more than one place of business, the relevant place of business is the one with the closest relationship to the arbitration agreement. Also if a party does not have a place of business, the relevant place is his place of residence rather than his place of business.

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6 Blake, S; Browne, J; Sime, S. A Practical Approach to Alternative Dispute Resolution (Oxford University Press: Oxford) 2011 p.432
7 See Article 1(4)(a) of the UNCITRAL Model of Law
8 Article 1(4)(b) of the UNCITRAL Model of Law
International arbitration is most frequently met in the shipping, construction and engineering, oil and gas industries and also in disputes involving insurance, banking and financial services. These as we have seen earlier fall under the definition of what constitutes commercial transactions.

3. FACTORS THAT INFLUENCE THE USE OF ARBITRATION

i. A significant factor that encourages parties to use arbitration as their dispute resolution mechanism in resolving international disputes is that the New York Convention 1958 makes it easy to enforce the award made in arbitration almost anywhere in the world.

ii. Another significant factor is that neither party may want the matter dealt with in the other side’s country. By choosing arbitration the parties are able to find a neutral jurisdiction that satisfactory to both sides.

iii. The parties have the liberty of agreeing to the tribunal applying a neutral system of law when making a decision on the dispute.

iv. The parties also achieve a balance between themselves by agreeing on the arbitration being located in one jurisdiction but applying the law of another.

Having taken note of the different factors that encourage international commercial arbitration, we shall now critically evaluate international commercial arbitration within the National Legal System of the United Kingdom and Nigeria as case studies.

As noted earlier the dominant rules that govern international commercial arbitrations are the UNCITRAL Model Law on International Commercial Arbitration and the International Chamber of Commerce Rules (ICC Rules). However, for the sake of this paper, we shall focus on the critical evaluation of international commercial arbitration governed by the UNCITRAL Model Law within the English and Nigerian Legal System.

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9 Blake, S et al op. cit
10 Blake, S et al op. cit

The United Nations Commission on International Trade Law whose secretariat is in Vienna is a subsidiary body of the General Assembly of the United Nations established pursuant to a resolution of the United Nations General Assembly and vested with the mandate of promoting the harmonization, unification and modernization of international trade law. Its establishment followed a proposal by Hungary urging the United Nations to be actively involved in the removal of legal hindrances to the flow of international trade.

In 1982, in order to alleviate the fears of parties engaged in international commerce of not getting a fair trial in another jurisdiction, solve the problems of inadequacy of domestic laws and disparity between national laws; the UNCITRAL Working Group began deliberations on the Model Law on International Commercial Arbitration which was adopted by the United Nations General Assembly on 11 December 1985 by consensus resolution 40/72. The UNCITRAL Model Law is built on the principles of uniformity and internationalization rather than nationalization. The UNCITRAL Model Law is not a convention but an international persuasive legislation.

This implies that state parties can decide to adopt the UNCITRAL Law wholly or modify it as a template for their national arbitration law. So far about 70 countries have adopted the UNCITRAL Model Law with or without amendments. Finally, the UNCITRAL Model Law applies to international commercial arbitration only. Despite the provisions of the UNCITRAL Model Law, certain issues may arise before, during and after the arbitration process which would involve the local courts. Issues such as language of the arbitration, rules of evidence, applicable

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11 See Resolution 2205 (XXI) of 17 Dec. 1966
12 Blake, S et al op. cit p.449
17 Faturuoti, B op. cit p.101
law- proper law of the contract, law of the arbitration agreement, jurisdiction regulation, procedural law of the arbitration and the law of the place of enforcement.

Thus the crux of this paper would be focused on the UNCITRAL Model Law on International Commercial Arbitration within the National Legal Systems of the United Kingdom and Nigeria.

5. THE UNITED KINGDOM LEGAL SYSTEM

The United Kingdom Legal System bordering on the issues surrounding international commercial arbitration is governed in England and Wales by the Arbitration Act of 1996.19 According to Blake, S et al,20 the Arbitration Act 1996 is intended to lay down a highly developed set of procedures for arbitrations in keeping with the country’s status as a leading venue for international commercial arbitrations. However, prior to 1996, the Departmental Advisory Committee (DAC) on International Commercial Arbitration under the Chairmanship of the Rt. Hon. Lord Justice Mustill published a consultative document21 which required modifications to the UNCITRAL Model of Law before its incorporation into the laws of the United Kingdom.

Conversely, Sir Johan Steyn a member of the DAC, argued that the United Kingdom should not adopt the Model Law because so many necessary additions and variations would diminish the very concept of the UNCITRAL Model Law.22 The DAC in its June 1989 Report decided not to adopt the UNCITRAL Model Law but rather to enact a new Arbitration Act which sets out the important principles of the English Law of Arbitration.23

The Arbitration Act 1996 is built around 3 main principles – obtainment of fair, speedy, impartial and cost effective dispute resolution; party autonomy and court minimal intervention.24 This standpoint was further buttressed by Mance LJ in the case of Department of Economics

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19 Blake, S et al op. cit p. 371
20 ibid
21 See Faturoti, B. op cit p.101
22 Steyn, Johan,(the Hon. Mr. Justice), “Arbitration in England: the Current Issues” 15 I.B.L 432 @ 435
24 Section 1 of the Arbitration Act 1996
Policy and Development of the City of Moscow v. Bankers Trust Co.\textsuperscript{25} where the court held that the Arbitration Act 1996 has been set out by parliament to encourage and facilitate a reformed and more independent as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interest of the public and of basic fairness.

6. THE NIGERIAN LEGAL SYSTEM

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides in Section 19(d) for the "respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication." This forms the legal framework upon which the Nigerian Arbitration and Conciliation Act\textsuperscript{26} (hereinafter referred to as ACA) Cap A18 LFN 2004 stands with reference to international commercial arbitration.

However, the law, as noted above, that governs commercial arbitration in Nigeria is the Arbitration and Conciliation Act (ACA)\textsuperscript{26}. There is also the Nigerian Investment Promotion Commission Act of 1995. This law governs all foreign investment and provides that in the case of a dispute between a foreign investor and the Federal Government parties are entitled to utilize any national or international machinery for the settlement of investment disputes.

Another international organization relevant to international commercial arbitration in Nigeria is the International Center for Settlement of Industrial Disputes (ICSID).\textsuperscript{27} The organization has a code which is applicable in issues concerning international commercial arbitration. Nigeria is a signatory to the Agreement and has in fact adopted the code into the Nigerian Investment Promotion Commission Act (NIPC Act).\textsuperscript{28} However, our focus during the course of this paper would be on the Arbitration and Conciliation Act which forms the primary legal framework for

\textsuperscript{25} [2004] ECWA Civ 314 @ para 31
\textsuperscript{26} Cap A18 LFN 2004
\textsuperscript{27} Odiase-Alegimenien, O.A op. cit p.12
\textsuperscript{28} Section 26(3) of the NIPC Act provides that the ICSID rules shall apply in the case of disputes between foreign investors and the Federal Government.
domestic arbitration and international commercial arbitration (particularly Part III of the ACA) in Nigeria.

The Nigerian Arbitration and Conciliation Act (ACA) is based on the UNCITRAL Model Law on International Commercial Arbitration. This means as noted above that the Nigerian Arbitration and Conciliation Act is similar to those other countries who had equally adopted the UNCITRAL Model Law either wholly or in part.29

7. CRITICAL EVALUATION OF INTERNATIONAL COMMERCIAL ARBITRATION WITHIN THE NATIONAL LEGAL SYSTEM OF THE UNITED KINGDOM AND NIGERIA

The critical evaluation of international commercial arbitration within the national legal systems of the United Kingdom and Nigeria would be conducted with the UNCITRAL Model Law on International Commercial Arbitration (Model Law) as the legal framework and discussed along the following sub-headings discussed below. These sub-headings would assist in no small way in determining how much influence, if any, the Model Law has had on the national legal systems of the United Kingdom and Nigeria in catering for the needs of international commercial arbitration within their respective legal systems.

i. SCOPE OF APPLICABILITY

The Model Law aims to regulate international commercial arbitration30 whereas the English 1996 Act applies to any arbitration whether domestic or international; and whether commercial or non-commercial. The Nigerian Arbitration and Conciliation Act on the other hand, applies also to any arbitration whether domestic or international. Part III of the Act is devoted to international arbitration.

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29 Odiase-Alegimenien, O.A op. cit p.13
30 See Article 1(1) of the UNCITRAL Model Law on International Commercial Arbitration which provides that “this Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States” Available at www.uncitral.org/06-54671_Ebook.pdf
commercial arbitration in addition to other provisions of the Act.\textsuperscript{31} The Act however, restricts itself to only commercial arbitration.\textsuperscript{32}

The Model Law is driven towards “the need for uniformity” which “is greater regarding international arbitration than domestic arbitration and that States may be more inclined to preserve their traditional concepts and familiar rules in a purely domestic context than in international cases”.\textsuperscript{33} While the English Arbitration Act 1996 and the Nigerian Arbitration and Conciliation Act Cap A18 LFN 2004 can be said to lean towards a ‘monist’ approach which does not distinguish between domestic and international\textsuperscript{34} arbitration, instead the Acts treat both domestic and international arbitration as a single basic substance.

ii. **TERRITORIAL APPLICATION**

According to Article 1(2) of the Model Law, “the provisions of this Law, except Articles \textit{8,9,35 and 36 apply only if the place of arbitration is in the territory of this State}” (that is the adopting State). This implies that where a country like Nigeria has adopted the Model Law, then the Model Law can be said to apply within the Nigerian jurisdiction. The English Arbitration Act 1996 applies to arbitrations where the ‘\textit{seat of the arbitration}’ is in England and Wales or Northern Ireland and to arbitration that does not have its seat in England to enable parties to overseas arbitration apply to stay legal proceedings in England and to enforce foreign arbitral awards.\textsuperscript{35} The Nigerian ACA provides in Section 58 that the Act shall apply throughout the Federation. There is however, no mention made in the ACA of the Act applying to international commercial arbitration held outside Nigeria.

The Model Law conservatively upholds the principle of territoriality which ensures that States through their courts maintain their supervisory roles to enable the courts provide assistance

\textsuperscript{31} See Section 43 of the Arbitration and Conciliation Act (ACA) which provides that “the provision of this Part of the Act shall, apply solely to cases relating to international commercial arbitration and conciliation, in addition to other provisions of this Act”.

\textsuperscript{32} Section 57 of the ACA provides that “\textit{arbitration}” means a commercial arbitration whether or not administered by a permanent arbitral institution.”


\textsuperscript{34} Faturorti, B. op. cit p.103

\textsuperscript{35} Ibid, This is provided for in Sections 2 and 3 of the English Arbitration Act 1996.
necessary to move the arbitral process forward. The English Act on the other hand recognizes both the doctrines of territoriality and delocalization of arbitration. Delocalization advocates a detachment of arbitral process from municipal law. This is necessitated by the argument that arbitral processes should not be fettered by the law of the seat of arbitration or lex arbitri. The practice of the doctrines of territoriality and delocalization thereby ensures that the United Kingdom remains a viable destination for international commercial arbitration. The Nigerian ACA also recognizes in line with the Model Law the doctrine of territoriality while ensuring that the courts have only limited intervention.

iii. ARBITRABILITY

Arbitrability for the purpose of this paper can be said to mean whether the applicable law allows certain disputes to be determined by arbitration. This is known as objective arbitrability as opposed to subjective arbitrability which focuses on whether the dispute being considered by the arbitral tribunal has been agreed on by the parties.

Article 1(5) of the Model Law provides that “this Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.” Therefore, according to the Model Law, what is arbitrable is determined by the State adopting the Model Law. The English arbitration Act 1996 expressly leaves it to the courts to develop rules on the issue of Arbitrability. According to Section 81(1)(a) of the 1996 Act, “Nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to- (a) matters which are not capable of settlement by arbitration.” Thus areas such as Civil Status, Liability for Criminal Offences are outside the coverage of English Arbitration Act. In the case of Soleimany v. Soleimany, Waller LJ noted that some ‘illegal or immoral’ dealings are ‘incapable of being arbitrated from an

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37 Section 34 of the ACA provides that “the court shall not intervene in any matter governed by this Act, except where so provided in this Act.”
38 Faturoti, B. op cit p.105
39 Ibid
40 Ibid p.106
41 [1999] QB 785 at 797
English Law perspective because an agreement to arbitrate them would itself be illegal or contrary to public policy’. In line with the Model Law, the Nigerian ACA specifically provides in Section 57 that “arbitration” means a commercial arbitration...” and according to the same section, “commercial” means all relationships of a commercial nature,…” This therefore implies that under the ACA only disputes which are commercial in nature would apply as an arbitrable dispute. In conclusion, arbitrability of disputes is based on a country’s economic, political and social policy.

iv. WAIVER

Article 4 of the Model Law regulates waiver of the right to object. It provides that “a party who knows that any provision of this Law from which the parties may derogate\(^\text{42}\) or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefor, within such period of time shall be deemed to have waived his right to object.” The Model Law requires an actual knowledge and “without undue delay”.

Section 3 of the English Act expects that the party contesting the absence of waiver to prove that even with reasonable diligence he would not have been aware of the grounds for objection.\(^\text{43}\) In the case of Athletic Union of Constantinople v. National Basketball Association\(^\text{44}\), it was held that under Section 73(1) of the 1996 Act, an applicant is deemed to have waived any ground of objection based on jurisdiction. The Nigerian Act on the other hand provides in Section 33 (which happens to be an adaptation of Article 4 of the Model Law) that “a party who knows- (a) that any provision of this Act from which parties may not derogate\(^\text{45}\); or (b) that any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance within the time limit provided therefor shall be deemed to have waived his right to object to the non-compliance.”

\(^\text{42}\) Underlining mine for emphasis
\(^\text{43}\) Faturoti, B op. cit p107
\(^\text{44}\) [2002] 1 Lloyd’s Rep 305
\(^\text{45}\) Underlining mine for emphasis
Nigerian Act also provides for an actual knowledge and ‘without undue delay’. However, the point of divergence seems to be what knowledge the applicant is to have. The Model Law provides for knowledge of derogation from the provisions of the Law which are non-mandatory while the ACA provides for knowledge of derogation from provisions of the Act that are mandatory.\(^{46}\)

**v. EXTENT OF COURT INTERVENTION**

Article 5 of the Model Law provides that “*in matters governed by this Law, no court shall intervene except where so provided in this Law*”. This gives courts a narrow room for intervention.\(^{47}\) Conversely, the English Arbitration Act 1996 permits wider scope of judicial intervention in comparison with that of the Model Law. Section 1(c) of the Act provides that “*...in matters governed by this Part the court *should* not intervene except as provided by this Part*”. The use of the word *should* has been interpreted by the English courts\(^{48}\) to imply that there may be situations where the court might intervene other than those specifically provided for in Part 1 of the 1996 Act. This position was further buttressed by Reid, Alan\(^{49}\) who observed that the restrictive scope of the Model Law is narrower than the corresponding provision of the 1996 Act. The Nigerian ACA, which as noted above is an adaptation of the Model Law, provides for an arbitral tribunal sitting in Nigeria to carry out and complete its mandate without undue interference by the court.\(^{50}\) Section 34 of the ACA provides that “*the court shall not intervene in any matter governed by this Act, except, where so provided in this Act.*” The court is therefore only allowed to intervene in those areas where prudence and the international arbitral obligations of Nigeria demand that the courts do so.


\(^{47}\) Faturoti, B op. cit p.108

\(^{48}\) This was decided in the case of *Runman Faruqi v. Commonwealth Secretariat* [2002] WL 498805 (QBD (Comm. Ct.)


\(^{50}\) Asouzu, Amazu op. cit pp 5-8
vi. JURISDICTION OF THE ARBITRAL TRIBUNAL

The Model Law has incorporated the doctrines of *competence-competence and separability* into its laws and these doctrines also form part of the English and Nigerian Legal Systems. The Competence-Competence doctrine refers to the extent to which an arbitral tribunal may rule on its jurisdiction while the Separability doctrine on the other hand refers to the independence of an arbitration clause even where the contract wherein it is found is invalid.51

Article 16(1) of the Model Law provides that the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to existence or validity of the arbitration agreement…a decision by the arbitration tribunal that the contract is null and void shall not entail *ipso jure* the validity of the arbitration clause. In England, Section 30 of the 1996 Act allows an arbitral tribunal to rule on its substantive jurisdiction subject to the court’s intervention under Sections 32 and 37. Under the English Act, the intervention of the court is predicated on the timely objection or otherwise of the complaining party52 and the agreement in writing of all other parties to the proceeding.53 However, under the Nigerian Act, Section 12(1) of the ACA empowers an arbitral tribunal with the powers to rule on its own jurisdiction. There is no appeal under the ACA against the ruling on jurisdiction by the arbitral tribunal; it is final and binding as provided for under Section 12(4) of the ACA.

With regards to the Separability doctrine, the Model Law Article 16(3), the English Act Section 7 and the Nigerian Act Section 12(2) are unanimous in holding that the arbitral clause is separate and independent of the contract. In the case of *Vee Networks Ltd. v. Econet wireless International Limited*54, the court held that even though the Technical Support Agreement (TSA) signed by both parties was *ultra vires*, its invalidity did not affect the validity of the arbitration clause.

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51 Faturoti, B op. cit
52 Section 73(1) of the 1996 Act
53 Section 32(2) of the 1996 Act
54 [2004] EWHC 2909 (Comm.) 14 December 2004
vii. **APPOINTING AUTHORITY**

In cases relating to international commercial arbitration in Nigeria, the Nigerian courts do not necessarily play a role in the appointment of arbitrators. The appointment of the members of the arbitral tribunal for international commercial arbitration in Nigeria is designated to ‘*The Appointing Authority*’. Section 54(2) of the ACA defines the Appointing Authority to mean the Secretary-General of the Permanent Court of Arbitration at The Hague. According to Asouzu, Amazu\(^{55}\), it seems that parties to an international commercial arbitration under the ACA must always designate as ‘the appointing authority’ the Secretary-General of the Permanent Court of Arbitration (PCA) or that the Secretary-General of the PCA must always perform the functions of ‘the appointing authority’ for all parties to an international commercial arbitration under the ACA. There seems to be no discretion for the parties to appoint any other person or institution as ‘the appointing authority’. That according to the writer is the impression one gets from reading Sections 44 and 54(2) of the ACA which is quite unusual.

Article 6(1)(b)\(^{56}\) of the UNCITRAL Arbitration Rules which influenced the drafting of an aspect of Section 44 of the ACA stipulates the procedure for the appointment of an appointing authority by parties who wish to appoint a sole arbitrator. Such an option does not exist anywhere in Section 44 despite the fact that the ACA in Section 44(6) relating to the appointment of a three member tribunal hinted that the appointing authority in that case would be one “previously designated by the parties…”

Also in section 44(6) of the ACA, the impression created that the appointing authority is one “previously designated by the parties…” However the meaning of “appointing authority” under the ACA by virtue of Section 54(2) is the Secretary-General of the Permanent Court of Arbitration at the Hague. Furthermore, the phrases used in Sections 45(10) and 45(9)(a) of the ACA on the issue of the challenge of an arbitrator in international cases is ‘*an* appointing authority’. While the phrase used under Section 45(9)(c) is ‘the appointing authority’.

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\(^{56}\) Article 6 of the UNCITRAL Arbitration Rules provides: “If a sole arbitrator is to be appointed, either party may propose to the other: (a) The names of one or more persons, one of whom would serve as the sole arbitrator; and (b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.”
The impression from Sections 45(10) and 45(9)(a) of the ACA is that the Secretary-General of the PCA at the Hague may not after all be the exclusive appointing authority under the ACA. Conversely, in Sections 49(3) and 50(3) of the ACA, an “appointing authority” becomes one “agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at the Hague…”

These discrepancies in the ACA as to who or what constitutes an/the appointing authority during international commercial arbitration in Nigeria only fuels the undesirability of Nigeria being designated a ‘seat of arbitration’.

**FINDINGS**

From the paper it is quite evident that though the Model Law serves as a legal framework for international commercial arbitration proceedings, it was not wholly adapted by the United Kingdom and Nigeria. It was however adopted by the United Kingdom and Nigeria with some variations in the areas of the scope of application which in the United Kingdom applies to both domestic and international arbitration, commercial and non-commercial arbitration, thereby making it a hub for states to refer to it as a seat for their arbitration. Under the Nigeria Legal System on the other hand, the scope of applicability is for only commercial arbitration either domestic or international, thereby restricting its applicability.

In the area of territorial application, the English Act recognizes both territoriality and delocalization of arbitration while the Nigerian Act recognizes the doctrine of territoriality. On the issue of the arbitrability of disputes, Nigeria bases its Act on the principle of objective arbitrability, which is what the Law of the land provides. The English Act leaves the issue of arbitrability to be decided by the courts as defined by common law. Also on the issue of power of waiver, while the English Act expects the party contesting to prove that even with reasonable diligence he would not have been aware of the grounds for objection while the Nigerian Act requires actual knowledge and ‘without undue delay’. Furthermore, the Nigerian Act provides for derogation from mandatory provisions of the Act.

57 See Asouzu, Amazu op. cit p12
Finally, the English and Nigerian Legal systems provide extensively for the extent of the court’s intervention in international commercial arbitration proceedings while confirming the doctrines of competence-competence and separability. However, the Nigerian ACA does not provide for the Right of Appeal from the ruling on jurisdiction by the arbitral tribunal in Nigeria. This goes a long way in ensuring that the time of the parties is saved.

RECOMMENDATIONS

1. Redrafting of Defective Provisions

It is strongly suggested that Sections 44, 45, 49 and 50 (Part III) of the ACA which are individually defective in catering for parties who wish to situate their international commercial arbitration proceedings in Nigeria be redrafted. In redrafting these sections, the UNCITRAL Arbitration Rules should be a guide for the draftsman if it is indeed intended to adopt substantially some of the provisions of those Rules in these areas.

It is also strongly suggested that the appointing authority provided for under Section 54(2) of the ACA should be amended as it is doubtful if the Office of the Secretary-General of the Permanent Court of Arbitration at the Hague is the most appropriate appointing authority even though the law pertains to international commercial arbitration. An alternative is for the courts in Nigeria to be empowered as the appointing authority or the Asian-African Legal Consultative Committee’s (AALCC) Lagos Regional Centre for International Commercial Arbitration would seem a better option. Consequently, Section 4 of the ACA which is also an inelegant adoption of Article 8 of the Model law should also be re-drafted.

2. Adoption of the Doctrine of Localization

It is suggested that the Nigerian Legal System adopts the doctrine of localization to provide for parties to international commercial arbitration who do not wish to adopt any law under the lex arbitri. There may be reference to members of the arbitral tribunal making applicable laws ex aequo et bono or as amiable compositeur.

3. Expansion of Scope of Application
It is suggested that in order to provide an enabling environment for international commercial arbitration to thrive in Nigeria, the scope of application of the Nigerian ACA should be expanded to encompass non-commercial disputes.

**CONCLUSION**

In conclusion, one can say that international commercial arbitration is being provided for within the National Legal Systems of the United Kingdom and Nigeria through the use of the UNCITRAL Model Law on International Commercial Arbitration as a legal framework for international commercial arbitration although with a few variations. However, as noted above, Nigeria still has a long way to go in ensuring that an enabling environment is created for international commercial proceedings to be held in Nigeria as ‘the seat of arbitration.’ It is not strange to still see parties adopt London as their seat of arbitration even though the subject matter of the dispute, place of business of the parties and place of execution of the contract is situate within Nigeria.

It is only when the practice and law governing international commercial arbitration has been fully developed and becomes attractive for use by prospective disputants that Nigeria would be able to attract more patronage and revenue for the country. In the words of Adebanjo A.I, “…Nigeria cannot for now attract international arbitration... we have to start with erecting structures for developing domestic arbitration and conciliation systems which will over time draw the attention of the world to the suitability of Nigeria as a venue for international [commercial] arbitration.”58

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