journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW
Vol. 12(4), September, 2025

THE CORNERSTONES OF ARBITRATION: RE-ENGAGING THE FOUR PILLARS IN MODERN PRACTICE

Emmanuel Chinaka EMMANUEL*
Toluwalase AJIBADE**
Jemimah ADEDIJI***
Damilola ABIDOYE****
Erioluwa SOTUNSA*****

Abstract

Arbitration has emerged as a cornerstone of modern dispute resolution, distinguished by four foundational principles: party autonomy, arbitrability, separability, and judicial non-interference or minimal interference. These pillars have historically defined the appeal and effectiveness of arbitration, particularly in cross-border and commercial contexts. However, the evolving dynamics of global commerce, legal reform, and technological advancement now call for a critical reassessment of how these principles function in practice. This paper employed the doctrinal research design which is a library-based research design, where statutes, and case law are considered. The doctrinal design is conducted on a legal proposition through the analysis of the existing provision of the statutes and cases using the power of reasoning. Data was gathered through primary source such as Arbitration and Mediation Act 2023, and secondary sources such as journal articles, books, and website materials. The study found that the four pillars of arbitration are both in operation and relevant to arbitral processes in Nigeria. In addition, the study further discovered that any deviation from any of the four pillars is a clog in the wheel of arbitration. The study concludes that re-engaging with these foundational elements is vital to sustaining arbitration's legitimacy, efficiency, and adaptability. By revisiting the core values that underpin arbitral practice, this study offers insights into strengthening arbitration for the demands of a rapidly changing world. The study recommends that there is a need to maintain a balanced arbitration clause through model agreements to avert overreach by one party. Furthermore, the paper recommends that incorporation of technology into arbitral processes to facilitate the efficiency of arbitration.

Keywords: Arbitration, Arbitrability, Judicial Non-Interference, Party Autonomy, Separability, Technology.

1. Introduction

For many years, arbitration has been the method of choice for settling business and international conflicts because it provides parties with a flexible, effective, and private substitute for going to court. Four essential tenets-party autonomy, arbitrability, separability, and judicial non-interference or minimal interference-are at the core of its ongoing appeal. These pillars have guaranteed arbitration's efficacy and universal acceptance in addition to defining its character. However, our

* **Emmanuel Chinaka EMMANUEL** PhD, Lecturer, Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State. E-mail: Emmanuelch@babcock.edu.ng; Contact: 07089324791

** **Toluwalase AJIBADE,** PhD, Lecturer, Department of Private and Commercial Law, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State. (Corresponding Author). E-mail: Ajibadet@babcock.edu.ng.

*** **Jemimah ADEDIJI**, Lecturer, Department of Private and Commercial Law, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State. Email: Adedijij@babcock.edu.ng.

**** **Damilola ABIDOYE**, Lecturer, Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State. Email: Abidoyed@babcock.edu.ng.

***** **Erioluwa SOTUNSA**, Lecturer, School of Law and Security Studies, Babcock University, Ilisan Remo, Ogun State. Email: Sotunsae@babcock.edu.ng

comprehension and use of these fundamental ideas must change along with the legal, technological, and economic environments.

It is both necessary and timely to re-engage with these four pillars in the dynamic conflict resolution environment of today. Emerging issues necessitate a new analysis of how these pillars function in reality, ranging from procedural inefficiencies and enforcement obstacles to cultural diversity and digital innovation. In order to maintain arbitration's legitimacy, fairness, and usefulness in the twenty-first century, this discussion aims to examine each of the four pillars in light of contemporary circumstances, emphasizing their ongoing significance while examining how they must change.

2. Arbitration in the 21st Century

Alternative Dispute Resolution (ADR) has become the most favoured option for dispute resolution globally and in Nigeria.[1] Brown and Marriott ventured into a description of the term where they expressed the view:

> *Analyzing each of the three elements of ADR - alternative, dispute and resolution – is instructive, not as a semantic exercise, but rather to examine what the process fundamentally involves. In doing so, it is important to bear in mind that ADR is a generic and broad concept, covering a wide range of activities and embracing huge difference of philosophy, practice and approach in the dispute conflict field.*[2]

Brown and Marriott's definition of ADR underscores one valid point which is that ADR is a compendium of a wide range of activities creating one broad concept. As an alternative, ADR houses many other alternatives from which disputing parties may elect whichever they desire should be applied in their dispute (to spur a resolution). In addition, the term ADR has been regarded as a dispute resolution methodology which accommodates the involvement of a third-party who does not in any way impose a legally binding outcome on both or either of the parties.[3]

Dokania has defined the term, ADR, as connoting a process of resolving a dispute outside the courtroom.[4] This position has been well accentuated in the case of *Guru Nanak Foundation v Rattan Singh & Sons* where the Court defined and recognized alternative dispute resolution as an alternative option for dispute resolution without the court's interference;[5] giving the parties the opportunity to negotiate their own terms and favourable terms of settlement.[6] Through ADR, parties to a dispute are guaranteed a win-win resolution since the system is entirely (or almost entirely) party oriented.

The emergence of ADR has been attributed to the shortcomings of litigation – the judicial approach. The time consumption, expense, and rigid nature of litigation encouraged disputing parties to seek alternative mechanisms for the resolution of their disputes.[7] Alternative dispute resolution has a variety of mechanisms adopted in dispute resolution by many in diverse jurisdictions such as conciliation, mediation, negotiation, arbitration and other hybrid mechanisms. Arbitration as a mechanism of ADR has become one of the most prominent forms of out-of-Court dispute

[1] PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).
[2] H Brown and A Marriott, *ADR Principles and Practice* (3rd edn, Sweet & Maxwell 2011); ibid.
[3] This researcher is of the opinion that this position is not entirely true, as the nature of arbitration proves. In arbitration, the third party's decision, award, has a binding effect on the parties. See K Mackie and others, *The ADR Practical Guide: Commercial Dispute Resolution* (3rd edn, Tottel Publishing 2007); PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).
[4] Y Dokania, 'Arbitration for Dispute arising from E-Commerce Transaction' (2020) 21 Supremo Amicus 1.
[5] (1981) 4 SCC 634; ibid.
[6] *Trustee of the Port of Madras v Engineering Construction Corporation Ltd*. (1995) 5 SCC 531.
[7] K Mackie and others, *The ADR Practical Guide: Commercial Dispute Resolution* (3rd edn, Tottel Publishing 2007); see also PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015); Y Dokania, 'Arbitration for Dispute arising from E-Commerce Transaction' (2020) 21 Supremo Amicus 1.

resolution.[8] As a trending and progressive methodology, arbitration has permeated a varied number of fields and works of life. The prevalence of arbitration can be seen as relevant in basically commercial fields such as medicine, engineering, contracts, and many other fields. Most importantly, arbitration has aided in the swift, less expensive and amicable resolution of disputes. Through arbitration, parties to a dispute exercise 'total' control over the modus operandi of the dispute.

The origin of this alternative dispute mechanism, arbitration, is one that precedes the 21st century. Arbitration can be easily traced back to the most primitive communities as a method which the people were most disposed to adopt in resolving their disputes.[9] This is exemplified by the practices that were in existence for years. For instance, in the Igbo societies, disputes were often amicably resolved by the family chief/head or head of the clan or such family head or members designated with such authority.[10] According to Centner and Ford, arbitration should not be relegated to a mere modern tool employed to circumvent some demerits in consonance with modern litigation.[11]

One of many scholars have postulated that the origin of arbitration can be traced back to biblical times.[12] As far back as the days of King Solomon, the then King of Israel, it is contended that the practice of arbitration was used by the famous King in what has now come to be known as an infamous decision in the Old Testament of the Bible.[13] King Solomon's objective was solely to have the only living baby, being contended between the women, split into two equal halves; one half to each woman. The King in his wisdom had requested for a sword to split the child, but one woman protested the King's proposal. Rather than allowing the King split the baby, the protester rather proposed that the other woman be given the baby so the child could at least be alive. The King, in his wisdom, had planned that the rightful parent of the child would rather desire the interest and welfare of the baby, hence, would rather prefer that the child is alive.[14] King Solomon's action was geared towards resolving the family dispute that was prevalent at that moment,[15] and he achieved this through arbitration.

Commercial transaction and arbitration dates back to the era of Philip II of Macedonia, the father of Alexander the Great, who was in the habit of resolving property disputes through arbitration.[16] In addition, in Marco Polo's dessert caravans, arbitration was applied to the resolution of the transactional dispute between Phoenician and Greek traders.[17] In the same vein, merchant disputes were seen as well suited for arbitration during the middle ages of England, rather than the royal

[8] M Bakhramova, 'Procedures and Legal Regulation of Dispute in Online Arbitration' (2022) 2 European Journal of Innovation in Nonformal Education 293.
[9] D Centner and M Ford, 'A Brief Primer on the History of Arbitration' <https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2018-19/summer/a-brief-history-arbitration/> accessed 21 June 2025.
[10] FC Amadi, PI Azubuike and OU Onyiri, 'Customary Arbitration of Land Disputes and the Implication of Finality and the Applicability of the Principles of *Res Judicata* of Awards in Nigeria' (2020) 10 Humberside Journal of Law and Social Sciences 43.
[11] D Centner and M Ford, 'A Brief Primer on the History of Arbitration' <https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2018-19/summer/a-brief-history-arbitration/> accessed 21 June 2025; PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Law Lords Publications 2015).
[12] D Centner and M Ford, 'A Brief Primer on the History of Arbitration' <https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2018-19/summer/a-brief-history-arbitration/> accessed 21 June 2025.
[13] 1 Kings chapter 3 verses 16 through 28.
[14] 1 Kings chapter 3 verses 16 through 28.
[15] It is the researcher's opinion that this is in consonance with the opinion expressed by Akpata where the legal scholar mentioned that arbitration . . . was employed for the resolution of conflicts as a result of its emphasis on moral persuasion and capability to guarantee harmony in human relationship. E Akpata, *The Arbitration Law in Focus* (West African Book Publishers Limited 1997); PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Law Lords Publications 2015); PO Idornigie, 'Evolution of Commercial Arbitration' (2003) 6 Current Jos Law Journal 246.
[16] D Centner and M Ford, 'A Brief Primer on the History of Arbitration' <https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2018-19/summer/a-brief-history-arbitration/> accessed 21 June 2025.
[17] ibid.

Courts.[18] In the year 1224, the concept of arbitration agreements in contracts was first regarded.[19] These transactional disputes were mostly resolved through arbitration often due to the constant travels and movements of merchants from one region to the other. Hence, there became a need for swift resolutions and decisions on commercial disputes.[20] Research has also revealed that arbitration has been employed in estate management as was the case as far back as 1799 when George Washington made his will.[21]

2.1. Preferred Terminologies for Arbitration

Arbitration, is the preferred method of dispute resolution where the disputing parties require a binding decision with no desire to go to Court or through litigation.[22] It is both a consensual and private channel for the resolution of disputes which leads to a legally enforceable decision.[23] Arbitration is regarded as an ADR method where the disputing parties resolve to have their dispute heard by a qualified arbiter – an impartial third party.[24] In defining arbitration, Idornigie captured the very essence of the term as he stated that the very essence of arbitration is that a dispute has arisen or a potential dispute will so arise, hence, the parties opt for a private tribunal regarded as (arbitrator[s]) to settle their dispute instead of going to the Court.[25]

According to Negi, arbitration is but a legal alternative, to Court, employed in the settlement of dispute. There, each flank makes an attempt to influence the panel of neutral decision-makers such as judges, lawyers, and other knowledgeable experts.[26] Negi's definition is clear and apt as it captures arbitration as an alternative, and rightly so called, a legal alternative. The researcher quite agrees with Negi as arbitration is not just an alternative but a legal alternative. Arbitration is a legitimate alternative to litigation which is acknowledged and sustained by the law. For instance, in different jurisdictions of the world where arbitration is practiced, the decisions of the arbitrator(s) is enforceable through the court, as is the case in Nigeria.[27] More so, the decisions of the arbitrator(s) is deemed final and binding; this finality and binding nature of the arbitral award is also recognized and sustained by the Courts. In the same vein, arbitration has its legal framework which provides a foundation for the alternative to be properly conducted. In this case, the legal framework makes certain provisions on arbitration. Some of such provisions would ordinarily include, but not limited to: composition of arbitrator(s); appointment of arbitrator(s); and jurisdiction of arbitrator(s).[28]

Arbitration is an ADR mechanism where two or more parties may obtain a final and binding resolution to their dispute by an independent expert of their choosing.[29] In addition, the term has also been viewed as one where two or more parties in a dispute agree that a private individual shall resolve it for them (since they are unable to resolve by themselves) thereby reaching a decision and

[18] ibid.
[19] ibid.
[20] ibid.
[21] ibid; 'George Washington's Last Will and Testament, July 9, 1799' <https://www.mountvernon.org/education/primary-sources-2/article/george-washingtons-last-will-and-testament-july-9-1799/> accessed 24 August 2024; PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015); MS Chapman, *Commercial and Consumer Arbitration: Statutes & Rules* (Blackstone Press Limited 1997); K Smith and D Keenan, *English Law* (7th edn, Pitman 1983); G Ezejiofor, *The Law of Arbitration in Nigeria* (Longman Nigeria Limited 1997).
[22] M Bakhramova, 'Procedures and Legal Regulation of Dispute in Online Arbitration' (2022) 2 European Journal of Innovation in Nonformal Education 293.
[23] ibid.
[24] EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).
[25] PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).
[26] C Negi, 'Concept & Overview of Online Arbitration' <http://dx.doi.org/10.2139/ssrn.2715684> accessed 21 August 2024.
[27] DT Eyongndi, 'Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices' (2021) 15 *Mizan Law Review* 107.
[28] Arbitration and Mediation Act 2023.
[29] C Negi, 'Concept & Overview of Online Arbitration' <http://dx.doi.org/10.2139/ssrn.2715684> accessed 21 August 2024; M Taly, *Arbitration Law – A Primer* (Eastern Book Company 2011).

not a compromise.[30] These two definitions of arbitration clearly depict the essence of the term as geared towards the amicable resolution of disputes between parties. Furthermore, the umpire to resolve this dispute must be private, that is, in the sense that they are independent of the parties who have appointed them, and free to go about their responsibilities with no hurdles.

Arbitration is perceived as a device where the resolution of a question, which is of interest for not less than two individual, is entrusted to one or more independent persons known as the arbitrator(s) who obtain their power(s) from a private agreement which is devoid of the state or its authority and empowered to go ahead and decide on the dispute bases on the agreement of the parties.[31] David's definition of arbitration likened the term to a device. The researcher is however of the view that arbitration is more than a device, it is a proceeding as a system for reaching justice and equality.

Orojo and Ajomo gave the term a more comprehensive definition. To them, arbitration is a procedure utilized in dispute resolution where the parties, by agreement, desire to be bound by the award reached by the arbiters. This award is both final and binding on both parties who from the onset had, by agreement, decided that the dispute or potential dispute between them would be settled by an impartial umpire chosen by them.[32] Orojo and Ajomo's definition of arbitration places emphasis on the mutuality of this mechanism. Both scholars clearly underscore arbitration as a party autonomous system that allows parties to make certain decisions on arbitration. As a party autonomous system, the parties, pre or post dispute, by agreement, resolve to subject their dispute to a neutral umpire who decides over their conundrum. In the same vein, the parties select the arbiter(s) and resolve to be bound by the arbiter's decision.[33]

The practice of arbitration is indeed an alternative forum. Taly perceived arbitration as the process by which parties, via their agreement, choose an alternative forum to resolve any disputes between them.[34] Unequivocally, the phrase 'alternate forum' is used to describe an out-of-Court approach. The researcher aligns with this definition of arbitration due to the fact that the term is seen both as a practice and forum. As a practice, it is a procedure for settlement; while as a forum, it provides a setting for dispute resolution. This definition is progressive and tailored towards broadening the scope of the concept. In addition, in viewing arbitration as an alternative medium for dispute settlement, Taly reaffirmed that arbitration is a modern (more modern) and efficient means of dispute resolution than adjudication (litigation).[35]

According to Garner, arbitration has also been regarded as a dispute resolution process where the parties in dispute select one or more neutral third parties who are saddled with the responsibility to make final and binding decisions in resolution of the dispute instead of having recourse to an action at law.[36] Although direct, yet, Garner's definition of arbitration is apt as it endeavours to touch on

[30] A Redfern and M Hunter, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet and Maxwell 2004); F Badiei, 'Online Arbitration Definition and its Distinctive Features' <https://www.semanticscholar.org/paper/Online-Arbitration-Definition-and-its-Distinctive-Badiei/3c644e47189165e14031370a841d96ad7bb6d12b#citing-papers> accessed 21 August 2024.

[31] R David, *Arbitration in International Trade* (Kluwer Law and Taxation Publishers 1985); F Badiei, 'Online Arbitration Definition and its Distinctive Features' <https://www.semanticscholar.org/paper/Online-Arbitration-Definition-and-its-Distinctive-Badiei/3c644e47189165e14031370a841d96ad7bb6d12b#citing-papers> accessed 21 August 2024.

[32] JO Orojo and MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates Limited 1999); EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).

[33] VF Comella, *The Constitution of Arbitration* (Cambridge University Press 2021).

[34] M Taly, *Arbitration Law – A Primer* (Eastern Book Company 2011).

[35] ibid. This definition of arbitration is similar to the definition of the term as seen in M Woodley (ed), *Osborn's Concise Law Dictionary* (10th edn, Sweet & Maxwell 2005), where the author regarded arbitration as the determination of disputes by the decision of one or more persons called arbitrators . . . An arbitration is a legally effective adjudication of a dispute otherwise than by the ordinary procedure of the courts. The parties choose the arbitrator, and he is usually a specialist in the relevant field. The arbitrator is required to act in a judicial manner. The decision of the arbitrator is called an award, and is usually binding on the parties.

[36] BA Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019).

certain key elements of the definition of arbitration. For instance, it emphasizes the selection process of the arbitrator, and the neutrality of same, both of which are relevant in any arbitral proceedings. This definition also identified the 'out-of-Court' nature of arbitration which is one of many factors that makes it an alternative. Lastly, the vitality of arbitral decisions is clearly captured in this definition. It seems clear however that there is no arbitration without an arbiter's decision known as award.

A cursory look at all the definitions of arbitration considered captures the fact that four fundamental elements are key in the definition of the arbitration across board. These elements include: mutual consent to submit to arbitration; choice of arbitrators; due process; and binding decision.[37] Mutual consent to submit to arbitration gives legitimization to the arbitral process. Parties to a dispute must agree before or after the crystallization of such dispute to resolve their differences through arbitration. In considering this, Badiei observed that due consideration, valid offer and acceptance, and intention to create a legal obligation should exist.[38] The presence of these factors will ensure that no individual is coerced into any form of agreement. Nonetheless, it is worthy of note that an arbitration agreement may not be entirely consensual in an online arbitration agreement.[39]

Furthermore, arbitration provides parties with the opportunity to choose arbitrator(s). The choice of arbitrators is not a privy of the state. It is rather under the auspices of the parties to select their neutral umpire. However, where the parties are unable to make this choice, the Court or an appointed third party is saddled with the responsibility.[40]There can be no arbitration without an arbiter. Hence, the choice of arbitrators is a key element in any form of arbitration. It should be noted that this arbitrator should be independent and impartial in the execution of his/her functions. The third element recurrent in the definition of arbitration is tagged due process. In arbitration, due process stands to connote the right of hearing, adversary proceedings as well as the right to equal treatment.[41] The essence of due process in arbitration cannot be overemphasized as the absence or lack of which may not be regarded as arbitration. Finally, it suffices to say that where there is no arbitral decision, there is no arbitration. Binding decision is the fourth element in the definition of arbitration. The binding decision in arbitration marks the end of the arbitral proceedings, but not necessarily arbitration. The decision of the arbiter in arbitration is such that must be binding on both parties to arbitration. As Badiei rightly puts it, by agreeing on arbitration, parties give arbitrators a judicial role to adjudicate admit them and to give a decision (award) as effective as that of a court.[42]

3. Relevant Principles of Arbitration

Arbitration thrives on principles. The characteristic that it is not as rigid and less formal than litigation, does not make it a wish-wash system of dispute resolution. Rather it is a mechanism anchored on tested and reliable principles which has guaranteed the sustenance of the mechanism. These principles, collectively, have given arbitration its nature, uniqueness and edge over other options of dispute resolution. These principles are therefore to be considered subsequently.

3.1. Principle of Party Autonomy

The principle of party autonomy, according to this researcher, is the bedrock of arbitration. As a private dispute resolution mechanism, arbitration is a product of the agreement of both parties. The

[37] F Badiei, 'Online Arbitration Definition and its Distinctive Features' <https://www.semanticscholar.org/paper/Online-Arbitration-Definition-and-its-Distinctive-Badiei/3c644e47189165e14031370a841d96ad7bb6d12b#citing-papers> accessed 21 August 2024.
[38]ibid.
[39]ibid.
[40]Arbitration and Mediation Act (AMA), s 7; ibid; see AMA
[41] F Badiei, 'Online Arbitration Definition and its Distinctive Features' <https://www.semanticscholar.org/paper/Online-Arbitration-Definition-and-its-Distinctive-Badiei/3c644e47189165e14031370a841d96ad7bb6d12b#citing-papers> accessed 21 August 2024.
[42]ibid.

idea of arbitration as a party autonomous mechanism is also captured in the UNCITRAL Model Law, and has been adopted in many countries with little or no serious modifications.[43] This has been clearly appraised by Herrmann who upheld the view that the most outstanding principle of the Model Law is that of the autonomy of the parties to come to terms on the 'rules of the game'. This freedom, he continued, experienced by the parties is partly because arbitration is anchored on party agreement and also policy consideration geared to international practice.[44] Party autonomy empowers the contracting parties to design their remedial process within the limits of public policy.[45] In arbitration, parties are at liberty (freedom) to choose the relevant laws and rules that will govern their agreement.[46]

Party autonomy has been regarded as a vital principle governing international arbitration agreement. It is the backbone of arbitration proceedings.[47] In the same vein, it has been regarded as the freedom of the parties to create their contractual relationship in the way they see fit.[48] Through this principle, the parties' right to make their arbitration agreement without any control is upheld and sustained. The principle has been well captured in the Nigerian case of *MV Lupex v Nigeria Overseas Chartering & Shipping Ltd,*[49] where the Court established *inter alia* that an arbitration clause is a written submission settled by the parties to the contract and, like other written submissions, it must be created in line with its language and in the light of the circumstances in which it is made.[50]

The relevance of the principle of party autonomy cannot be undermined. Party autonomy is a guiding principle in deciding the procedure to be followed in arbitration. It has been endorsed in both national law and international law which is exemplified in the UNCITRAL Model Law. Under international commercial arbitration, Dursun sums up the basis behind the principles of party autonomy. Accordingly, the scholar noted that parties to international commercial contract may decide not to resolve their disagreement through the court since litigation which is often national of one party and alien to another party; and the parties do not desire to deal with procedural formalities. As a result, the parties opt for arbitration as a private mechanism which allows them the opportunity to conduct all proceedings of arbitration by taking cognizance their desires in order to determine the choice of arbitrator (with the requisite knowledge and skill for the dispute) and time for hearing.[51]

(A) Limitation of Party Autonomy: Although arbitration is founded on the principle of party autonomy, it is essential to note that the principle is not an end to itself, neither is it ultimate. Party autonomy is also limited by a variety of elements that the researcher would discuss subsequently.

---

[43] United Nations Commission on International Trade Law (UNCITRAL Model Law) 1985, art 19 (1).
[44] G Herrmann, 'The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions' in P Sarcevic (ed), *Essays on International Commercial Arbitration* (Graham & Trotman Ltd 1989); PO Idornigie, 'The Nigerian Arbitration and Conciliation Act and the Principle of Party Autonomy' in OD Amucheazi and CA Ogbuabor (eds), *Thematic Issues in Nigerian Arbitration Law and Practice* (Varsity Press Limited 2008); PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).
[45] PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015); JDM Lew, 'Arbitration Agreements: Form and Character' in P Sarcevic (ed), *Essays on International Commercial Arbitration* (Graham & Trotman Ltd 1989).
[46] Although this freedom may not be absolute. Y Gao, 'A Brief Analysis of Party Autonomy in International Commercial Arbitration' (2021) 580 Advances in Social Science, Education and Humanities Research 123.
[47] J Ansari, 'Party Autonomy in Arbitration: A Critical Analysis' (2014) 6 Researcher 47; SA Fagbemi, 'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?' (2015) 6 Afe Babalola University Journal of Sustainable Development Law & Policy 222.
[48] S Abdulhay, *Corruption in International Trade and Commercial Arbitration* (Kluwer Law International 2004); SA Fagbemi, 'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?' (2015) 6 Afe Babalola University Journal of Sustainable Development Law & Policy 222.
[49] (2003) 10 SCM 71, 79.
[50] (2003) 10 SCM 71, 79.
[51] S Dursun, 'A Critical Examination of the Role of Party Autonomy in International Commercial Arbitration and an Assessment of its Role and Extent' <https://www.yalova.edu.tr/Files/UserFiles/83/8_Dursun.pdf> accessed 18 July 2024.

(i) Third Person: An arbitration agreement is binding on the parties to the agreement – the two parties. As a result, decisions or agreements made has no binding force on a third party. That is, the parties to the agreement cannot make a decision on something that would impact a third party negatively. This is further exemplified by the inability of or little power to demand the presence of a third party to serve as a witness in the proceedings or to even file a document. Nonetheless, the arbitrator(s) can obtain legal assistance through the court.[52]

(ii) Equality of Parties: The parties to arbitration are autonomous enough to take decisions in regulation of arbitration or arbitral proceedings. However, the agreements of the parties cannot be implemented in a way that it violates the provisions regarding equal treatment of the parties. At some times, the parties' agreements can be interpreted and implemented to their detriment (unfair treatment). To this end, the arbitrator(s) and even the Court is duty bound to sustain the basic attributes of arbitration proceedings and to restrict party autonomy.[53]

(iii) Arbitrability: The concept of arbitrability refers to the suitability of a dispute to be brought to arbitration. Arbitrability questions whether or not it is appropriate to settle a dispute through the employment of arbitration. Arbitrability is a subject of party autonomy. Arbitrability can be viewed from two perspectives – objective and subjective arbitrability.[54] The objective arbitratibility is one where the eligibility of referring the subject matter to arbitration is questioned;[55] while subjective arbitration questions the capacity of parties to go into arbitration agreement.[56]

(iv) Arbitration Agreement: The arbitration agreement can, on its own, be or serve as a limitation to the autonomy of the parties. By agreement, the parties to the arbitration may agree to refer their disagreement to an arbitrator or a tribunal of arbitrators. The agreement, being a production of party autonomy, serves as a limitation to the parties since they are bound by their agreement in the arbitration agreement, and the parties cannot deviate from the provisions therein.[57]

(v) Public Order: Public policy is not subject to precise definition, yet, it is dependent on economic, social, and cultural philosophy of each country.[58] Every state must structure for itself and define as well its boundaries and standards. This can only be achieved through public order which places a limitation to party autonomy as a result of the notion of state sovereignty.[59] Although parties to arbitration are empowered to structure their arbitration agreement as they deem fit, though subject to certain limitations;[60] nevertheless, the Singapore Court of Appeal decided that the parties may use their autonomy to outline an agreement, but where the execution of such agreement results to a conflict with public order, then such agreement will be avowed void on this note.[61]

3.2. Principle of Separability

It is now a settled law that an arbitration clause survives the main contract under the principles of separability. The Court in answering the question whether an arbitration clause is terminated by breach of the contract of which it was a part. The Court explained the principle of separability clearly in its judgment.[62] Accordingly, the Court in the case of *Heyman & Ors v Darwins Ltd* held

[52] M Malacka, 'Party Autonomy in the Procedure of Appointing Arbitrators' (2017) 17 International and Comparative Law Review 93.
[53] ibid 99.
[54] ibid 93; EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020) 18.
[55] EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020) 19.
[56] ibid 18.
[57] M Malacka, 'Party Autonomy in the Procedure of Appointing Arbitrators' (2017) 17 International and Comparative Law Review 93, 100.
[58] ibid 103.
[59] ibid 103.
[60] *Mastrobuono v Shearson Lehman Hutton, Inc*., (1995) 514 U.S. 52; ibid 104.
[61] *Peh Teck Quee v Bayerische Landesbank Girozentrale* (2000) 1 SLR 148.
[62] *Heyman & Ors v Darwins Ltd* (1942) AC 356.

the view that a breach of contract does not abrogate the contract although all further performance of the obligations undertaken by each party in favour of the other party may cease. The contract survives for the purpose of measuring claims arising out of the breach, and the arbitration clause survives for determining the mode of their settlement. The purposes of the contract have failed, but the arbitration clause is not of the purposes of the contract.[63]

Article 16(1) of the Model Law states that an arbitration clause which is a part of the contract shall be regarded as an independent agreement separate from the term of the contract.[64] Blackaby and Partasides have further thrown some light into the meaning of the principle of separability. According to these scholars, a different way of analyzing this position is that there are in fact two separate contracts. The major contract concerns the commercial obligations of the parties; while the secondary contract houses the obligation to resolve any disputes emanating from the commercial relationship by arbitration. This second contract may never come into operation, but if it does, it will form the background for the appointment of an arbitral tribunal and for the resolution of any dispute arising out of the major contract. The doctrine of separability is endorsed by institutional and international rules of arbitration.[65] An arbitration clause is treated as a different and independent agreement which perpetrates even after the termination of the underlying contract.[66] The breathe and length of the principle of separability is centered on the fact that the arbitration agreement is separable from the main contract where it appears.[67] This doctrine came up as a result of the need to save arbitration agreement from failing due to the fact that contained in contracts are items with questionable validity.[68]

3.3. Principle of Arbitrability

The principle of arbitrability is one of the four core principles upon which arbitration is mounted. Arbitrability, as a term, means the quality of being capable of resolution of arbitration.[69] The principle of arbitrability is one of the major four pillars of arbitration. Arbitrability can be viewed from varied perspectives. For instance, arbitrability can be seen from the perspective of the subject matter.[70] This perspective considers the nature of dispute that can or should be referred to arbitration.[71] According to Idornigie, arbitrability refers to the quality of being capable of resolution through arbitration;[72] it is utilized to omit some subject matters from the scope of arbitration.[73] According to Nwakoby, Aduakka and Orabueze, arbitrability bothers on the competence of the arbitrator or arbitral tribunal to embark on arbitration with regards to any issue directed to them. In essence, it is a jurisdictional issue which questions whether or not the arbitrator(s) has the authority to determine a dispute.[74]

---

[63] *Heyman & Ors v Darwins Ltd* (1942) AC 356; PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).

[64] UNCITRAL Model Law, art 16 (1).

[65] N Blackaby and C Partasides, *Redfern and Hunter on International Arbitration* (5th edn, Oxford University Press 2009).

[66] DJ Sutton, J Gill and M Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007); PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).

[67] A Mustafayeva, 'Doctrine of Separability in International Commercial Arbitration' (2015) 1 Baku State University Law Review 93; JL Tsen-Ta, 'Separability, Competence-Competence and the Arbitrator's Jurisdiction in Singapore' (1995) 7 Singapore Academy of Law Journal 421.

[68] JL Tsen-Ta, 'Separability, Competence-Competence and the Arbitrator's Jurisdiction in Singapore' (1995) 7 Singapore Academy of Law Journal 421; RA Daimsis, 'How Heuristics misshape reasoning and lead to increased costs in Arbitration' <http://dx.doi.org/10.2139/ssrn.3296744> accessed 21 July 2024; E Etlik, 'The Principles of Separability and Enforcement of Foreign Awards in International Arbitration' <https://www.academia.edu/31596972/The_Principles_of_Separability_and_Enforcement_Of_Foreign_Awards_in_International_Arbitration> accessed 21 July 2024; R Ollus, 'The Doctrine of Separability and the Interaction between the Main Agreement and the Arbitration Clause' (Master Thesis, University of Helsinki 2019).

[69] PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).

[70] ibid.

[71] ibid.

[72] ibid; EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).

[73] EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).

[74] GC Nwakoby, CE Aduakka and CI Orabueze, 'Arbitration Agreement: The Issue of Arbitrability in Nigeria Arbitration Practice' (2018) 1 International Journal of Law and Society 92; EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).

Sutton, Gill and Gearing held the view that the question of arbitrability comes up in three variant stages, which are to be examined. First, arbitrability arises due to a submission to stop the arbitration, where the differing party asserts that the arbitrator or arbitral tribunal is with no authority to determine a matter since is not arbitrable. Second, the question of arbitrability springs up in arbitration on the hearing of a protest that the tribunal is devoid of substantive jurisdiction. Third, on the submission to contest the award or to oppose its execution.[75] As earlier mentioned, arbitrability are in two specific types. The first is the subjective arbitrability; while the second is the objective arbitrability. Nonetheless, both types of arbitrabilty aids the understanding of the germane principle of arbitration.[76]

In discussing the subjective arbitrability, it refers to the capacity of parties to engage in arbitration agreement. Capacity is of great concern as parties who engage in arbitration agreement must possess the legal capacity to go into such agreement.[77] In essence, the subjective arbitrability addresses the eligibility of parties to go into such agreement.[78] The New York Convention clearly captures the idea of subjective arbitrability where it stated that the recognition and enforcement of the award may be refused if the parties to the agreement were, under the law applicable to them, under some incapacity.[79] On the other hand, the objective arbitrability is the second type. The objective arbitrability is that type of arbitrability which places emphasis on the eligibility of the subject matter of the dispute to be referred to arbitration. This type of arbitrability is advanced on the basis that certain subject matters or the subject of a dispute can only be settled through or by the national Courts. That is, certain disputes are only left for the attention of the Courts and not arbitration.[80] It considers the eligibility of the subject matter to be referred to arbitration.

3.4. Principle of Judicial Non-interference or Minimal Interference

Arbitration is a private dispute resolution mechanism. It is an alternative to the traditional dispute settlement approach which took place within the four walls of a Court room. As an alternative and private approach, arbitration and arbitral proceedings are run with little or zero interference from the Court. In essence, arbitration is an autonomous system of dispute resolution independent of the Court or Court system. The principle of judicial non-interference or minimal interference is not to be understood from the perspective or with a mindset that there exists no relationship between arbitration and the Court; such view will be fallacious. Blackaby and Partasides shared the opinion that the union between the arbitral tribunal and the national Court fluctuates between true partnership and mandated cohabitation. Arbitration is dependent on the primary support of the Courts which alone have the empowerment to rescue the system when a party seeks to sabotage it.[81]

By standard, an ideal arbitration agreement, by its nature, ought to be independent of the Court.[82] This is exemplified in article 5 of the UNCITRAL Model Law which provides that the Court shall not intervene in matters governed by the Model Law, except the otherwise is provided by the same law. Under this principle, the standard of arbitration does not get devalued at the domestic level. Under section 64 of the Arbitration and Mediation Act,[83] the Act states that a Court shall not intervene in any matter governed by this Act except where so provided in this act. This provision serves one purpose which is to guarantee the exclusion of any residual or general powers placed on the Court in a domestic

[75] DJ Sutton, J Gill and M Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007); EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).
[76] N Freimane, 'Arbitrability: Problematic Issues of the Legal Term' (LLM thesis, Riga Graduate School of Law 2012); EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).
[77] C Mrotzek, 'The Development of Concept of Arbitrability: An International Comparison' (LLM Thesis, University of Cape Town 2017).
[78] EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).
[79] New York Convention 1958, art 5 (1)(a).
[80] JDM Lew, LA Mistelis and SM Kroll, *Comparative International Commercial Arbitration* (Kluwer Law International 2001); EC Emmanuel, 'Arbitrability of Medical Negligence in Nigeria' (LL.M Dissertation, Babcock University 2020).
[81] N Blackaby and C Partasides, *Redfern and Hunter on International Arbitration* (5th edn, Oxford University Press 2009).
[82] PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015).
[83] Arbitration and Mediation Act, s 64.

parlance which are not listed in the Model Law.[84] To corroborate this statutory provision, the English Court in *Cetelem v Roust,* emphasized that the intention of the enactment was to ensure that the powers of the Court should be limited to assisting the arbitral process and should not usurp or interfere with it. [85] Another way of stating the non-interference of the Court in arbitral proceedings is aptly mentioned under the English Arbitration Act where it provides that there is no inherent common law jurisdiction of the Court to supervise arbitration outside the framework of the Arbitration Act 1996.[86]

It is noteworthy that there is an exception to the general rule that the court is not to intervene in arbitration. The implication of this is that there are certain circumstances that warrant the assistance of the court in arbitral proceedings. For instance, an arbitration agreement shall be irrevocable unless by agreement or by leave of the court;[87] the court can assist in the appointment of the arbitrator(s);[88]and the court has the power to order the attendance of witness.[89]These are just few examples.

4. Conclusion

For arbitration to continue to be successful and credible at a time of fast globalization, technological disruption, and changing legal complexities, its core principles must be continuously improved. The foundation of arbitration has historically been the four pillars of party autonomy, separability, arbitrability, and judicial non-intervention or limited interference. But the current environment necessitates a conscious return to these ideas. Separability between the arbitration clause and the transaction contract must be maintained in circumstances of contract breach, even if party autonomy must be protected while guaranteeing the equality and justice of the disputing parties. Furthermore, judicial non-intervention or minimal involvement must be followed, and arbitrability—which highlights the ability to resolve disputes through arbitration—must be taken into account. Despite growing opposition to the arbitral procedure, the enforceability of these four arbitration pillars must be maintained. A reevaluated strategy that balances tradition and change is necessary to re-engage with these pillars.

In the end, arbitration's future depends on both upholding its core principles and reinterpreting them to accommodate modern demands. In order to strengthen these pillars against current and upcoming problems, legal professionals, organizations, and legislators must actively examine how these pillars operate in practice. The arbitral community can strengthen arbitration's relevance, build public trust, and guarantee that arbitration continues to be a strong, flexible, and user-centered dispute resolution method in a world that is changing quickly by reinvesting in the fundamental principles that set it apart from other dispute resolution procedures.

5. Recommendations

From this paper, this study recommends four basic proposals:

First, there is a need to encourage ongoing change by involving stakeholders, such as governments, universities, arbitral institutions, and end users, to ensure that the four pillars adapt to changing legal, technological, and economic conditions.

Second, fair arbitration provisions should be encouraged by using model contracts that stop stronger parties from going too far, particularly in investor-state or cross-border deals.

Third, to protect the integrity of party choice and prevent excessive intervention, judges should be encouraged to exercise discretion while examining arbitral agreements and generally adjudicating arbitral matters.

Finally, the use of technology to empower parties, such as by using online platforms that allow parties to alter deadlines, procedures, and arbitrator choices, are essential.

---

[84] United Nations Document A/CN. 9/264, art 5 (2); PO Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Law Lords Publications 2015).
[85] (2005) 1 WLR 3555, 3571.
[86] Arbitration Act 1996, s 1 (c).
[87] AMA, s 3.
[88]ibid s 7.
[89]ibid s 43.