Appraisal of International Arbitration for Improve International Trade Opportunities

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Abstract
The paper focused on international arbitration as a means of reconciling differences and disagreement that often occur amongst participants in cross border trade. To achieve targeted objectives the researchers developed ten research questions and administered to 1455 respondents using online questionnaire. The justification for the use of this research instrument was based on the analysis of Cronbach's Alpha scale-retest observation and the consistency of the first and second responses from respondents. The major findings of the research indicated that most cross border trade participants preferred international arbitration as a veritable means of settling trade disputes. This is because it's more flexible, economical, and saves time. The study made it clear that the propensity of trade dispute has increased over time, causing disaffections amongst involved parties, especially when the cases are not properly handled by arbitrators. Also the influence of domestic country where international trade disputes arbitration matters are often discussed affects the work of arbitrators, hence the urge for neutrality of arbitral table or seating. Furthermore the different interpretations of terms based on each countries laws impact negatively on the activities of arbitrators and affects the free flow of businesses. The more reason arbitration clause is necessary in every agreement in order to enforce award. And finally international arbitrators are working hard to achieve the goal of cushioning the effects of cross border trade disputes, despite the enormous challenges as defined by the study. Therefore it was recommended that participants in cross border businesses must keep to the terms and conditions of the contracts and agreement to reduce the frequency of trade disputes and enhance the growth of global trade.

Keyword*:* Arbitration, International Trade, Disputes, Awards, Enforcement, etc

Introduction

The recent development calls for global consumers to accomplish the task and consumption of all that is produced by both producers and sellers in foreign markets. Today global competition is intensifying, such that foreign companies are expanding aggressively into new international markets, because domestic markets are no longer viable and rich in opportunities as they use to be. Kotler and Armstrong (2001) affirmed that the firm that stays at home to play it safe not only may lose its chances to enter markets, but also risk losing its home markets. It is noted that businesses and companies that are not involved in international trade have to compete with the export industry in the factor market and with the foreign goods competing in the commodity market, hence the emergence of a largely border-less world that has unfolded new realities for all participating countries, individuals, products and attendant challenges.

In most cases when barriers to international trade are mentioned, every effort is titled or focused on trade discriminations, high tariffs, foreign exchange controls, language interpretations, customs red tapism, restrictive cartel practices and many others not discussed in this paper. But often no consideration is given to commercial trade dispute as a challenging barrier to international trade expansion. It is imperatively important to note that many medium -sized and small companies find themselves in trouble when they have disagreement with buyers and customers or sources of supply in other countries of the world. This invariably makes commercial transactions disputes in cross border trade a more challenging barrier that require critical attention.

Consequently over the past years as a result of the increased number of parties involved in international trade transactions and the subsequent expansive global markets, there had been inevitably increasing number of disputes between, exporters and importers, sellers and buyers, and nations amongst nations, such as unfulfilled trade agreement, controversies over failure to ship or to deliver goods or merchandise inferior in quality, differing interpretations of cross border trade agreements, foreign exchange regulation issues, to mention but a few, which often surfaced (Sanders, 2007).

As a result of this situation, some disputants choose to go to court and the end result of such court actions creates more animosity that often ends business relationship amongst disagreed parties. The more reason this study is advocating international commercial arbitration as the most

preferred alternative method of resolving international trade disputes or disagreement, since it adjudicate differences quickly, cheaply, fairly, and leaves trade disputants in better conditions that encourages future business development.

International trade is described as a trading arrangement that involves two or more countries as well as companies of various nations and further goes to stress the integration of the domestic economy into the external economy through export and import nexus (Ewah, 2008). In other words international business or trade is the performance of business activities designed to plan, price, promote and direct the flow of companies' goods and services to consumers in more than one country for profit purposes (Kotler and Armstrong 2001). It emphasizes the development of a going business concern in one or more countries or regions within a set up that can accommodate fully fledged and rationalized local manufacturing and traditional marketing functions (Agbonifoh, et. al. (1998). All with the intention of creating business opportunities for saturated domestic markets, vulnerable business environment to mention but a few.

In like manner, global producers, businesses and participants face business challenges that often result to dispute amongst the various actors. How these disputes and disagreement are managed formed part of the focus of this study. The suggested method to resolve international trade disagreements or disputes based on this study is international trade arbitration. The essence of arbitration in international business is to resolve disputes that often arise from commercial contracts or transactions between participating individuals or parties from different countries outside the court (Foelix, 2017).

In its true sense arbitration is a dispute resolution process agreed between parties in which the dispute is submitted to one or more arbitrators who issue an award. This is an alternative way of settling disagreement that may occur because it does not call for litigation, i.e avoid going to court. In submission, arbitration is the process of bringing a business dispute or disagreement before a disinterested third party or arbitrator for resolution. The more reason international trade and commerce arbitration has become exceptionally strong and widely accepted as a means of resolving foreign businesses misunderstandings that often emanate between participants. Therefore as international trade continue to grow, countries that previously had inward looking strategy and dependent on domestic businesses have towed a new line and have advanced their

businesses through proliferation of cross-border trade, resulting in an international business community that is more significant in terms of its transactional capacity.

The importance of this trade is anchored on the fact that it serves as a pointer to the orientation of every business ideology, those that widen the extent of the market, inducing innovations and increasing productivity, those that increase savings and capital accumulation, and those that have an educative effect in instilling new wants and taste and in technology transfer. On the other hand the rapid expansion of cross border trade transactions has also resulted in a concomitant increase in business disputes between companies, individuals and countries over time and these actions require culturally sensitive decision makers having the knowledge of resolving international trade disputes to act as arbitrators (Mann, 2017).

Furthermore, the multi-dimensional method of trade transactions amongst nations and citizens has brought in a paradigmatic shift in the way global business disputes are resolved. Prior to this shift, foreign trade disagreement most often were resolved in the national courts of one party's home country. This approach disfavoured the other party, as a result of the unfairness perpetrated by the domestic country judge. Moreover, resolving cross border trade disputes within one party's national court sometimes involved the inability to enforce these courts award abroad (Ancel, 2013). The inherently problematic method of resolving international business disputes domestically led to the search for a better approach, thus traditional litigation was replaced with international arbitration as the preferred and fasted growing method of cross-border dispute resolution.

The motivating factor that informed the decision to carry out this study rest on, to what extent has international trade arbitration help to reduce the occurrence or cushion the effects of international commerce or trade dispute amongst participants or countries.

It has been assumed that there is correlationship between trades despite settlement amongst participating countries or businesses and achieving targeted goals of international commence arbitration and further solving the challenging problem of increasing trade disputes.

The remaining part of the study includes the following theoretical postulations, brief historical underpinning, justification for international trade dispute arbitration, merits and demerits of international trade disputes arbitration others are features that lead to international trade arbitration, methodology, data analysis, discussion of findings, conclusion and recommendations.

Theoretical Postulations

Jurisdictional Theory: The proponents of this theory are of the opinion that all arbitration procedures have to be regulated by the rules of law chosen by the parties if there are any and those rules of law enforce in the place of arbitration. The theory maintained that the validation of arbitration agreement and arbitration procedures needs to be regulated by regulated by national laws and the validity of an arbitral award is decided by the law of the seat and the country where the recognition or enforcement is sought (Landon, 2012). Here the courts in the country where recognition or enforcement is sought plays supervisory role over matters of arbitration at the stage of recognition or enforcement. Accordingly, under Article V(2) the courts have the discretion to refuse to recognize or enforce an arbitral award if it finds out that the subject matter of the difference is not capable of settlement by arbitration under the law of that country of recognition or enforcement of the award would be contrary to the public policy of that country. Thus this theory place emphasis on the supervisory powers of states as it concerns matters of arbitration and does not dispute the fact that arbitration has it origin in the concerned parties' arbitration agreement. This is because arbitrators' powers are derived from the laws of the state they function, as in the case of judges, arbitrators must apply the rules of law of the state in order to settle international trade dispute (Sanders, 2007). In that case the awards made by arbitrators are regarded as having the same status and effect as judgment passed by judges presiding in national courts.

It is pertinent to note that the various issues arising from international business arbitration, such as agreement validity, arbitral procedures, arbitrators' powers, scope of submission and enforcement of arbitral awards, all have to be decided within the mandatory rules and public policy of the lexfori. If this is not done, the awards may be set aside and also recognition and enforcement of the award may be refused by the courts of arbitration and enforcing states.

The bottom line is that the jurisdictional theory place emphasis on the close supervisory role of the state court over cases of arbitration.

Contractual Theory: This theory is invariably the opposite of the jurisdictional school of thought, because the proponents of contractual theory argued that arbitration is based on a consensus between the parties or businesses having disagreements. Therefore, the settlement of the dispute in arbitration should not be influenced by the power of any state and the principle of

pactasuntservanda should prevail, binding the disputed businesses or parties to perform the arbitration agreement made between them without pressure from state (Redfern, 2011). Furthermore, proponents of this school of thought are of the opinion that there is no strong correlation between arbitration matters and imploring the law of the state in which arbitration matters are being handled. Although they also admit the fact that arbitration proceedings and arbitration agreements may be influenced by relevant state laws if caution is not taken and still conclude that arbitration has a contractual character that originates in the concerned parties arbitration agreement (Mustill, 2014). Which of course should be allowed as decided by the participating firms, businesses and individuals in the global market place? It is also important to note that most businessmen and companies operating at the international level desire to have a more flexible and informal method of settling disputes when they occur, the more reason most deliberation seats tend to follow the tenets of contractualist and interpret the relationship between the parties involved and the arbitrators as mere contract. In most jurisdictions the mechanism of international commercial arbitration is undeniably designed on the basis of contractual theory and it tends to prevail in most cases (Luzzatto, 2007).

Hybrid Theory: This theory was earlier initiated by professor Surville and further developed by Professor Sauser-Hall after they deduced the lapses existing in the operation of jurisdictional and contractual theories in isolation and opted for hybrid method of international business arbitration. This method place emphasis on the combination of the earlier mentioned two theories, which is more or less a compromise of contractual and jurisdictional theory. Consequently international trade arbitration is a mechanism with a dual character which implies on one hand that a contractual element in arbitration is reflected in the argument that arbitration has its origin in a private contract, where the concerned parties have the right to choose the arbitrators and the rules to govern the arbitration procedures and substantive matters (Lew, 2018). And on the other hand the jurisdictional theory permits an arbitration to be conducted within national legal regimes in order to determine powers of the parties, the validity of the arbitration agreement and the enforcement of awards (Luzzatto, 2007). For instance, the jurisdiction on arbitration tribunal is not determined by a single lexfori as a result of the hybrid character of international commercial arbitration, but based on a combination of contractual and jurisdictional factors. This implies the desire of the parties or business practioners as expressed in the arbitration agreement on the one

hand and the various laws applicable to the different aspect of the arbitration tribunal on the other hand. Therefore it is concluded by scholars of this school of thought that the perfect operation of international commercial/trade arbitration lies on the mixture or combination of jurisdictional and contractual to have the ideal method called hybrid theory.

Autonomous Theory: This theory is anchored on the autonomy of issues relating to international trade or business arbitration and totally criticized the jurisdictional and contractual theories on grounds that they lack face merit. Proponent of this theory Rubellin Devichi maintained that the idea of arbitration should be decided on the basis of it use and purpose by placing arbitration on a supra-national strata and recognize its autonomous nature. The scholar further opined that social and economic benefits of international commercial arbitration cannot be doubted, hence arbitration should be allowed to enjoy the expansion it deserves, while maintaining its appropriate limits and accepting the fact that it is neither any of the three earlier discussed but autonomous in nature.

It is noted that Rubellin - Devichi did not argue about the dual nature of arbitration, but disagreed with differentiating the jurisdictional and contractual ideas of arbitration, because it is difficult or even impossible to draw a line between the two in the real sense. That an undesirable distortion may occur or develop as a result of insisting on the separation of jurisdictional theory from contractual theory when it concerns matters of international business arbitration. Rubellin-Devichi final submission rest on the autonomy of international commercial/trade arbitration matters and stressed the inextricable intertwines that exist between jurisdictional and contractual underpinning.

Despite the different theories of arbitrations and their scholarly inputs it is important to note that the jurisdictional and contractual theories take two opposite directions on the same spectrum, the hybrid theory seems to take a more mild and compromised position, and tends to be more appreciated and acceptable when put in practice. The autonomous theory remains the most criticized, because it tries to provide a basis for an ideal arbitration framework that is really difficult to attain in real life. It was questioned whether such autonomous arbitration, which is not bound to any national legal system can succeed or work and thus an arbitration should be rooted in a national legal system (Mann, 2017). All these are discussed for academic brain storming and comprehension, but suffice to say that any of the theory that suit the time and

situation on ground and able to solve international trade arbitration disputes it is highly welcome and accepted.

Justification for International Trade Dispute Arbitration

The following substantive reasons have been given to justify the need for international trade dispute arbitration.

1. **The Process of Selecting Arbitrators:** The parties to a dispute in international business have the freedom of selecting or deciding who stands in as the arbitrator or possibly they have the absolute right to choose their arbitrators in the event of misunderstanding in business transactions. It is important to note that this arbitrators are trained professionals who are always ready to bring to bear expertise when the need arises.
2. **Procedure of Arbitration:** This process is strictly dependent on the aggrieved parties. The procedure of resolving or settling the dispute may be done through references to past and present documents relating to the business or deal or written submissions made by the concern parties. It can equally require the disputing parties to present themselves physically and make verbal presentations regarding issues pertaining to the disharmony. This point makes the arbitration process more flexible and suitable for the particular situation.
3. **Cost and Time of Settling Dispute:** The cost and time of resolving international trade dispute using arbitration is cheaper and less time consuming, especially when it has to do with small to medium size business disputes. But for larger, more complex international trade disputes the reverse is the case. This is because the number of arbitrators will be more, which implies more time and money will be required. But it's not always common.
4. **Confidentiality of the Process:** This situation or process invariably implies that all issues or matters regarding the disputes are not discussed for public hearing but in private between the arbitrators and the aggrieved parties. And any evidence tendered during proceedings is kept confidential, and used only for the purpose it serves. This makes the arbitration process more attractive when compared with court session.
5. **Neutrality of Arbitral Place:** All parties involved in international commerce arbitration are free to choose a neutral place or ground where the issues concerning the dispute can be discuss and resolve, especially if parties involve come from different countries. This

will help avoid either party having to submit to the jurisdiction of the other party's national influence and law.

6. **The Process of Appeals:** Unlike the case of courts of law matters, for most international trade disputes after verdicts have been passed it sometimes difficult to appeal. This is because parties sometimes state in their arbitration agreement that the right to appeal has been excluded. Which implies that the rendering of an award by the arbitrators will normally mark the end of proceedings? This preserves the principle that the parties are free to agree on how disputes will be resolved with minimum court intervention and convinced themselves to accept the finality of the arbitrators' decision as well. The most significant issue for many parties is the commercial confidentiality of their business dealings and this confidentiality is more likely preserved in arbitration cases.
7. **The Enforcement of Awards:** The international trade arbitration process has made it possible for the enforcement of international trade disputes awards/decisions and the effort of New York Convention which most countries are signatories to the resolutions. The convention provides in theory, for a relatively simple and effective method of obtaining recognition and enforcement of awards across the world, but in practice it has been more challenging.

Merits of International Trade Dispute Arbitration

The following merits are enumerated below to buttress the researchers' points of view.

1. The presence of international arbitration has increased the willingness and impetus to dare into cross border transactions amongst people and different countries.
2. International arbitration encourages confidentiality and privacy, such that issues discussed and evidences tendered are kept secret, not for public consumption. A significant issue for many parties is commercial confidentiality of their business dealings; hence arbitral table is often preferred.
3. International trade dispute arbitration procedure is flexible and easily adjusted to meet the demands of time and situation (Hunter 2007).
4. It is faster and cheaper in terms of execution and implementation when compared with litigation especially in the case of small and medium-size business disputes (Hunter, 2007).

5. It often avoids the use of national courts which are sometimes perceived as corrupt/or inefficient in settling international trade disputes.
6. It is often more easy to enforce award than enforcing court judgment, especially with the aid of the New York Convention Resolutions. Accordingly, the advantage accruing to international arbitration in enforcement largely occurs in relation to matters not wholly within European Union (EU).
7. It often prevents different countries laws coming into conflict by settling on one governing law and specific set of rules from the beginning.
8. The international trade dispute arbitration process is held in a pre-determined neutral venue, which often help to reduce the possibility of forum shopping, delay in proceedings, and accusations of cultural bias in the end. Thus international arbitration is a way of securing a high degree of neutrality in international business dispute resolution process (Hunter, 2007).
9. Parties in dispute reserve the right to choose arbitrators using a mechanism of their choice or as stated in the arbitration agreement.

Demerits of International Trade Dispute Arbitration

The demerits are also enumerated below to equally substantiate the researchers' points of views:

1. The possibilities of challenging arbitration award/decision reached are quite limited if any of the parties looses the case. The more reason appeals are not often granted to aggrieved parties, since award is final.
2. Parties to disputes are responsible for the remuneration/fees payable to arbitrators for services rendered. This makes the whole process very expensive, especially when dealing with more complex and severe disputes (Hunter, 2007).
3. Arbitrators handling cases sometimes lack the power to make certain interim orders against the parties before the final award. It therefore implies that arbitrators lack the power to grant preventive and provisional remedies.
4. International trade dispute arbitration engagement often ends up as soon as the award is issued, because sometime it does not degenerate into commercial relationship or interest between the parties and arbitrators.

5. There is limit on the arbitrators' powers to speed up the arbitration proceedings. Fast-track procedures in the international commercial arbitration without hearing or cross-examination are really rare (Hunter, 2007).
6. It is sometimes cumbersome because of the multiple numbers of arbitrators involved in handling most lingering disputes.
7. Sometimes arbitrators are saddled with many responsibilities to handle in some jurisdictions which make them unavailable to attend to other areas of need, but for judges in law court, they are easily accessible.
8. International arbitrators sometimes ignore certain cultural or legal traditions and thus marginalize or worse, out right offending some participants (Klein, 2015).

Features that Lead to International Trade Arbitration

These three features were enunciated by Tweeddale, A. and Tweeddale, K. (2005) as follows;

1. There must be an arbitration agreement between the parties carrying out the business deals. This will give international trade arbitral tribunal its jurisdiction to hear and determine the dispute or disagreement, to guard against failure of the arbitral process. However it must be contained or specified in the contractual agreement between the trading parties.
2. The concerned business parties must appoint the arbitration panel or arbitrators. The process of selection must be determined by the parties and specified in the arbitration clause or agreement, mandating the international commerce dispute arbitrating panel to hear and determine the disputes the trading parties have referred to it.
3. There must be disagreement or dispute between the parties to warrant international trade dispute arbitration. In attending to the matter or dispute brought before the panel, it follows a judicial process that is not in the form of litigation, but total adherence to due process, fairness, impartiality and final decision in the form of an arbitral award. When an arbitration award is passed it is usually final and binding on the trading parties.

Brief Historical Underpinning

International trade arbitration is a private, non-judicial dispute resolution process by which parties from different states present disputes to neutral arbitrators with the hope of gaining peaceful and quick resolution of disputes that will remain binding on disputants. Therefore it is often advisable that international marketers sign bilateral business treaties or other trade agreements stating their position on how to resolve unavoidable disagreements, and the consideration of international trade arbitration as one of the most likely options could be a better decision.

According to Carr (2005) arbitration could be said to be the first step towards privatization of justice, because it bye-passed the rigours of litigating in state courts while ensuring, equal enforcement of its awards. Moreover, international trade dispute arbitration allows it's parties to have greater control of matters and the principles to be applied to issues need not be attached to any particular national law (Durosaro, 2014). In order to achieve this height parties involve are required to put in writing that if disagreement occurs in the course of business transactions it should be settled on arbitration table as agreed and once the award is made the arbitral tribunal is functus officio in respect of the matters decided within the award and the issues are there after resjudicata (Redfern, and Hunter, 2006). This is why it is essential for exporters and importers or sellers and buyers who wish to use international commerce arbitration as a method of settling disagreement to include a clause in the contract of sale and purchase which provides for arbitration, and also businessmen or practitioners should be abreast of the laws of the countries with which they trade as regards to the validity of arbitration clauses.

This is because arbitration clause guides both parties into the next level of arbitration and without such development it will be vehemently difficult to arbitrate as a result of argument upon counter-argument when dispute eventually spark. Moreover the laws of the different countries as regards to arbitration are not identical in most of the important fundamentals, and methods of enforcing the arbitration clauses. In practical circumstance each party submit a written statement of testimony of issues involve to any institutional arbitrators of their collective choice. There after the arbitral panel meet to decide whether to handle the case or not. Your guess is as good as ours, the decision to take the matter granted, implies that the arbitrators enact the modus operandi believing that in international trade arbitration, seating panel of arbitrators are not bound to follow any particular precedence or governing law rather depend on civil law tradition

or a common law tradition and professional expertise which may not necessarily stem from the premise of a legal luminary but in accordance with what is right and good - exaequo et bono. In this case the international trade dispute arbitrators will give/pass award purely based on equity and justice.

It is worthy to note that commercial disputes that end in courts of law are always costly and usually bitter. This is because cases frequently drag through the courts for too long and the ultimate winner of the lawsuit finds that much is expended financially and other wise compared to the amount of the judgment in favour. Moreover, courts tend to favour their own nationals as against other nationals and thereby further animosity is created between business people of different countries, who are now suspicious of the kind of deal that they will get from foreign nations. Consequently the basic tenets of international trade disputes arbitration is to ensure that trading parties have the freedom to agree to have disputes arising from their contract resolved outside the national court regime, necessitating to the alternative dispute resolution mechanism as well as using the applicable law of their choice (Durosaro, 2014).

This serves as the main non-court method for resolving large complex cross-border commercial disputes. It is divided into arbitrations which arises out of contractual issues between companies who accept the fact that when there is disagreement or dispute it should be settled through arbitration, and arbitrations which arises out of a treaty, such as an investment treaty, where companies within the signatories countries agree to settle their disputes through arbitration if such occur. However, in both cases, international commerce arbitration is seen as the preferred method of dispute resolution for a reasonable number of corporations, companies and businesses in recent time.

It will interest all to note that the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) has been observing and monitoring the number of new investment, treaty arbitrations requiring attention. The number keeps increasing as the number of business transactions expand in a global sense.

From a general perspective, the private dispute resolution system in cross-border trade has been quite sustaining and most countries old international arbitration laws have been modernized and new international arbitration laws have been enacted to respond to the present needs of

international business community. Thus most countries have adopted the UNCITRAL Model Law, which purports globally harmonize the law and its practicability (Durosaro, 2014).

To buttress this point further Price Waterhouse Coopers (PWC) and Queen Mary, University of London in 2006 in their research study found out that 73% of respondent corporations preferred international commerce arbitration as an ideal method of disputes resolution (Strong, 2009).

In order to ensure the enforceability of arbitral awards, arbitrators must consider the domicile of the assets of the litigants to confirm if there are possible contradictions between their decisions and the national law of the court where recognition or enforcement is sought. It is of importance to note that awards are often at the mercy of national laws, especially when they are challenged, and enforcing states may discover that some awards even though rendered on an objective consideration of a dispute are against their public policy may often not support the outcome (Durosaro, 2014). Some of the institutions responsible for the settlement of international trade disputes through arbitration include the following; International Centre for Dispute Resolution (ICDR), International Chamber of Commerce (ICC), American Arbitration Association (AAA), London Court of International Arbitration (LCIA), Hong Kong International Arbitration Centre to mention but a few (Maniruzzaman, 2014).

Research Methodology

The researchers deemed it necessary while developing the instrument for eliciting data, which of course was the questionnaire, came to mind the need to justify the use of the instrument. To achieve the very objective the researchers deployed two level of validity test. One, the questionnaire was subjected to face validity check, that is it was scrutinized and ascertained fit by statistical experts in the ivory tower. Two, a pretest that comprises 50 respondents with the features of interest was conducted and their responses culminated to the refinement and acceptance of the instrument for data collection. Thus the reliability of the research instrument was conducted with the aid of test-retest method which means the earlier questionnaires administered to the 50 respondents were repeated and when the questionnaires were retrieved after a period of two weeks, the result indicated consistency in their responses. To achieve that very height though, the researchers analyzed the data using Cronbach's Alpha scale and the value of Alpha was 90% which was considered an acceptable value statistically. This invariably

makes the research instrument for data collection highly valid and reliable working document for this study. The empirical study on its own was based on descriptive analytical method, which also led to the researchers administering a total number of 2040 questionnaires online and the respondents also gave their answers online in compliance with Covid-19 specifications which deprived the researchers the opportunity of meeting one on one with the respondents. The number of correctly answered and submitted online questionnaires is depicted below.

Data Analysis

Table 1: Number of Online Questionnaires Administered to Respondents

No. of Questionnaires Administered Online	No. of Online Submitted/Returned Questionnaires	%	No. of Unsubmitted/unreturned Questionnaires	%
2040	1455	(71.3)	585	(28.7)

Source: *Researchers Online Administered Questionnaires Detail, May 2020.*

The analysis above clearly depicts that the online questionnaires administered to all the specified respondents was highly commendable and received a wider publicity, based on 1455 (71.3%) response rate. The remaining 585 (28.7%) of the questionnaires were not correctly filled and some were equally not submitted or returned for the continuation of the study. The submission is that majority of the respondents attempted all the questions and their responses gave strong academic input for purposes of making policy decisions.

Table: International Trade Dispute Arbitration Online Questionnaire

S/N	**Questions on ITDA**	**Responses**		
		Agreed (%)	**Disagreed (%)**	**Total (%)**
1	Most importers and exporters as well as other cross border business participants prefer to settle disputes through international arbitration instead of litigation.	740 (50.9)	715 (49.1)	1455 (100)
2	The propensity of international trade dispute has	945	510	1455

	increased over time and exerting much pressure on the activities of arbitrators	(65)	(35)	(100)
3	The more the trade disputes amongst the participants the greater the disaffection if not properly settled through arbitration.	800 (55)	655 (45)	1455 (100)
4	The essence of international trade dispute arbitration is to adjudicate differences urgently and cheaply amongst disputants for improve business opportunities.	850 (58.4)	605 (41.6)	1455 (100)
5	International trade disputes settlements are becoming more challenging than ever envisaged as a result of the influence of domestic country of arbitration.	820 (56.4)	635 (43.6)	1455 (100)
6	Differing interpretations of cross border trade terminologies and definitions amongst disputants countries laws affects the free flow of businesses and the result of arbitrations.	954 (65.6)	501 (34.1)	1455 (100)
7	International business agreement or contract must have arbitration clause in order to enforce award when dispute is resolved.	890 (61.1)	565 (38.8)	1455 (100)
8	International arbitration facilitates speedy and economic resolution of disputes that propels more business prospects if properly handled.	905 (62.2)	550 (37.8)	1455 (100)
9	The major problems of international trade disputes arbitration include, but not Limited to the undermentioned; - Poor delivery of goods - Compromised product quality - Foreign exchange regulation/regime maneuvering	925 (63.6)	530 (36.4)	1455 (100)

	- Technical manipulations - Over interpretation of marine insurance freight - Terms of trade disagreement - Deliberate dumping of products, etc.			
10	Has international arbitration achieve its targeted goods of reducing or cushioning the effects of cross border trade disputes in recent times?	720 (49.5)	735 (50.5)	1455 (100)

Source: *Researchers Online Administered Questionnaire, May, 2020.*

Discussion of Findings

Question One indicated that majority of the respondents who where 740 (50.9) agreed that most exporters and importers as well as other cross border business participants prefer settling trade disputes that often arises through international arbitration as against litigation, while the other respondents numbering 715 (49.1%) disagreed. A critical survey of the outcome of the empirical result buttressed the point that the differences seen above are quite negligible. This situation further confirmed earlier assertion that cases that are more complex in nature sometimes require litigations depending on the disputants but others still have confidence in the outcome of international arbitration matters. This makes arbitration process more attractive when compared with court cases. In the view of Hunter (2007) arbitration procedure is more flexible and easily adjusted to meet the urgent demands of current situations and especially when the case of litigation is not considered as an option. This point of course must have ginger the interest of disputants in addressing or presenting disputes before arbitrators.

Question two, also depicts that the propensity of international trade dispute has increased overtime and exerting over bearing pressure on the activities of arbitrators based on majority response rate of 945 (65%) respondent who affirmed the question. The other respondents who disagreed were 510 (35%). It is important to note that as cross border trade continue to increase in size and magnitude of operation, so also the number of cases/disputes brought before international arbitration table has equally multiplied and making the task of arbitrators more demanding and intrigue. Sanders (2007) confirmed that the number of individuals and parties

involved in international trade has increased over time and as a result of the above, the number of trade disputes has amplified and mounting pressure on the activities and job of arbitrating panels to deliver awards. The present study is a re-affirmation of earlier research findings.

In question three it was noticed that 800 (55%) of the respondents who were in majority agreed that as international trade disputes and disagreement continue to increase amongst participants or parties the greater will be the disaffection if arbitrators do not handle such tensed situations/crisis accordingly. The remaining respondents numbering 655 (45%) did not accept the above assertion.

Therefore, to avoid such animosity occurring it is better for the arbitrators to bring in their professional wealth of experience to bear in order to reduce the possibilities of commercial disputes for the benefit of progressive business practices. From the literature review there are instances were aggrieved business partners choose to go to court and the end result of such court actions created more acrimony and animosity that often end business relationship amongst them (Maniruzzaman, 2004). But then other studies encourage international arbitration as one of the best option if disputes cannot be totally avoided. This is because arbitration is one of the steps towards privatization of justice and bye passes the rigours of litigation especially in state courts (Carr, 2005).

It is also important to note that in question four, a large number of the respondents who were 850 (58.4) accepted the fact that the essence of international trade dispute arbitration is to adjudicate differences in such a manner that will usher in some level of urgency in attendance to cases and economically that will encourage disputants to continue business transactions. On the other hand 605 (41.6%) of the respondents disagreed with the earlier claim. In summary we all certainly will accept the fact that when cases are treated quickly, it makes administrative cost cheaper and concerned parties may likely put behind those differences and forge ahead business wise. To really substantiate this point and give it scholarly backing it deserves, it is necessary to cite Hunter (2007)’s claim that international arbitration of trade disputes is faster and cheaper in terms of administrative requirements and execution. Furthermore, the adjudication of differences had often been the focal point of international trade arbitration seatings/panels especially at very crucial moments based on the services of International Centre for Dispute Resolution (ICDR),

International Chamber of Commerce (ICC), American Arbitration Association (AAA) London Court of International Arbitration (LCIA) etc.

Question five indicated that international trade disputes settlement are becoming more challenging than ever as a result of the influence of the country were arbitration table seat. And the result from responses from the respondents confirmed that majority of those who supported the research question were 820 (56.4%) and the remaining 635 (43.6%) of the respondents disagreed. This situation sufficed to say that the influence of the domestic country were arbitration takes place is highly over whelming, especially if it has to do with one of the disputant's nationality. The more reason it is advisable that the disputants must agree on a neutral ground or country where arbitration table will seat. This should be done from the start of arbitration contract and agreement. Ancel, (2013) made it clear that resolving cross border trade disputes within one party's national court sometimes lead to the deliberate disfavour of the other party, thereby causing the rejection of award due to the unfair judgment. Based on the jurisdictional school of thought there must be a close supervision of arbitration panel if they must seat in one party's domestic country as against a neutral ground, while the contractual school opined that it should not be influence by any state law, but rather it should be a contractual agreement of the parties.

Furthermore, in question six it was observed that the bulk of respondents numbering 954 (65.6%) who answered the research question agreed that the differing interpretations of cross border trade terminologies and definitions amongst disputants countries laws affects the free flow of business transactions and the result of arbitration, while the rest of the respondents also 501 (34.4%) did not accept this conclusion. The most difficult issue here is that every business practitioner or participant wants arbitrators to interpret the rules or laws as dictated by their own country of origin in crisis or disagreement situations, which of course should not be the case. Noted that there is no total uniformity on how terms and laws are interpreted in a global, sense, but there must be a way to reach a consensus on all the necessary ingredients that will be incorporated and documented for purposes of references whenever the need arises. A critical scrutiny of the contractual theory shows that disputant parties must agree on terms to be able to settle disputes using arbitrators and should not be influence by the power of any state law. And it was further stressed that there is no strong correlation between arbitration matters and imploring or invoking

the laws of the state in which international arbitration cases are being tabled and discussed (Redfern, 2011). This question confirmed the fact that the mechanism of arbitration is undeniably designed on the basis of contractual theory (Luzzatto, 2007).

The result generated from question seven showed that 890 (61.2%) of the respondents agreed, while the remaining 565 (38.8%) of the respondents disagreed. This invariably means that majority of the respondents are of the opinion that international business agreements and contracts must have arbitration clause from the onset in order for it to be possible to enforce award when disputes are resolved. There are instances where arbitrators after haven resolved arbitration cases, the losers sometimes look for ways not to oblige the outcome or accept the award. This arbitration clause once it is included and specified in the agreement and contract it makes it easy for the enforcement of award and cushion the adverse effects of refusing award. To further help matters is the New York convention which most countries are signatories to the resolutions reached has made it mandatory the enforcement of international trade disputes awards, even though it has remain a challenging issue in practical terms, much has been achieved.

The findings from question eight confirmed that 905 (62.2%) of the respondents supported the fact that international arbitration facilitate a speedy and economic resolution of disputes when it occurs amongst individuals and companies and the benefits propels prospects for continuous business engagement. Those respondents who disagreed with the above assertion were 550 (37.8%). This result therefore implies that majority of the respondents who gave answers to the questions put before them answered in the affirmative. Often disputants want speedy and economic dispensation of justice that will not result to regret, in terms of spending amounts of money that will be more than the eventual outcome of the benefits accrued to the award. If the cost of arbitration process in mild or conservative and with absolute care in handing disputes the tendencies of parties seeking arbitration overwhelm the idea of litigation as an option. As earlier noted by Hunter, (2007) arbitration method of resolving cross border disputes has often exhibited some level of fairness, fast deliberations of issues, and cheaper to manage. The findings of the study is thus in conformity with earlier research work of Hunter which was conducted in 2007. When disagreement arise between business partners in foreign trade transactions definitely the quick intervention of arbitral panel that administer fair hearing gives both parties the impetus to

continue in business. Believing that cases will not be drag too long, which add to cost of doing business.

According to findings in question nine majority of the respondents numbering 925 (63.6%) agreed that the major problems of international trade disputes and discourse in international arbitration include, but not limited to poor delivery of goods, compromised products quality, foreign exchange maneuvering/regime, others are technical manipulations, over interpretation of marine insurance freight, terms of trade disagreement and deliberate dumping of goods.

The remaining 530 (36.4%) respondents did not accept and hence disagreed with the research stipulations. It therefore suffice to say that these challenging and lingering problems had over years hampered cross border trade activities, necessitating to frequent international arbitration cases between parties involved. The earlier these problems are reduced the better for international transactions and expansion of the frontiers of business opportunities in a global manner. The ability to resolve these challenging problems amicably could also help to reduce its occurrence. The more reason from previous studies it was emphasized that participants in cross border trade should choose a method of resolving disagreements and international arbitration of trade disputes came up more pronounced as one of best options. In doing that participants or parties in trade must include in the contract agreement a clause of arbitration and the procedure of arbitration from the onset.

This will help check current existing excesses and inculcate better business developments in the global market that will accommodate prospective present and future investors' exporters and importers considering the added advantage of digital technology.

The last but not the least is question ten and it was stated thus has international arbitration responsibility of settling cross border trade been achieved or cushioning the effects of trade disputes or disagreement been achieved. The response rate from respondents indicated that 720 (49.5%) agreed, while the majority response rate came from 735 (50.5%) respondents who disagreed. The above marginal difference shows that the respondents had almost a balance assessment of happenings in foreign trade arrangement. This could be as a result of other challenges impeaching on the performances of most arbitrators or arbitral panels, such as influence from third party to circumvent decisions, difficulty in enforcing award as a result of multiple extraneous variables, domestic country of hearing's impact, more complex cases,

cultural and legal demands of host county of arbitration, limitations on arbitrators powers as induced by legal luminaries, neutrality and confidentiality issues to mention but a few. The above mentioned have often hampered the good work of international trade disputes arbitrators. There are willing arbitrators' spreads all over the word, but they need the support of institutions and binding rules or laws to forge ahead the ministry of dispensing justice at the arbitral table not minding where ever they are call to duty. For the benefit of world trade and continuous supply of goods and services to global consumers, this will in turn prosper world economy.

Conclusion

The fact continue to hold or be that international commerce arbitration is one of the ways or methods' of resolving cross border disputes when such surfaces amongst participants. This method leaves the parties with some level of sanity and trust and bridge the gap between participants in cross border trade or foreign companies and domestic entities by providing a neutral and independent mechanism for resolving disputes when they arise. This is because it brings to bear the much needed stability for the corporate existence of foreign marketers and particularly relevant for business performance in emerging markets with weak unstable institutions (Baron, 2007), and more so if it is indicated in the arbitration clause from the start of the agreement contract. The immense merits of settling disputes through arbitration panels greatly overwhelm its demerits, especially when compared with litigation.

Therefore the most essential way to ensure stability is for global marketers to be rest assured that when they enter new markets, they will be able to retain control of their profits and personnel, enforce contracts, engage in productive activities and will not be trapped by inefficient regulations of laws by either independent countries of operation or seating arbitrators (Baron, 2017).

Consequently the solution board, international trade participants, as well as countries involved in cross border businesses should endeavour to minimize the occurrence of disputes and misunderstandings that often hamper the free flow of business transactions and create waves for the expansion of world trade and economies of nations. For this to happen it means there must be reasonable level of sincerity and desire to keep to the terms of trade as agreed by contracting individuals, companies and countries, as the case may be. No business prosper in an environment

that is perpetually at war with itself, like wise business associates or individuals who encounter / involve in trade disagreement or disputes because of failed promises or terms of trade have detrimental effect on the general performance of cross border trade. But in situation where it cannot be avoided the study still encourages the use of arbitration panels as a veritable means of reconciling the differences caused by failed business agreements in order to reduce or discourage animosity amongst involved parties for the growth of global business opportunities.

Recommendations

These specific recommendations serve as policy option for implementation. They include;

1. International arbitration should be given the institutional backing by laws or rules to enable the enforcement of awards possible, no matter where arbitration panel seat.
2. International arbitrators must attend to cross border trade disputes with high level of sincerity and urgency to foster confidence and hope on the part of disputants.
3. Parties to cross border trade must be honest to the terms of trade agreement and contracts to reduce the high propensity of trade disagreement and disputes, in order to boost business opportunities globally.

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