

THE LEGAL FRAMEWORK FOR THE INSTITUTIONALISATION OF INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIA: A CRITICAL REVIEW

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ABSTRACT

Considering the need to enhance commercial activities in Nigeria and the indisputable right of international parties to resolve disputes through arbitration, the desire for Nigeria to sign and ratify the New York Convention cannot be over emphasized. Unquestionably, the administration of justice through our regular courts is usually beleaguered with delays for diverse reasons. An attempt to combat these delays and ensure swifter dispensation of justice has seen the emergence of arbitration in its effective use in Nigeria. The need for speed, resulting in more efficiency and economy in contract drafting, has always dominated international commercial transactions. Thus, the need for resorting to arbitration is more compelling considering the lethargic attitude of Nigerian courts to the resolution of sophisticated commercial disputes.

This paper seeks to examine the mechanisms through which there has been an implantation and implementation of international commercial arbitration legal regime in Nigeria. The work attempts a critical analysis of relevant extant laws in use in Nigeria and the effectiveness as well as efficiency of these laws. A detailed explication of the different international legal regime of commercial arbitration has been highlighted with the ultimate aim of adverting Nigerian as bedrock of sustainable resolution of commercial disputes through the instrumentality of arbitration in sub-Saharan Africa. The work thus queries the receptive nature of our national courts towards the enforcement of foreign arbitral award.

Keywords: *International Commercial Arbitration, New York Convention, Enforcement, Nigeria.*

1. INTRODUCTION

Considering the need to enhance commercial activities in Nigeria and the indisputable right of international parties to resolve disputes through arbitration, the need for Nigeria to sign and ratify the New York Convention¹ cannot be over emphasized. Due to disparities between the systems of thinking, national ideologies and methods of conducting business in the various regions of the world, a national of a particular jurisdiction will be more likely to present a more convincing case by the standards of the court of her jurisdiction than will a foreigner.² The negative perception of a judge's national predisposition may prevent parties with different

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¹ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award. United Nations Treaty Series, vol. 330, No. 4739. Done in New York on 10th June 1958. [‘New York Convention’]

² C. Lecuyer-Thieffry & P. Thieffry, (1990). ‘Negotiating Settlement of Disputes Provisions in International Business Contracts’, 45 Business Lawyer, 577

national or cultural backgrounds from agreeing on a suitable court to hear their disputes.³ The necessary implication of the foregoing is that once a court pronounces on a matter, it can only have a binding effect or force within that judicial territory and not beyond, save for situations where other jurisdictions have agreed to allow such judgments' enforceability within their own territories. Two schools of thought have emerged from the foregoing.⁴ Firstly, by analogy, the theory of reciprocity implies that Nigerian courts should recognise and enforce the judgments of Ghanaian courts, if and only if, Ghana is prepared to offer similar recognition and enforcement to Nigerian judgments. This theory is necessary when one thinks of the fact that policies can eventually be altered by states varying their patterns of behavior and causing one custom to supplant another. Secondly, the theory of obligation implies that the judgment of a court of competent jurisdiction imposes a duty or obligation on a defendant (foreign party) to comply with the terms of a given judgment, which the courts in the foreign party's country are bound to enforce. Where there is anything, which negatives that duty, a defense to an action could arise.⁵

Indubitably, the administration of justice through our regular courts is usually beleaguered with delays for diverse reasons. An attempt to combat these delays and ensure speedy dispensation of justice has seen the emergence of arbitration in its effective use in Nigeria even at an overwhelming proportion. Arbitration is a means of achieving mutually acceptable solution to disputes between parties without recourse to litigation. In fact, this form of dispute resolution discourages delays and a degeneration of an adversarial culture in the attainment of civil justice. The dividends of recourse to arbitration as a form of alternative dispute resolution are not farfetched: the parties can choose the arbiter so that confidentiality is maintained. Besides, it is not adversarial like in the regular courts. Indeed, the use of arbitration has its setbacks: it suffers the same adversary principles as normal court adjudicatory proceedings under the common law. Thus, it has been strongly argued that arbitration does not fall within alternative dispute resolution mechanisms (ADR). Despite these, parties to contractual agreements more often than not prefer arbitration as an effective means of settling disputes to any other ADR mechanisms. It not only reduces parties' expenses and time, it is more expeditious than the regular courts. The need for speed, resulting in more efficiency and economy in contract drafting, has always dominated international commercial transactions.⁶ Thus, the need for resorting to arbitration is more compelling considering the lethargic attitude

³ Asouzu, A, (2001), *International Commercial Arbitration and African States: Practice, Participation and Institutional Development*. 34 Cambridge University Press

⁴ See section 3 of the Foreign Judgments (Reciprocal Enforcement) Act. Cap F35, Laws of the Federation of Nigeria, 2004. [The recital to the Act indicates that the Act makes provision for the enforcement in Nigeria of judgments given in foreign countries which accord reciprocal treatment to judgments given in Nigeria, for facilitating the enforcement in foreign countries of judgments given in Nigeria.] See also Shaw, M.N. (2005), *International Law*, 5th edition, Cambridge University Press, 7-8. The rule of reciprocity dictates that States act reasonably and moderately in the exercise of their discretion and jurisdiction in the expectation that this will similarly encourage other states to act reasonably and so avoid confrontations.

⁵ Blackburn J, in *Schibsby v. Westenholz* (1870) LR 6 QB, 155 at 159. The foregoing dictum is persuasive on Nigerian jurisprudence considering the fact that Common Law and Judicial Precedents still remains one of the sources of Law in Nigeria.

⁶ Klaus Peter Berger, *Private Dispute Resolution in International Business. Negotiation, Mediation, Arbitration*. Vol II. Wolters Kluwer, 10.

of Nigerian courts to the resolution of sophisticated commercial disputes.⁷ This work therefore attempts a critical analysis of the different legal regime of international commercial arbitration in Nigeria. It draws semblance from the consciousness been implanted into Nigerian legal jurisprudence through compulsory recourse to those mechanisms that will bring speedy resolution of disputes. There is no doubt that Nigeria has sufficient laws to cope with the resolution of disputes through arbitration. Thus, this work questions the rationale for the ineffective use of standard and international laws in Nigeria vis-a-vis international arbitration with a view to identifying the grey areas and the need for reform. It also queries the receptive nature of our national courts towards the enforcement of foreign arbitral award.

2. COURT, COUNSEL AND PARTIES: TRIPOD EFFORTS FOR OPTIMAL SUBMISSION.

Much credit must be given to the Nigerian courts for encouraging the use of alternative means of dispute resolution. Order 25 R(l) (2) (c) of the *High Court (Civil Procedure) Rules of Lagos State (2004)* makes provisions for the promotion of amicable settlement of cases or adoption of Alternative Dispute Resolution. Section 24 of the *High Court Laws of Lagos State 2003* also provides to the same effect.⁸ One way of achieving the foregoing is by reference of disputes to arbitration, for instance, even where parties have not contracted to so do.⁹ Article I of the Practice Direction of 2002 made pursuant to Section 274 of the 1999 Constitution¹⁰ in Lagos and Practice Direction of 2003 in Abuja made pursuant to section 259 of 1999 Constitution¹¹ enjoin the courts, counsel and parties already in litigation and even parties not yet in litigation to use ADR procedures where appropriate. A presiding Judge may therefore order and or refer an on-going case to the instrumentality of arbitral proceedings. All hands must therefore be on the deck to ensure that arbitration is accorded its rightful place in the legal environment in Nigeria. Even where lawyers are reluctant to take matters before an arbitral tribunal for obvious reasons¹² parties should insist such preferred means of settling disputes. It is therefore evident from

⁷ In *IPCO (Nigeria) Ltd v. N.N.P.C* [2008], EWHC, 726 797 (Comm), the English Court was taken aback when it learnt that the Nigerian Court was still entertaining a set-aside proceeding over an arbitral award for three years and there was no hindsight that the case was nearing any completion.

⁸ Section 24 of the High Court Laws of Lagos State provides that in civil cases when there is any action in the High Court, the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof. For criminal matters, section 25 is instructive, it provides to the effect that in criminal cases the High Court may encourage and facilitate the settlement in an amicable way of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court.

⁹ Order 17, Rule 1 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2004 provides that A Court or Judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either. - (a) Arbitration; (b) Conciliation (c) Mediation; or (d) any other lawfully recognized method of dispute resolution. See also Order 19 Uniform (Civil Procedure) Rules, [High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules)] Act Cap 511 Laws of F.C.T. for copious reference to arbitration.

¹⁰ Section 274 of the 1999 Constitution of the Federal Republic of Nigeria provides that: Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State.

¹¹ Section 259 provides to the effect that: Subject to the provisions of any Act of the National Assembly, the Chief Judge of the High Court of the Federal Capital Territory, Abuja may make rules for regulating the practice and procedure of the High Court of the Federal Capital Territory, Abuja.

¹² Incompetence and the thinking that practice before arbitral tribunals will lead to poverty.

the analysis above that the Courts have created a robust milieu for the institutionalisation of arbitration as an alternative to litigation.

3.0 LEGAL REGIME OF INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIA.

3.1 Arbitration and Conciliation Act.¹³

The earliest attempt at consolidating arbitration in Nigeria was in 1914 when the first statute was enacted- the Arbitration Ordinance of 1914, which applied to all the parts of the country.¹⁴ Expectedly, the Nigerian Arbitration Ordinance was modeled after the English Arbitration Act 1889 in view of its colonial history. Later that year the ordinance was replaced by an Act and became Arbitration Ordinance Act, 1914. In 1954, the Act applied to all the regions in the country.¹⁵ It is interesting to note that the application of the Act relates to both domestic and international arbitration.¹⁶

The extant law on arbitration in Nigeria is the Arbitration and Conciliation Act 1988.¹⁷ The aim of the Act is to provide a unified legal framework for the fair and efficient settlement of commercial¹⁸ disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of international commercial arbitration.¹⁹ Part III of the Act²⁰ relates to the International Commercial Arbitration. Section 48 sets the grounds under which an arbitral award may be set aside.²¹ There is no striking difference from the provisions of Article V of the New York Convention.

¹³ Cap A18, Laws of the Federation of Nigeria, 2004. [ACA]. The Act incorporates the New York Convention.

¹⁴ 1914 Nigeria Ordinance, Orders and Regulations, 199. This was issued as Chapter 9 of the 1923 edition of the Laws of Nigeria and later as Chapter 13 of both 1948 and 1958 editions of the Laws of the federation of Nigeria { Ch. 9, 92 (1923); Ch. 13, 204(1948); Ch.13, 204(1958)} see further Charles Mwalimu, Peter Lang, The Nigerian Legal System, 2009, 646,658).

¹⁵ The regions then in existence in Nigeria were Northern, Western, Eastern, Mid-Western Regions and the Federal Territory of Lagos, the then Southern Cameroons.

¹⁶ This Act was later to be incorporated into the Laws of the Federation of Nigeria, 1958 as this was the year Nigeria had the first set of organized laws.

¹⁷ See note 13. The Act was enacted by a military decree in 1988 and came into effect on 13th March, 1988.

¹⁸ 'commercial' as defined under section 57 (1) includes "all relationships of a commercial nature including any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, constructing, engineering licensing, investment, financing, banking, insurance, exploitation, agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road."

¹⁹ See the recital to the act.

²⁰ Sections 43-55 of the Act

²¹ Section 48 provides thus:

The court may set aside an arbitral award-

- (a) If the party making the application furnishes proof-
 - i. that a party to the arbitration agreement was under some incapacity,
 - ii. That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria,
 - iii. That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case, or

The procedural requirements²² mentioned in the second ambit of the section indicates that, by using the word ‘shall’ which is a legal imperative, compliance must be followed vigorously, otherwise there could be refusal to enforce the foreign award. In *Imani & Sons Ltd. V. BIL Construction Co. Ltd.*,²³ the Court of Appeal held that in addition to the Motion on Notice expected to be filed by the party seeking enforcement, the party also needs to adhere to the following simple requirements:

- 1) The Arbitration Agreement;
- 2) The Original Award;
- 3) The name and last place of business of the person against whom it is intended to be enforced;
- 4) Statement that the award has not been complied with, or complied with only in part.

The writer strongly believes that Nigerian Courts added items 3 and 4 above to the requirements as contained under ACA, since nothing in ACA says the last two items should be added. Reasons for these are not farfetched. Courts guard their jurisdiction jealously and would not want their judgments to be given without any effect; hence, they want to verify whether the party against whom the award is to be enforced, if a company for instance, is still a going concern.²⁴

The foregoing legal regime is an indication that Nigeria possesses adequate provisions for the institutionalization of arbitration in Nigeria. These laws provide a specialized and highly-supportive legal regime for most contemporary international commercial arbitrations. The legal regime provides an enticement for the conduct of international trade. With an efficient and effective judicial system, free flow of commercial transactions will be encouraged. But the question remains, why is there is such apathy towards arbitration. An attitudinal problem could be attributable to this. Considering the speed that arbitration demands, it is unacceptable for arbitral cases to take more time than necessary in the law courts, where parties seek enforcement of the arbitral award. This is where the problem lies in Nigeria. On the part of Nigerian judges, the experience to cope with the technical nature of arbitration proceedings seems lacking. For the lawyers, delay tactics, evidence of the inglorious

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- iv. That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or
 - v. That the award contains decisions on matters which are beyond the scope of submission to arbitration, so however that the if decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decision on matters not submitted to arbitration may be set aside, or
 - vi. That the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or
 - vii. Where there is no agreement between the parties under subparagraph (vi) of this paragraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or
- (b) if the court finds-
- i. that the subject-matter of the dispute is not capable of settlement by arbitration under laws of Nigeria; or
 - ii. That the award is against public policy of Nigeria.

²² An originating application (Motion on Notice) is brought before the requisite court (Federal High Court or the relevant State High Court).

²³ [1999] 12 NWLR [Pt. 630] 253 at pg 263.

²⁴ See also Emilia Onyema,(2010). Enforcement of Arbitral Awards in Sub-Sahara Africa, LCIA, .26, (1), 2010.

litigious years, readily overshadow their sense of judgment. The parties are thence at a fix.

The recent case of *CTT Ltd v. FRN and 4 ors* attests to the foregoing assertion.²⁵ In that case, an arbitral award was obtained by the Claimant in a Nigerian court. The time limit to seek annulment of the award in Nigeria expired on 15th November, 2008. The defendants, all Nigerian parties did not bring any application before the court. On April 2009, (Four months after the deadline to seek for annulment) the Nigerian parties applied for an injunction to prevent enforcement of the award by the Claimant and for an extension of time to apply to challenge the award. Before those proceedings were initiated by the Nigerian parties, the Claimant sought the enforcement of the award in England and the United States (US) against one of the defendants²⁶ properties. The US court dismissed Nigeria's defense to enforcement and denied its request to adjourn enforcement pending the Nigerian annulment court action.²⁷ In England, the Court granted an interim order to enforce the award against the defendants until 24th June, 2009, hoping the Nigerian action would have been determined by then. On 23rd November, 2009 the defendants applied to the court to have all orders set aside or stayed. The English High Court initially granted a stay on condition that the defendants provide security in the amount of UK 100 million pounds. The court held that the mere fact that an application was brought to set aside an arbitral award in the country of rendition does not mean that the award has been set aside or automatically suspended. The court has discretion to order a stay pending annulment proceedings. This case is peculiar as other cases involving Nigerian and foreign parties. It is disheartening, as indicated by the court, to note that the defendants' application before the English courts did not show that their application to challenge the validity of the award had a real prospect of success, since there was Nigerian law evidence before the court to rebut it.

Aside corruption that has consumed the entire foundation of the Nigerian society, one would have expected the personnel at the Federal Ministry of Justice together with the competent Counsel representing Nigeria to have done a better defense. Such tardy and lethargic preparation is to say the least unwarranted and unjustified. More so the case comes up before a foreign court. Indeed the annulment application appeared to involve delaying tactics. This is a direct replica of the regime that permeates litigation in Nigeria. The English court noted and rightly so that the potential substantial delay caused by a stay (it was unclear when the Nigerian annulment action would be heard) would result in significant prejudice. What would the defendants be doing for four months after the expiry of the period set aside for annulment of an award? Such dispositions thus not support the regime of international commercial arbitration in any guise. It is instructive to note here that the above case shows the lassitude of Counsel and parties. The same delaying tactics played out itself in an earlier case of lethargy on the part of the Nigerian judiciary. In *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corporation*,²⁸ the Claimant obtained an arbitral award on the 28th October, 2004. While the defendants application to the Court on 15 November, 2004, to set aside the award was still pending, IPCO approached the English High Court seeking for an order to enforce a part of the arbitral award that was not open to serious challenge. On November 29, 2004 the English Court enforced the arbitral award. The English court while

²⁵ Yearbook Commercial Arbitration, Volume XXXV (2010), 474. Available online at www.bailii.org, accessed

²⁶ The Nigerian National Petroleum Corporation. <http://www.nnpcgroup.com/>

²⁷ See note 25 at US no.296, footnote 1.

²⁸ [2008], EWHC, 726 797 (Comm.)

deferring to the set-aside proceedings in Nigeria adjourned the proceedings in England. In 2008, when the Nigerian decision was not forthcoming, IPCO approached the English courts again for the partial enforcement of his arbitral award. Between 2004 and 2008 is an incredibly long period of time for Nigerian courts to decide a set-aside application in an arbitral proceeding. The implication of the foregoing is that Nigerian courts should take the issue of arbitration proceedings very seriously. Unnecessary delay and bureaucratic bottlenecks only divest Nigerian courts the jurisdiction of arbitration matters. If Nigeria is to position itself as the hub of international arbitrations in the future, foreign parties have to be assured that our laws are efficient and enforcement mechanisms are effective

Thus, it will be safe to conclude that to reach an enviable status where Nigeria will be chosen more frequently as the hub of international commercial arbitration, Nigerian laws and the enforcement of such laws have to be in tune with the dictates of modern trend.

3.2 The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award. ('New York Convention')²⁹

No effective discourse on International Commercial Arbitration and the enforcement of foreign arbitral award can be made without an effective analysis of our reception of the Convention in Nigeria. Despite its brevity, the Convention is now widely regarded as “the cornerstone of current international commercial arbitration.”³⁰ The Convention provides certain rules as a matter of uniform applicability for national courts to adhere to. These rules require national courts to recognize and enforce foreign arbitral awards, subject to specified exceptions;³¹ recognize the validity of arbitration agreements, subject to specified exceptions;³² and Refer parties to arbitration when they have entered into a valid agreement to arbitrate under the Convention.³³

Article I (1) of the Convention gives a basis for two definitions of arbitral award;³⁴ the first definition³⁵ applies to awards made in any other State. Thus, any

²⁹ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award. United Nations Treaty Series, vol. 330, No. 4739. Done in New York on 10th June 1958. [‘New York Convention’]. The standard reference works on the Convention are A. van den Berg, *The New York Arbitration Convention of 1958* (1981) and G. Gaja, *International Commercial Arbitration: The New York Convention* (1978). Note that the New York Convention was ratified and domesticated and thus became part of our national laws by the National Assembly pursuant to Nigeria’s Constitution. See Section 12 of Nigeria’s 1999 Constitution which provides that: 12 (1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation...for the purpose of implementing a treaty. Section 54 of the ACA incorporates the New York Convention under the Second Schedule of the Act and has become applicable in our national courts ever since.

³⁰ A. van den Berg, *The New York Arbitration Convention of 1958* 1 (1981). A. Redfern & M. Hunter (eds.), *Law and Practice of International Commercial Arbitration* 3-04 (4th ed. 2004) (“most important convention in the field of international commercial arbitration”).

³¹ See Articles III and V. “Recognition” of an arbitral award refers to giving preclusive effect to the award, usually to bar re-litigation of the claims that were arbitrated; “enforcement” refers to the invocation of coercive judicial remedies to fulfill the arbitral award.

³² Article II (1) of the New York Convention.

³³ Article II (3) of the New York Convention.

³⁴ Article I(1) provides that this Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It

party can after obtaining award in any other sovereign State, apply to Nigerian courts to have the award enforced, once the procedural requirements have been complied with. However, Article I (1) is limited under Article I (3) to the extent that there exist the principle of reciprocity in applying the Convention to the recognition and enforcement of awards made in the territory of another Contracting State. The scope of application of the second arm of Article 1(1) was clarified in *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corporation*.³⁶ Tomlinson J stated the position of the law as follows:

...Being an award rendered in Nigeria by Nigerian arbitrators in a dispute governed by Nigerian law between two Nigerian entities, this is in every sense a Nigerian domestic award. However, since Nigeria is a state specified by Order in Council under [s.100 (3)], the award is also a [Convention] award. Accordingly it may be recognized and enforced in this jurisdiction pursuant to [s.101].³⁷

Thus the fact that the award in the aforementioned case is purely a Nigerian award is irrelevant under the Convention.³⁸ In *Toepfer Inc. of New York v. Edokpolor (trading as John Edokpolor & Sons)*,³⁹ the Nigerian Supreme Court held that a foreign arbitral award could be enforced in Nigeria by suing upon the award, even where there is no reciprocal treatment in the country where the award was obtained. To succeed in the action however, the plaintiff must prove the existence of the arbitration agreement, the proper conduct of the arbitration in accordance with the agreement and the validity of the award.

It is important to note that under Article II, the definition given to writing seems to be restrictive due to the fact that it does not correlate with the demands of present day international trade and commerce. In contemporary times where vast exchanges of telecommunications in business are concluded via teleconferencing, the author is of the opinion that exchange of agreements done electronically that provides for arbitration even though not signed should be administered under the Convention. Article II (3) mandates courts to refer parties to arbitration unless the courts find the said agreement null and void; inoperative or incapable of being performed. In Nigeria there is overwhelming deference to arbitrator's jurisdiction by the courts.

In *Ras Pa Gazi Construction Company Ltd v. Federal Capital Development Authority*,⁴⁰ the Supreme Court held that the High Court has no power under the Arbitration and Conciliation Act to convert an arbitral award into its own judgment.⁴¹ In fact the only jurisdiction conferred on the Court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award; then it can refuse leave. Certainly an arbitral award is at par with judgment of the Court.⁴² The above case reflects an attempt by the courts of first

shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement is sought.

³⁵ See note 34.

³⁶ (2008) EWHC 797 (Comm.)

³⁷ *Idem* at 799

³⁸ See also Part III of the English Arbitration Act, 1996.

³⁹ [1965] All N.L.R. 307

⁴⁰ [2001] FWLR (Pt. 58) 1013

⁴¹ Cap A18, Laws of the Federation of Nigeria, 2004. ('ACA').

⁴² See note 40 at 1015.

instance to threaten the arbitral process and parties desire to ensure resolution of their disputes through arbitration. What if the parties do not have the financial means to prosecute their case to a higher court? In a situation where a party or Counsel relies on the High Court's judgment in the case above, it is certain that the process of obtaining justice through arbitration would have been thwarted. Without doubt, Nigerian Courts should not in the exercise of their jurisdiction subvert the submission of the parties to arbitration for the resolution of the dispute.

The rule in Article III provides that there shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral award. Thus in *Ebokam v. Ekwenibe & Sons Trading Company*,⁴³ the Nigerian Court of Appeal listed additional requirements needed for a party seeking recognition and enforcement under the Convention. These requirements are as follows:

1. the arbitration agreement;
2. that the dispute arose within the terms of the submission;
3. that arbitrators were appointed in accordance with the clause which contains the submission;
4. the making of the award; and
5. That the amount awarded has not been paid.

These requirements are a further elongation of those requirements under Article III of the Convention, which Nigeria acceded to.⁴⁴ This decision was given by an appellate court and at best could form a judicial precedent, at least, until a proclamation varying or nullifying those requirements come from the Supreme Court, the highest court in Nigeria. Counsel could innocently pursue those requirements in a bid to seek enforcement of their arbitral award. It is therefore suggested that such onerous responsibilities as those placed on the party seeking enforcement should be discouraged so that this jurisdiction will be seen as arbitration friendly.

Article IV provides for documents to submit for recognition and enforcement of arbitral awards. Although by the dictates of Article IV(2), the submission of a translation of the arbitration agreement and arbitral award is mandatory,⁴⁵ needless to say that the requirement of translation can be done away with where the judge knows the foreign language satisfactorily well to have taken full cognizance of the contents of these documents. Article V lists the grounds for refusal of enforcement in general. While Article V (I) is activated only by the parties, Article V (2) is raised *suo motu* by the court where the courts deems it fit. Article VII ensures a more-favourable-right-provision under the second arm of the article and therefore provides for the party seeking enforcement of an arbitral award to rely on the provisions of a domestic law concerning enforcement of foreign arbitral awards or other treaties, instead of the New York Convention.

3.3 THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ("UNCITRAL") MODEL LAW.⁴⁶

⁴³ [2001] 2 NWLR (Pt. 696) 32.

⁴⁴ See note 29 above.

⁴⁵ Considering the use of the word: 'shall produce.'

⁴⁶ United Nations document A/40/17, annex I and A/61/17. Available online at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf. Last visited on 16th February, 2012.

The UNCITRAL Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It has indeed propelled States to dramatically adapt their laws in conformity with modern dictates and trend in international commercial transactions, despite different legal or economic systems of the States. In fact, the Model law recommends an oral arbitration agreement,⁴⁷ which would otherwise be unthinkable especially in third world Countries where States are still grappling with Information Communication and Technology development and much reliance is placed on physical conduct of business. The Model Law was adopted in Nigeria in 1960 making Nigeria a model law country.⁴⁸

In 2006,⁴⁹ however, there was a revision to the Model Law to improve the framework for acceptability and as a result of the technological innovations in the modern world and in the international arbitral process. Nigeria needs to urgently change its current laws to conform with the revised version of article 7 which is intended to modernize the form requirement of an arbitration agreement to better conform to international contract practices. Some salient features of the revised Model Law which Nigeria could draw semblance from are the following:

1. Considering the fact that oral arbitration agreements are found in practice and could be recognized by our national courts, the Model Law's "writing" requirement for arbitration agreements is broadly similar to, but somewhat less demanding than, Article II of the New York Convention.⁵⁰
2. On the principles of *Kompetenz-Kompetenz*⁵¹ and Separability, the Arbitral tribunal's competence to rule on its own jurisdiction is based on courts scrutiny. Article 16(3) provides for immediate court control where the tribunal preliminarily rules that it has jurisdiction. Under the Nigerian legislation, no provision for court control is made in the ACA. These could leave the hitherto fragile arbitral environment to arbitral neophytes to decide on their own jurisdiction. The consequence can be better imagined than experienced.
3. The definition of "commercial" under article 1 of the Model Law unlike the ACA is based on an objective test and not what the national law may regard as "commercial".
4. By treating awards rendered in international commercial arbitration in a uniform manner irrespective of where they were made, the Model Law draws a new demarcation line between "international" and "non-international" awards. This new line is based on substantive grounds rather than territorial

⁴⁷ Article 7 of the Revised Model Law, 2006.

⁴⁸ Binder P., *International Commercial Arbitration in UNCITRAL Model Law Jurisdictions*. (London: Sweet & Maxwell, 2000, p. 241-313.

⁴⁹ Amendments were made to articles 1(2), 7 and 35(2) of the 1985 Model Law; a new chapter IVA to replace article 17 and a new article 2A were adopted by UNCITRAL on 7th July, 2006.

⁵⁰ Article 1 of ACA makes no mention of oral agreement. See Article 7(2) of UNCITRAL Model Law, 2006.

⁵¹ A principle which states that an arbitral tribunal could rule on its own jurisdiction to entertain an arbitral matter.

borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases.⁵²

3.4 UNCITRAL Arbitration Rules⁵³

The *UNCITRAL Arbitration Rules* sets the model for Nigeria's arbitral process. It provides a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad-hoc arbitrations as well as institutional arbitrations. The main objective was to create a unified, predictable procedural framework for international arbitrations without stifling the informal and flexible character of such dispute resolution mechanisms.⁵⁴ The Rules cover all aspects of the arbitral process, providing a model arbitration clause and the conduct of arbitral proceedings.⁵⁵ Section 53 of the *Arbitration and Conciliation Act*⁵⁶ (ACA) has significantly adopted the UNCITRAL Rules.⁵⁷ Thus parties are *ab initio* obligated to make use of the Arbitration Rules once it is acceptable to them.

3.5 International Center for the Settlement of Investment Disputes (ICSID)

ICSID sought to remove major hurdles to the free international flow of private investment posed by non-commercial risks and the absence of specialized international methods for investment dispute settlement. ICSID is an autonomous international institution established under the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" (the Convention).⁵⁸ The Convention entered into force on October 14, 1966, when it had been ratified by 20 countries.⁵⁹ The Convention regulates the conciliation and arbitration of investment (legal) disputes between contracting States and nationals of other Contracting States in accordance with the provisions of the constitution.⁶⁰ Thus only such disputes which have been submitted to ICSID by the mutual consent of the parties will be settled under the Convention.⁶¹ ICSID also regulates its arbitral proceedings through the ICSID Arbitration Rules.⁶²

Nigeria deposited its instruments of ratification on 23rd August, 1965 and the Convention entered into force in Nigeria on 14th October, 1966. The

⁵² See the UNCITRAL Secretariat commentary; document A/CN.9/264.

⁵³ United Nations General Assembly Resolution 31/98, made on 15th december, 1976. See Report of the UNCITRAL on the Work of its Ninth Session, UN Doc. A/31/17. <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/302/81/IMG/NR030281.pdf?OpenElement>. Accessed on 16th february, 2012.

⁵⁴ Report of the Secretary-General on the Revised Draft Set of Arbitration Rules, UNCITRAL, Ninth Session, Introduction, UN Doc. A/CN.9/112, 17, VII Y.B. UNCITRAL 157 (1976).

⁵⁵ Articles. 14, 15-25, 27-29 of the UNCITRAL Arbitration Rules

⁵⁶ Cap A18, Laws of the Federation of Nigeria, 2004.

⁵⁷ Section 53 of ACA provides thus: "...the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with...the UNCITRAL Arbitration Rules or any other international arbitration rule acceptable to the parties." (Emphasis supplied)

⁵⁸ U.N.T.S. 159 (No. 8359) (1966), www/worldbank.org/icsid/. [the Convention]. Produced at Washington, D.C., 18 March 1965. [The Convention].

⁵⁹ There are currently 157 signatory States to the ICSID Convention. Of these, 147 States have also deposited their instruments of ratification, acceptance or approval of the Convention and have become ICSID Contracting States. Available online http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates_Home. Accessed on 18th February, 2012.

⁶⁰ Article 1 of the Convention.

⁶¹ Article 25(1) of the Convention.

⁶² See Rules 32, 37, 41 of the ICSID Arbitration Rules.

Convention was domesticated as a local legislation⁶³ and thus referred to as the International Centre for Settlement of Investment Dispute (Enforcement of Awards) Act.⁶⁴ The Act provides that an ICSID award shall be enforced in Nigeria as if it were an award contained in a final judgment of the Supreme Court if a copy of such an award, duly certified by the Secretary General of the Centre is filed in the Supreme Court by the party seeking its recognition and enforcement.⁶⁵ In *Guadalupe Gas Products Corporation v. Nigeria*,⁶⁶ which deals with the Production and marketing of liquefied natural gas, settlement was agreed by the parties and settlement recorded at their request in the form of an award.

With the advent of democracy in Nigeria and influx of construction and other investment developments, it is envisaged that the optimum utilization of this Convention will be made manifest in practical application.

One curious comment the writer observes from the Convention is that it makes the award rendered under ICSID Convention directly enforceable in signatory states without any standard of review to be applied in national courts.⁶⁷ Failure to comply with the terms of the award could have serious implications on the investment climate of Nigeria. Nigeria could also risk facing the International Court of Justice at The Hague, if a party seeking to enforce an ICSID award feels that the Nigerian government is uncooperative in enforcing the award. Thus, awards rendered in the United States for instance are directly enforceable in Nigeria without the party seeking enforcement approaching our national courts. This is a substantial difference from the New York Convention, where arbitral awards are subject to annulment (in the arbitral seat) and non-recognition (elsewhere).

3.6 The Nigerian Investment Promotion Commission Act⁶⁸

The Act aims at promoting investments in Nigeria. In the light of the foregoing, it contains specific provision for the resolution of disputes arising between an investor (Nigerian or foreign) and any government of the federation of Nigeria. Section 26 of the Act provides that where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement. However, in the event that an amicable settlement cannot be reached, the aggrieved party can proceed to arbitration.⁶⁹

This Act offers a remarkable departure from the conventional recourse to arbitration that other enactment creates. It provides a multi-tiered process towards resolution of disputes. It is thus highly recommended for parties to conclude agreements that will ensure a multi-tiered process of initially seeking amicable and peaceful means of settling disputes before recourse is made to arbitration.

3.7 Foreign Judgment (Reciprocal Enforcement) Act.⁷⁰

⁶³ See section 12 of the 1999 Constitution of Nigeria.

⁶⁴ Cap I20 Laws of the Federation of Nigeria, 2004. (ICSID Convention).

⁶⁵ See Article 54 of the ICSID Convention.

⁶⁶ ICSID Case No. ARB/78/1.

⁶⁷ Articles 53-54 of the Convention.

⁶⁸ Cap N117 Laws of the Federation of Nigeria, 2004. [The Act].

⁶⁹ Section 26 further provides that where one of the parties is a Nigerian investor, the rules of procedure for arbitration will be that as specified in the Arbitration and Conciliation Act. Where one of the parties is a foreign investor, recourse shall be made to the provisions of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties.

⁷⁰ Cap F35, Laws of the Federation of Nigeria, 2004. [The Act].

The effect of this Act is that it applies to registration of foreign judgments given by a competent court or in an international commercial arbitration.⁷¹ A foreign judgment cannot be enforced automatically in Nigeria. This is due to the fact that legal systems are territorially limited.⁷² Such limitation is an indispensable feature of territorial sovereignty.

By virtue of section 3(1) of the Act, only judgments from countries, which accord reciprocal treatment to judgments given in Nigeria, as designated by the Minister of Justice, would be recognized. In *Alfred Toepper Inc. (New York) v. Edokpolor*⁷³ the plaintiff, a New York company brought an action for the enforcement of an award given in a foreign arbitration, which was governed by the law of New York, a State that had no reciprocal arrangement with Nigeria. The defendant argued that since there was no reciprocity between New York and Nigeria the action should be set aside. The Supreme Court held that the lower court ought not to have struck out the suit for lack of reciprocity since the plaintiff could sue upon the foreign judgment under common law. However to do this, the plaintiff must prove the existence of the arbitration agreement, the proper conduct of the arbitration in accordance with the agreement, and the validity of the award. Thus, this case puts to rest the uncertainties that belie foreign judgments obtained in countries that do not have reciprocity agreements with Nigeria. Under common law, what is advisable is that the judgment creditor institutes a fresh action and the foreign judgment is pronounced upon by a Nigerian court. Sadly enough, common law still remains a veritable part of the Nigerian legal system.

A judgment or award obtained in a foreign country may be enforced in Nigeria within six years of the judgment or award.⁷⁴ However, it is not all judgments obtained in a foreign jurisdiction that becomes enforceable in Nigeria. Certain judgments are excluded from the provisions of this Act. It is necessary and indeed apposite to consider the grounds under which foreign judgments can be registered in Nigeria. For a judgment to be registered in Nigeria, such judgments must be pronounced by a superior court of the country of the original court. This applies to both civil proceedings (including awards in arbitration proceedings) and judgments given in criminal proceedings for the payment of money in respect of compensation or damages to an injured party.⁷⁵

The foreign judgment must be a money judgment. The judgment must be for a certain sum. Furthermore, the judgment must be final and conclusive as between the parties.⁷⁶ What this typifies in essence is that such judgments must settle the obligations as well as the rights and liabilities of the parties in the matter. Thus, interim or interlocutory as well as default judgments that do not finally and conclusively determine the obligation of the parties are not registered.

Where however, a matter is on appeal in the original country, the enforcement country can still register the judgment since a court of competent jurisdiction has finally decided the matter, the mere fact that it is on appeal does not remove the fact that it is a final and conclusive judgment.⁷⁷ Similarly, judgments of a non monetary nature such as declarations regarding an existing state of affairs and

⁷¹ Section 2(1) of the Act.

⁷² I.O. Omoruyi, *An Introduction to Private International Law: Nigerian Perspectives*, Ambik Press Ltd, 2005, 281

⁷³ (1965) 1 All NLR, 292

⁷⁴ Section 4 of the Act.

⁷⁵ Section 2(1) of the Act.

⁷⁶ Section 3(2)(a-b) of the Act

⁷⁷ Section 3(3) of the Act.

injunctions either directing or prohibiting a person from doing a particular thing (other than the payment of money) are not registered. Similarly, Judgments directing payment of taxes, revenues and penalties,⁷⁸ judgments in criminal proceedings imposing terms of imprisonment or fines are also excluded from being registered. A judgment shall also not be registered if at the date of the application for registration the judgment has been wholly satisfied⁷⁹ by the judgment debtor or if the judgment could not be enforced by execution in the original court.⁸⁰ Thus a challenge to the registration of the award may cause undue delay and frustrate the intentions of the Act.

Besides, the sum payable under the judgment must be expressed in Naira. If the judgment sum is expressed in a currency other than the Naira, the law requires the sum to be converted into the Naira at the rate of exchange prevailing at the date of judgment.⁸¹ The problem with this provision is that in Nigeria where there are delays in the administration of justice, the constant change in the rate of exchange not unconnected with increasing inflation, one can imagine where a judgment is sought to be registered and the judgment takes almost a decade in Court. Thus it is the considered opinion of the writer that a provision such as interest payable at a stipulated rate till judgment is registered is added to this provision. It will also put off intractable lawyers who may want to frustrate the registration of the judgment.⁸² If at the date of the application for registration, the judgment of the original court has been partly satisfied, the judgment will be registered in respect of the balance due only and not the whole sum.⁸³

The exception to the execution of a foreign judgment as mentioned above is that where an application has been made to set aside the registration of a foreign judgment, execution shall not be issued. The grounds for setting aside a registered judgment are:

- i. the judgment is not a judgment to which Part I of the 1990 Act applies⁸⁴;
or
- ii. the courts of the country of the original court had no jurisdiction in the circumstances of the case⁸⁵; or

⁷⁸ Section 3(2)(b) of the Act

⁷⁹ That is, it has been wholly paid by the judgment debtor.

⁸⁰ proviso to section 4 of the 1990 Act

⁸¹ Section 4(3) of the Act.

⁸² See however Sections 4(2), (a), (b), (c), (d) of the Act. *Adwork Ltd. v. Nigeria Airways Ltd.* (2000) 2 NWLR (Pt. 645) 415.

⁸³ Section 4(4) and section 7(4) of the 1990 Act.

⁸⁴ Section 6(1) (a) (i) of the 1990 Act. Such judgments include money judgments which must be final and conclusive.

⁸⁵ A foreign court will be deemed to have assumed jurisdiction in a case where the judgment debtor who was the defendant in that court: submitted to the jurisdiction of that court by voluntarily appearing in the proceedings, protecting or obtaining the release of property seized or threatened with seizure in the proceedings, see section 6(2)(a)(i) of the Act; or was plaintiff in, or counter-claimed in, the proceedings in the original court, Section 6(2)(a)(ii) of the Act; or had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit it to the jurisdiction of the court or of the courts of the country of that court, Section 6(2)(a)(iii) of the 1990 Act; or was, when the proceedings were instituted, resident in, or, being a body corporate, had its principal place of business in, the country of that court, Section 6(2)(a)(iv) of the Act; or had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place, Section 6(2)(a)(v) of the 1990 Act.

Aside the foregoing, Where the subject matter is either movable or immovable property, the foreign court is deemed to have been seised of jurisdiction if the property in question was situated within the jurisdiction of the Court, Section 6(2)(b) of the Act

- iii. that the judgment debtor, being the defendant in the proceedings in the original court, did not receive notice of those proceedings in sufficient time to enable him defend and did not appear⁸⁶; or
- iv. the judgment was obtained by fraud⁸⁷; or
- v. enforcement of the judgment would be contrary to the public policy of Nigeria,⁸⁸; or
- vi. The rights under the judgment are not vested in the person who applied for registration.⁸⁹

Any of the five conditions will accord jurisdiction to the foreign court. In other words, it is not the requirement of the law that all the five conditions must co-exist to confer jurisdiction on the court.

The judgment may also be set aside if ‘...the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter’⁹⁰

For the purposes of an application to set aside the registration of a foreign judgment, the courts of the country of the original court are deemed not to have had jurisdiction:

- i. if the subject matter of the proceedings was immovable property situated outside the foreign country⁹¹; or
- ii. where the proceedings are brought before it in breach of an agreement for the settlement of disputes (this covers breaches of arbitration or jurisdiction clauses in contracts and agreement)⁹²; or
- iii. If the judgment debtor, being a defendant in the original proceedings was a person who, under the rules of public international law, was entitled to

⁸⁶ section 6(1)(a)(iii) of the Act

⁸⁷ Section 6(1) (a) (iv) of the Act. This is undoubtedly of prime importance when the twin pillars of natural justice are better appreciated. The principles of natural justice are “*nemo iudex in causa sua*” and “*audi alterem partem*.” The principle of “*audi alterem partem*” requires that before a decision is taken which will affect the civil rights and obligations of the party, that party must be afforded a hearing. That is to say where a person is not heard, that decision will be set aside through ‘*certiorari*’ proceedings. However the body taking that decision must be acting judicially or quasi – judicially when the body is a mere administrative body devoid of any judicial powers, then it will not be required to observe this rule. This principle was traced to Biblical times in the case of *R.V. University of Cambridge, Ex P. Evans* (1998) ELR, 515. The principle also requires that adequate notice is given before a decision that may affect a person is made, where notice is given but not adequate, that decision is liable to be set aside. See *Owolabi V. Permanent Secretary, Ministry of Education*.

⁸⁸ Section 6(1) (a) (v) of the Act. In *Dale Power Systems Plc v. Witts & Bush Ltd* [2002] 8 NWLR {Pt.716}, 699, public policy was defined as “community sense and common conscience extended and applied throughout the State to matters of public morals, health, safety, welfare and the like.” In that case the court held that it does not offend public policy in Nigeria to enforce a foreign judgment against a Nigerian company which has obtained goods on credit from a foreign company but has failed to honour its obligation to pay for them and does not deny the existence of the liability to pay same and it does not matter that the foreign company involved was once a shareholder of the Nigerian company.

⁸⁹ Section 6(1) (a) (vi) of the 1990 Act; See generally *Halsbury’s Laws of England* 4th Edition (Reissue) Vol. 8(3) paragraph 176 at p.157.

⁹⁰ Section 6(1) (b) of the Act.

⁹¹ Section 6(3) (a) of the Act.

⁹² Section 6(3) (b) of the Act.

immunity from the jurisdiction of the courts of the country of the foreign court and did not submit to the jurisdiction of that court.⁹³

4. CONCLUSION

When adjudicating over disputes that have foreign elements, Nigerian judicial officers must tread with caution most especially where such issues before it relates to public policy. To do this effectively, these officers must be abreast of developments in multi-jurisdictions. The effectiveness of neutral cross-border arbitration requires that arbitrators have the first word in deciding the contract's interpretation, even if judges have the last word on the contract's vital public policy implications.⁹⁴ The reasons for Courts aggression towards arbitration of some issues is that Nigerian judges still reel in the euphoria that there are some no-go areas for arbitrators as certain disputes are concerned.⁹⁵ Most legal systems support such renunciation of judicial jurisdiction either by enforcing agreements and awards, ordering attachments of assets to secure payment of awards, or making defective arbitration clauses workable.⁹⁶

The thematic strand that sustains the argument in this work revolves around the international virile and versatile legislation that abounds in Nigeria concerning dispute resolution. The distrust occasioned by endemic corruption and lack of faith in the judicial sector has bedeviled the exercise and recourse to these laws in managing dispute resolution in Nigeria. Nigeria like Russia suffers from the endemic problem of enforcement.⁹⁷ International contractual agreements avoid Nigerian law even where one of the parties is a Nigerian. Appearing before a Nigerian judge who could be unsophisticated and/or possibly corrupt is not an idea that should be toiled with. It is totally unacceptable and intolerable for Courts to assume jurisdiction over an arbitral matter for over three years.

Even though, it cannot be confidently said that Nigeria has attained its height in the administration of international commercial arbitration, unlike developed societies such as United States, France, and United Kingdom.⁹⁸ However, one can say that with the free democratic society Nigeria has found itself, there is an increasing hope that better days lie ahead in using Nigeria as the hub of international commercial arbitration in Africa.

⁹³ Section 6(3) (c) of the Act.

⁹⁴ William W. Park, National Law and Commercial Justice: Safeguarding Procedural Integrity In International Arbitration, 63 Tulane Law Review. 647 1988-1989, 699.

⁹⁵ Such no-go areas include bankruptcy, anti-trust and competition. Nigerian courts should allow arbitrators to gain effective control over arbitral proceedings. This can only be achieved if arbitrator's discretion is not fettered. Where parties submit to arbitration, courts should not undermine that submission by exercising jurisdiction over an arbitral award given by an arbitrator or in the legal merits of a dispute.

⁹⁶ See note 94 at 706.

⁹⁷ Dimitry Afanasiev, chairman of Russians largest law firm Egorov Puginsky Afanasiev & Partners in the IBA Global Insight magazine of December 2011 edition.

⁹⁸ In constructing the Rolls Building in the UK, the government decided to make the UK the world's pre-eminent destination for swiftly resolving international legal disputes, while making the country's legal services market as lucrative as its financial services sector in the process, aimed at making the UK the lawyer and adviser to the world. See Neil Hodge, Rolls Royce Justice: IBA Global Insight, December 2011, Vol 65 No 6, 39.