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RESOLUTION OF DISPUTES ARISING FROM INTERNATIONAL PETROLEUM TRANSACTIONS INVOLVING IOCS

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Abstract

The resolution of disputes involving international petroleum transactions all fall within the purview of upstream petroleum sector in the oil and gas industry involving big multi-national oil companies like Royal Dutch Plc, NNPCL, Total Energies, ExxonMobil, Chevron Corporation, etc. However, disputes in the oil and gas industry take an almost infinite variety of forms and therefore when considering the best practices for resolution of oil and gas disputes in the upstream sector, no particular mechanism of alternative dispute resolution (ADR) fits all. Some disputes can be more amenable to resolution through a particular process or in a particular form than others. These mechanisms of alternative dispute resolution include negotiation, mediation, conciliation, arbitration. Alternative dispute resolution is simply a process of initiating alternative methods and procedures in the resolution of disputes in the oil and gas industry without resorting to litigation, which is more expensive and time consuming. Alternative dispute resolution provides a confidential and alternative way or method of tackling legal disputes in the oil and gas sector without going through the litigation or court system. Using doctrinal research methodology, this paper provides a comprehensive review of the dispute settlement mechanisms and also analyzes advantages, problems of settlement of international transaction and possible solution and ways to tackle the menace. The sources of authority and information are mainly from primary sources of data and they include statutes, case law and customs. The findings of the paper show that alternative dispute resolution mechanisms is relatively effective in the oil and gas industry in Nigeria and that the alternative dispute resolution mechanisms used in the upstream sector of the oil and gas industry are arbitration and mediation alone in line with the new Arbitration and Mediation Act 2023. It is recommended that all oil and gas disputes should be settled through alternative dispute resolution mechanisms to enable for the smooth running of the oil and gas industry and that the power to make binding decisions is of fundamental importance, and thus distinguishes arbitration and mediation as methods of resolving disputes from other alternative dispute resolution procedures in arriving at a negotiated settlement.

Keywords: Dispute resolution, settlement, arbitration, mediation, upstream sector

1. Introduction

Disputes in the oil and gas industry take an almost infinite variety of forms. Some disputes will be more amenable to resolution through a particular process or in a particular form than others and these disputes can be either vertical or horizontal. The vertical disputes occur between parties in different industry segments or tiers and these tiers consists of the host governments (as owners of the resources), the second tier is the oil and gas companies (Shell), the third tier are service providers (Halliburton, Schlumberger) while the fourth tier are equipment providers. Disputes between the first and second tier protagonists normally concern host government contracts such as concessions, production sharing contracts, risk service contracts whereas disputes between oil companies and service providers often concern master service agreements. Horizontal disputes on the other hand occur between parties of the same tier or between states, for example, boarder disputes between oil companies in co-venture relationships, joint operating agreement, farm-out agreement, asset sale and finally among service and equipment providers like deep water horizon disaster. Construction disputes often involve owners, contractors, subcontractors and equipment suppliers. Disputes can

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also be categorized based on where they occur in the oil and gas value chain like the upstream, midstream or downstream. The disputes can be classified based on when they occur during the project life cycle, for example in the upstream sector disputes occur during exploration, appraisal, development, production and decommissioning The complexity of the legal framework and commercial matrix in which these disputes arise or occur almost guarantees the impossibility of any easy or effortless solution.

The oil and gas industry has long been a leader in promoting the resolution of industry disputes through the use of binding arbitration and the issue is whether resolutions arising from international petroleum pose a difficult task or whether there are problems of settlement of international petroleum transactions and the possibility of resolving such problems. In the international sphere, the often mentioned *Abu Dhabi*, *Qatar*, *ARAMCO*, *Amin-oil*, and *Libya* cases played a critical role in promoting the acceptance of investor-state arbitration and the applicability of international law to oil and gas industry disputes involving host nations. Today, the vast majority of international commercial oil and gas disputes are resolved through arbitration. Arbitration of domestic oil and gas disputes also gained an early foothold in the United States. As early as the 1950's U.S. 'natural gas companies' began to incorporate arbitration clauses into Natural Gas Act era gas purchase agreements. By the 1970's industry contracts, such as the Trans Alaska Pipeline System Agreement, included arbitration clauses, as did a series of very large Alaska Royalty Settlement Agreements in the early 1990's. Nevertheless, even in the 1980s and thereafter, many forms of oil and gas contracts did not incorporate arbitration provisions. With the advent of the twenty-first century, most sectors of the oil and gas industry now include arbitration provisions in many, if not most, of their contracts. The domestic and international oil and gas industry has become one of the leading players in the promotion of arbitration and the development of arbitration materials. For example, the Association of International Petroleum Negotiators (AIPN) has developed model form arbitration provisions to be utilized in a broad variety of oil and gas contracts, and other oil and gas industry organizations, such as the American Association of Petroleum Land-men (AAPL) and the International Association of Drilling Contractors, all draft arbitration provisions for use in oil and gas contracts.

1. Mechanisms in Alternative Dispute Resolution

Disputes can be resolved by the parties themselves or by the parties with help from a third party and the third party are the decision makers like Courts, arbitrators or mediators. The parties can design a multi-step dispute resolution process that progressively channels their disputes into more rigorous forms of dispute resolution when one form fails. In the oil and gas industry, disputes can be resolved when removed from the individuals who may for commercial or other reasons have vested interest in the outcome which in turn impedes settlement. The parties can provide for submission of disputes to formal mediation, and if not resolved by mediation within 90 days from the notice of dispute, either party may submit the dispute to the forum selected by the parties, either the court or arbitral tribunal.

2.1 Arbitration

Arbitration is a method of dispute resolution involving one or more neutral arbitrators who are usually appointed by the disputing parties and whose award is binding on the parties. The new Arbitration and Mediation Act [1] defines arbitration as 'commercial arbitration whether or not administered by a permanent arbitral institution.' This means that the act applies to commercial disputes and commercial disputes can be subjected to the process of arbitration and mediation. According to Stewarts, arbitration is a contract based form of binding dispute resolution.[2] In other words, a party's right to refer a dispute to arbitration depends on the existence of an arbitration agreement between them and the other parties to the dispute, that the dispute be referred to

[1] The Arbitration and Mediation Act, (AMA) 2023
[2] <https://www.stewartslaw.com/expertise/divorce-and-family/arbitration> accessed 2 February 2023

arbitration. Arbitration is a method of dispute settlement using private entities known as arbitral tribunals.[3]

Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[4] The stroud's judiciary dictionary, relying on the case of *Collins v. Collins*[5] opined that 'arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties.'[6] Bernstein, however, sees arbitration from the point of agreement when he suggested that when two or more agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is, upon evidence before them and the agreement is called an arbitration agreement. When there is a dispute between persons, it is put before such other selected person for decision and the procedure is called arbitration while the decision is called an award.[7] The above definition encapsulates the true meaning of the term arbitration as a mechanism for the resolution of disputes between two or more persons under the agreement to be bound by the decision the arbitral tribunal or neutral third arbitrator. In other words, it is the private and judicial determination of a dispute by an independent third party or case of an arbitral tribunal were one or more arbitrators are appointed to resolve the dispute.

The American Bar Association defines arbitration as a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments.[8] They also went further to opine that when arbitration is binding, the decision is final, and can be enforced by a court, and can only be appealed on very narrow grounds. The World Intellectual Property Organization[9] on the other hand, defined arbitration as a procedure in which a dispute is submitted by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. However, in choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration is a form of alternation dispute resolution or a way to resolve disputes outside the courts. The objective of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. The parties should be free to agree on how their disputes are resolved subject only to such safeguard as are necessary in the public interest, intervention by courts should be restricted.[10]

2.2 Mediation

Mediation is an alternative dispute resolution mechanism commonly used in commercial arbitration in the oil and gas industry and it involves an independent, optional dispute resolution mechanism whereby an impartial third party is invited by the disputing parties to help in identifying the contending issues, and bring out options for settling those issues as well as finding resolutions acceptable to all the parties.[11] Mediation is an informal process where a neutral intermediary helps the parties in reaching a resolution of their dispute, based on the parties respective interests. This makes mediation a voluntary and confidential process in which a neutral person referred to as the mediator, helps the disputing parties to clarify issues, develop options and work towards a mutually

[3]<http:// www.dispute-resolution-hamburg.com> accessed 5 November 2024
[4] Halsbury's Laws of England, (3rd ed. Vol 2) 2.
[5] 28 L. J. Ch. 186.
[6] Halsbury's Laws of England, (3rd ed. Vol. 1) 180.
[7] R Bernstein (ed.) *The Handbook of Arbitration* (London: Sweet and Maxwell, 1998) quoted by MM Stanley-Idum and JA Agaba: *Civil Litigation in Nigeria* (Nelag & Company Limited, 2015) 63.
[8] www.americanbar.org accessed on 2nd November 2024.
[9] World Intellectual Property Organization, Arbitration Centre, Geneva.
[10] Section 5, Arbitration and Mediation Act, (AMA) 2023
[11] WF Fox, 'The Wisdom of International Commercial Mediation and Conciliation' in Jacques Werner and AH Ali (eds.) A Liber Amicorum: T Walde- Law Beyond Conventional Thought (London: CMP Publishing Ltd., 2009) 45.

beneficial resolution.[12] Mediation is inexpensive, simple, flexible, confidential, quick, and can lead to a complete settlement of the dispute, without necessarily resorting to complicated legal rules, unless lawyers or legally trained individuals are retained as mediators.[13]

In comparison to litigation, the mediation is not adversarial in nature as there is no casting of blame and apportionment of faults. It is a voluntary and non-binding, involving decisions made only by the parties themselves, not by the mediator and is more confidential in nature. The mediation outcome is consensual and reflects a mutual ground between the parties, thereby reducing the chances of future disputes. This approach is welcomed where certainty and long-term partnership is a key.[14] The prevalent usage of mediation and its continuing development as a tool for dispute resolution[15] has endeared the process to stakeholders in the Nigerian oil and gas sector as it is a speedy and cost-effective dispute resolution mechanism. In the oil and gas industry where disagreement take a vertical structure, for example, between a powerful entity and a relatively less influential individual, it is best to adopt the mediation process in resolving disputes between the oil companies and the local communities,[16] even in disputes concerning environmental impact assessment of some petroleum-related projects with immitigable substantial negative environment consequences.[17] The reason why mediation procedure is desirable is because unlike a situation with legal action where there is always the victor-and vanquished attitude, the likelihood of sustaining ongoing relationships is paramount in a mediation process.[18]

3. Advantages of Arbitration and Mediation

Arbitration and mediation are popular alternative dispute resolution mechanisms of dispute resolution in the oil and gas industry recognized by the Arbitration and Mediation Act 2023 and the Petroleum Industry Act 2021. The advantages of using these mechanisms for the resolution of disputes in the oil and gas industry involving IOCs instead of litigation are listed below.

3.1 Neutrality of Process

Oil and gas contracts frequently involve parties from different national jurisdictions and no party to a contract is willing to be subjected to the national jurisdiction of another party which would be the case if the parties were to submit a dispute to the courts of a host country.[19] In order to avoid a any advantage of the other party, it is common for parties to choose arbitration for the neutrality of the process.[20] Under arbitration, parties agree in the contract after the dispute has arisen for neutral

[12] United Nations Office on Drugs and Crime, Training Manual on Alternative Dispute Resolution and Restorative Justice, 2007 <https://www.unodc.org/documents/nigeria//publications/Otherpublications/Training_manual_on_alternative_dispute_resolut ion_and_restorative_justice.pdf> (accessed on 2 October 2023).

[13] JA Tan, WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts, 15

[14] JI Mohammed, 'Dispute Resolution in the Oil and Gas Industry: An Appraisal of Mediation and Litigation Procedures,' (2017) 2 (1) *Journal of Private and Business Law*, 119

[15] E Sussman, 'Combination and Permutations of Arbitration and Mediation: Issues and Solutions' in Arnold Ingen- Housz (ed.) ADR in Business: Practice and Issues across Countries and Cultures Volume II (The Netherlands: Kluwer Law International, 2011) 382.

[16] UC Ilegbune, 'Mediating Community/Company Environmental Disputes in the Oil and Gas Industry: A Guide for Promoting Environmental Mediation in Emerging Economies Focus on Nigeria,' Unpublished Dissertation, <https://static1.squarespace.com/staric/5bb24d3c9b8421e87bbb6t/5c2a846d70a6ae0b32f3d8/1546290287882/Ilegbune- mediating-Ugo99.pdf> accessed 2 November 2024

[17] Sections 29, Environmental Impact Assessment Act, Cap. E12, Laws of the Federation of Nigeria 2004

[18] JG Martin and MS Anshan, *Alternative Dispute Resolution for Oil and Gas Practitioners* (Chicago Illinois: American Bar Association, 2001) 5.

[19] RW Bentham, Arbitration and Litigation in the Oil and Gas Industry" (Vol. 5, No.2 *International Energy Law and Taxation Review*, 1986) 35.

[20] ML Moses, The Principles and Practices of International Commercial Arbitration, 2nd Edition, Cambridge: Cambridge University Press, 2012, 3.

arbitrators,[21] neutral arbitral institution,[22] neutral rules and neutral seat of arbitration[23] for the settlement of the dispute. In order to ensure the neutrality of arbitrators the ICC rules requires that in confirming or appointing arbitrators, the court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals.'[24] This requirement is premised on the common law principle of 'nemo judex incausa sua', that is, no one can be a judge in his own case. The main purpose is to ensure that arbitrators are impartial and independent in their decision making. The International bar association rules of ethics for international arbitrators also requires arbitrators to be free from bias.[25] Impartiality or lack of independence on the part of an arbitrator is a ground for challenging the arbitrator[26] on the ground of public policy[27] and awards procured under impartiality will not be valid under the New York Convention on the ground of public policy.[28]

3.2 Party Autonomy

Arbitration and mediation gives parties a degree of autonomy which is unavailable under litigation and party autonomy is a fundamental principle in international commercial arbitration.[29] This principle is embodied in both international and national laws of arbitration. Article 19 (1) of the UNCITRAL Model Law provides that subject to the provision of this law, the Parties are free to agree on the procedure to be followed by arbitral tribunal in conducting the proceedings.[30]

In the United Kingdom, the Arbitration Act of 1996 recognizes the freedom of parties to agree on how they want their dispute to be resolved.[31] In both ad-hoc arbitration and institutional arbitration the parties are generally free to choose arbitrators, seat of arbitration and the governing law of arbitration. However, in institutional arbitration, where parties fail to agree on the choice of arbitrators and seat of arbitration, the arbitral institution will choose arbitrator and the rules of the institution will apply.[32] Arbitrators chosen by parties are normally persons with expertise in the industry and the principle of party autonomy in arbitration have been recognized and upheld by the courts of law, including the English case of Jivraj v. Hashwan[33] where the Supreme Court overruled

[21] Arbitrators may be chosen by parties themselves particular in ad hoc arbitration.
[22] Parties may choose an institution to administer arbitration from a range of existing institution such as the International Chamber of Commerce (ICC) which is based in Paris, France; or the London Court of International Arbitration (LCIA) based in London, UK; or International Centre for the Settlement of Investment Disputes (ICSID) based in Washington, USA.
[23] Parties may choose rules of arbitration from a range of existing rules, including ICC rules, LCIA rules, ICSID rules, UNCITRAL rules, IBA rules or they may make their own rules.
[24] International Chamber of Commerce, 2012 ICC Rules of Arbitration English Version, Article 13 (1) < http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/Rules-of-arbitration/Download-ICC-Rules-of-Arbitration/ICC-Rules-of-Arbitration-in-several-languages/> accessed 10th October 2024.
[25] International Bar Association, Rules of Ethics for International Arbitrators, Rule 1 < http://www.int-bar.org/images/downloads/pubs/Ethics_arbitrators.pdf > accessed 5th November 2024.
[26] International Chamber of Commerce, 2012 ICC Rules of Arbitration English Version, Article 14 (1).
[27] Alam, N., Independence and Impartiality in International Arbitration-An assessment Vol.1 No.4 OGEL, 2003.
[28] United Nations, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V (2) (b) < http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf > accessed 5 November 2024.
[29] Pryles, M. Limits of Party Autonomy in Arbitral Procedure <http://www.arbitration- icca.org/media/0/12223895489410/limits_to_party_autonomy_in_international_commercial_arbitration.pdf > accessed on 5th November 2024.
[30]United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006, Article 19 (1) < <http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf > accessed 5th October 2024.
[31] The United Kingdom, Arbitration Act, 1996 Section 1 (b).
[32] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006, Article 19 (2).
[33] [2011] UKSC 40.

the Court of Appeal's decision which had the effect of challenging the party autonomy in arbitration in particular with regard to their freedom to choose arbitrators with specific qualifications.

3.3 Cost Effectiveness and Speed

Another factor which make arbitration more preferable than litigation is its inexpensiveness because unlike arbitration, litigation is a slow and very costly means of dispute resolution where these costs are mainly attributable to the fees payable to the advocates or lawyers and the lengthy court process which may involve several appeal proceedings. The high cost of arbitration is said to be caused by arbitrator fees, payment to the arbitral institution and related costs. Parties in oil and gas dispute are interested in the length of time within which their dispute will be resolved without interruption to the petroleum operations and arbitration is said to take relatively shorter time than litigation mainly due to the fact that it involves less discovery and that the award is not appealable except on the exceptional circumstances.

3.4 Enforceability of the Award

Among the greatest merits of international arbitration is the enforceability of the award and under the New York Convention,[34] contracting states are obliged to recognize and enforce an award unless there are serious procedural irregularities, or problems that go to the integrity of the process. Contracting states are required not to impose more difficult conditions in recognition and enforcement than are necessary in accordance with the New York Convention,[35] which is applicable to the recognition and enforcement of arbitral awards made in states other than the state where the recognition and enforcement of such awards are sought and arising from differences between persons.[36] It also applies to awards not categorized as domestic awards in the state where their recognition and enforcement are pursued.[37] The New York Convention is considered as the most important international treaty in respect of international commercial arbitration which is also regarded as a major factor in the development of arbitration as a means of resolving international trade disputes. There are 149 contracting states to the New York Convention[38] and this makes the enforcement of arbitral award easy and more widespread in the sense that a party to a dispute is able to enforce an award rendered in one contracting state into any of the other contracting states. Furthermore, the principle of separability of arbitration agreement or clause allows the parties to arbitrate and eventually enforce an award even if the main contract within which the arbitration clause is incorporated is declared null and void. Various laws and rules of arbitration incorporate the doctrine of separability including Article 16 (1) of the UNCITRAL Model Law which states that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.[39]

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[34] The United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) (1958). The Convention was prepared and opened for signature on 10 June 1958 by the United Nations Conference on International Commercial Arbitration, convened in accordance with resolution 604 (XXI) of the Economic and Social Council of the United Nations adopted on 3 May 1956.

[35] The United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) (1958), Articles III and V.

[36] The United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) (1958), Article 1.

[37] Ibid.

[38] United Nations, Treaty Collections <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&lang=en > accessed 5th October 2024.

[39] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006 < http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf > accessed 23 November 2024; also LCIA Rules, Article 13(1); UNCITRAL Rules, Article 23 (1).

3.5 Confidentiality of Proceedings

One of virtues of arbitration is that their proceedings are confidential and in arbitration agreement the parties agree to keep arbitration proceedings confidential, including all documents, evidence, orders and awards.[40] Arbitration is seen as advantageous compared to litigation which is usually open to the public except in few circumstances. The privacy of arbitration proceedings refers to the ability of uninvited third parties to access and observe proceedings and disclose the facts relating to the arbitration without the consent of parties or arbitrator. Confidentiality of proceedings refers to the ability of disputing parties, the arbitrator, and witnesses keeping the process confidential and private. Arbitration is private in the sense that its proceeding are not openly accessible to the public and confidential as all matters are kept private between the parties.

3.6 Non-Adversarial

Arbitration is a non-adversarial method of dispute settlement and according to the Black's law dictionary an adversarial approach to justice is a process where each party to the dispute presents arguments and evidence for their preferred outcome and a judge or jury strives to serve as a neutral decision maker regarding which party has provided the most convincing case under the relevant law.[41] The practical difference between the adversarial and non-adversarial methods of dispute resolution is that the adversarial approach is premised on the winner-take all principle whereas non-adversarial approach is based on the win-win principle. In the oil and gas industry where parties are keen to maintain relationships after the dispute, the win-win principle of arbitration is more appropriate than the winner take all principle as seen in litigation. In this regard arbitration has a special advantage over litigation in terms of maintaining the business relationships between parties after the end of a dispute resolution process.

4. Procedural Issues and Problems in Oil and Gas Arbitration

Every arbitration is unique to some degree but it is nonetheless fair to say that many oil and gas arbitrations involve similar procedural and jurisdictional issues. For example, it has become relatively common for dispute resolution provisions in oil and gas contracts to be in the form of a 'tiered' provision that requires the parties to attempt to negotiate or mediate a settlement of their dispute before the arbitration is commenced. Such provisions often give rise to issues concerning whether one or more of the parties have satisfied conditions precedent to arbitration and to associated allegations that the arbitral tribunal lacks the authority or jurisdiction to adjudicate the party's claims. This is because many oil and gas projects are time sensitive and require continuity in order to avoid loss or harm caused by delays, making oil and gas arbitrations often feature requests for emergency arbitral relief or the issuance of emergency or conservatory measures by the arbitral tribunal.

Oil and gas arbitrations can involve complicated issues at the pre-hearing stage because oil and gas operations involve complex technology that can generate unprecedented volumes of data. Therefore, disputes regarding the scope of discovery and information exchanges in oil and gas arbitrations often ensue and are of great importance to the parties. Often the desired information is in the possession of third parties, whether they be service industry contractors, manufacturers, or upstream, midstream, or downstream players with the result that requests for the issuance of third party subpoenas are not uncommon.

Many oil and gas companies are involved in both domestic and international operations and as a result have substantial experience in innovations first advanced in international operations and as a result, many domestic oil and gas operations now feature the use of written direct testimony. Other innovations from other sectors, such as the construction industry for example, the use of so-called

[40] V Rajora, 'Confidentiality in Arbitration" (Institute of Law, Nirma University), Social Science Research Network < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1572221 > accessed 5th October 2019.
[41] BA Garner, (ed.), *Black's Law Dictionary (*9th Edition, London: West, 2009). 62.

hot-tubbing of expert witnesses are now common in oil and gas arbitrations. The problem with international commercial arbitration is that you cannot put it neatly into the pigeon hole of any one single country's legal system and it is often conducted under rules of an arbitration institution and no two sets of rules are the same.

Moreover, the parties to arbitration may also add their own individual twist to their arbitration by agreeing on special procedure to apply and this has an effect for someone coming to international commercial arbitration for the first time, it becomes difficult to know where to start, what the important issues are going to be and how the arbitration proceedings should be approached and conducted.[42]

Another major problem of international arbitration is the lack of uniform procedures in settling disputes especially in Africa and Asia. The proliferation of the ways of settling disputes in different parts of the world which is tied to cultural differences. The Asian approach to settling dispute is consensual whereas the western approach is confrontational which is legalese and formalistic and may adversely affect the relationship of the parties involved.

Perhaps, there is still very little arbitration expertise in the developing countries in either the Bar or the Bench compared to that in other developed countries,[43] such as the U.S, Australia, Hong Kong and Canada. There is also limited professional arbitration centers to make arrangements for regular training programmes to update professionals and judges with the knowledge of recent developments in the field of arbitration. Knowledge, skills and expertise are crucial to effective arbitration and many African and Asian countries are still lagging behind or inadequate in this respect.[44]

5. Ways of Tackling Problems in International Transactions

Oil and gas contracts often involve the expenditure of large sums of money and the attendant allocation of significant risks and benefits. Many oil and gas contracts also are long-term in nature. In other instances, an oil and gas contract of a relatively short term nature or of relatively modest value might be critical to the parties' ongoing business or constitute a significant source of income for one of the parties. When disputes arise under oil and gas industry contracts, there are often urgent reasons why the dispute must be resolved promptly and with sufficient clarity to ensure the protection of the parties' rights and the enforcement of the parties' obligations. In other words, the parties need clarification regarding how the contract should be performed for the remainder of its term. One or both sides may have trade secret, trademarked, or patented information the value of which rests upon its confidentiality and may be unwilling to risk publicly exposing their property rights and interests in court filings. A party might also need a prompt resolution of the parties' dispute for financial reasons. Regardless of the nature of the dispute, binding arbitration almost always provides a pragmatic and efficacious means of resolving commercial disputes that arise in the oil and gas industry. Many arbitration institutions readily acknowledge the need for qualified arbitrators with specialized experience in the oil and gas industry.

Moreover, there should be provision of proper expertise for the determination of oil and gas disputes in the oil and gas industry and a uniform procedure for all arbitration and mediation mechanisms in the oil and gas industry. The provision of arbitrators with specialist knowledge to handle all oil and gas disputes in the oil and gas industry due to overlapping commercial interests and long term contractual relationships between oil and gas companies which militates against litigation that is very expensive, time consuming, adversarial and destructive of good relations. The law and

[42] Y. Oke, Nigerian Energy Resources (2019).416.
[43] MC Koh, Enhancing Economic Co-operation: A Regional Arbitration Centre for ASEAN? (2000) 49 ICLQ, 390.
[44] JK. Schaefer, Leaving the Colonial Arbitration Laws Behind: Southeast Asia's Move into the International Arbitration Arena, (2000) 16:3 Arb.Int'l, 207.

procedure of arbitration proceedings needs to be streamlined toward uniformity for the purpose of the energy sector. It is necessary that the legal structures and related mechanisms put in place are ascertainable and predictable for energy business to thrive and become profitable for all stakeholders. This is because parties choose the applicable law without which the relevant international arbitration rules or the conflict of laws rule of the seat of arbitration would resolve the point of law applicable to the enforcement of the award will be the country in which the enforcement is sought.

6. Conclusion

In a nutshell, in arbitration parties choose a neutral venue for the resolution of their dispute as well as choose arbitrators who are not nationals of a country which is not a home country of either party to the dispute and have no relationships with any party to the dispute. As a result, this makes arbitration a neutral process and party autonomy is a decisive factor in the parties' preference for international arbitration to litigation. The parties to arbitration own the dispute resolution process in the sense that they determine the governing law, the rules of arbitration and the number and qualification of arbitrators. The fact that a winning party to arbitration is able to enforce the arbitral award pursuant to the New York Convention means that parties to the dispute can be assured of redress whenever damages have been occasioned by the other party to the contract. Arbitration is a non-adversarial method of dispute resolution which is premised on the need for a win-win outcome of the dispute resolution process. This implies that arbitration enables parties to maintain good relationships even after the arbitration process is over and this is vital in ensuring continuity in the oil and gas operations which is favourable to international oil companies in the upstream sector.