

VIDEO CONFERENCING IN ARBITRATION: AN OVERVIEW

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What is the argument on the other side? Only in this that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on: and that will be bad for both.^{**}

Lord Denning M.R.

1. Prefatory Statement

Video Conference as an empirical science always shows that truth is stronger than fiction. This focus on video conferencing is chosen in the belief that law as an art and science should grow by accretion. In the spirit of this work one envisages that arbitration by video conferencing will turn out to be an important engine of development, peace and unity of the now global village. At the point when video conferencing is made as common or affordable as the mobile phone, there will be “a globalization in solidarity, a globalization without marginalization”. It is at this point that the real picture of justice will start to emerge to all classes of people. From this point, person or nation can see what others see, enjoy what others enjoy in some directly proportional way. The end result will then be harmonious human relationships at all levels.

The caution sign is that every member of the global village arrangement should be just, equitable, fair and honest to each other. The words should be “love thy neighbour as thy self”. This is to avoid the previous and still existing consequences of (1) slavery, (2) colonization and (3) neo-colonialism. Let “globalization not be the next stage of the listed three.

For a harmonious embryonic world using the internet, the solution is rock bottom rate of internet access. This will make it possible for all to feel affiliated and there will be cohesion. Surely this will place human beings at the centre of events.

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^{**} Packer v Packer 91953) 2 All E.R. 127 at 129.

2. Introduction:

Law, science and technology are the children of progress, the instruments of human civilization, with them; man navigates the empty space and the unfriendly ocean of life. For law, it is the expression of common consciousness of the people. There can be no law without the society and no society without law. In every society disputes arise. Dispute, according to **Olagunju JCA** is “an agitation by contending parties over a right”.¹ It is obedience to law that facilitates dispute resolution. This is because law is the highest reason implanted in nature which dictates those things, which ought to be done, and prohibits the reverse. It does not create situations but regulates situations. Now we can utilize the synergy of both law and science/technology to lay solid foundation for peaceful, costless and lasting dispute resolution by arbitration; for a better economic future.

Science and technology have brought out for the use of all, internet facilities. This has shown that no nation can have separate existence but to function with the whole world. The present stage of development of the world has indicated that the whole world is now a global village with the aid of law, science and technology. This is why it is now possible to arbitrate by the means of video conferencing. In fact, it is expected because trade, commerce, behaviour, travels, contracts, relationships have all changed.

What is arbitration?

In this work, we shall dwell on the line linking law, science and information technology in the modern world now known as global village. However, arbitration which is in the area of law was defined as a concept in settlement of disputes. In the definition, linkage of arbitration and contract was highlighted. It was observed from various versions of definitions of arbitration; the problem in the definition of arbitration is as a result of the relationship between arbitration, law and justice. The latter two (law and justice) being rather abstract in nature, the definition of arbitration would not be easy. It is for this reason that it was observed that even jurists have problems in their attempts to define arbitration.

In fact, every attempt at the definition of arbitration reflect the perspective, circumstance, and the ideology of the jurist. Apart from the statutory definition of

¹ Bendex Engineering Corporation & Anor v. Efficient Petroleum Nig. Ltd (2001) 8 NWLR [Pt.751] 333 at 361.

arbitration,² it is seen as an extra – judicial procedure which the state has permitted by enacting (in the exercise of its legislative sovereignty), the legal framework for its organization and conduct.³ Also, **Greg C. Nwakoby** in his work, sees arbitration as the procedure in which disputants voluntarily agree to submit their dispute(s) or difference(s) to a third party in whom they repose confidence and undertake to abide by the decision of the said third party.⁴ Some judicial decisions attempted the definition of arbitration as in **Ofomata & Ors v. Anoka & Ors.**⁵ where it was said to be the determination of dispute by the decision of persons called arbitrators chosen or appointed in a recognized manner and agreed upon by the disputants. The court in the stated case went ahead to state that such a decision must be (1) certain (2) final, (3) reasonable, (4) legal, (5) possible of execution and (6) dispose of all the differences submitted to arbitration.⁶

It was at the point of an overview of Customary Arbitration that the observation of an erudite jurist *Niki Tobi JSC* in the case of **Onyenge & Ors. v. Ebere & Ors**⁷ was reiterated, he said:

*“...It is equally true, however, that before the British brought their system of administration of justice, we had our traditional system that worked. It worked, and still works better for the indigenes because it is faster and cheaper and they understand it, not being bugged down by the unnecessary and avoidable technicalities that beset the English”*⁸

The learned jurist’s observation indicated that before the advent of the British colonization of parts of Africa, customary arbitration existed among the people. So, customary arbitration is a process of dispute resolution prevalent in the hinterlands of Africa in accordance with native customary law of the people. Surely, it is popular among the rural dwellers in the villages. However, one must observe that in most cases some urban dwellers who have interest in the subject matter of dispute which situate in the villages show likeness for customary arbitration. The predominant arbitrators in the customary arbitration are the chiefs, elders and in some cases the priests. One distinguishing factor between customary

² Section 57(1) of the Arbitration and Conciliation Act Cap A18, 2004 Laws of the Federation of Nigeria.

³ **Amazu A. Asouzu** “Arbitration and Judicial Powers”, A paper presented at the year 2000 Annual Conference of the NBA, Abuja, 35.

⁴ **Greg C. Nwakoby**, *The Law and Practice of Commercial Arbitration in Nigeria*, Enugu, Ikye Ventures Association, 2004, 1.

⁵ (1974) 4 E.C.S.L.R 251 at 253.

⁶ Ibid at 253.

⁷ [2004] Vol. 11 M.J.S.C. 184.

⁸ Ibid at 201.

arbitration and arbitration under the Act or common law arbitration is that customary arbitration agreement may be oral and the others written.⁹

As international trade has expanded so has the use of international arbitration. With the world being reduced to a global village, more powerful technologies offer the reduction of the digital divide between nations and makes it easier for dispute resolution mechanism to adopt the fastest and most convenient devices hence video conferencing in arbitration. This is more beneficial in international arbitration.

3. What is Video Conferencing?

It is proper to first define the word 'video'. According to BBC English Dictionary, Video is the recording and showing of films and events, using a video camera, a video recorder, video tapes and a television set.¹⁰ On the other hand, video conferencing is a conference in which several people who are a long way from each other communicate using audio and visual equipments.¹¹ It is trite and self evident that we live in a time of very rapid technological change; what was previously referred to as jet age. We have to thank God for making it possible in our own time. The nature and speed of communication, the access to and dissemination of information are on a scale unprecedented and unimaginable only a few years ago.

Towards the end of the last millennium, the internet came to cushion the inertia of contracts, relationships, activities etc, new kinds of contracts, services, trades as well as the resolution of disputes or conflicts arising from them take different dimensions. Such new areas come in the form of transfer of technology, genetic, engineering, electronic commerce, electronic banking, entertainment and sports, including sponsorship. These will present specific demands in an internet regime – the growing commercial arbitration. All these developments will come to naught if law does not go in tandem with them.

Today, this issue of video conferencing in arbitration appears very novel to us. Actually, video conferencing is a process of using information technology to simultaneously send and receive audio and visual messages and signals of what is taking place at different parts of the world at the same time. Soon there will be infrastructure for video conferencing in arbitration in almost all places. People will invest in it, making use of science, technology

⁹ See section 1(1) Arbitration and Conciliation Act Cap A18, 2004, Laws of Federation of Nigeria.

¹⁰ **John Sinclair**, et al, *BBC English Dictionary*, Harper Collins Publishers, 1992, 1311.

¹¹ *ibid* 1311.

and law. This means that we are for now looking somewhat into the crystal ball, but hopefully with practical eyes, endeavouring to ascertain the likely form which commerce, service, trade, technology and others might usefully take. The internet will remain a popular asset if it maintains the confidence and respect of who uses it and are likely to use it, given the volume and worth of value entrusted to it.

In fact, in few years from now, virtually, all documents would have dematerialized. They will only exist in electronic form.¹² Law on its own will never stand still. It is predicted here that internet activities such as video conferencing and courts will soon smoothen the rather ambivalent rapport between nations in the present global village. It is at this point that the universal application of the internet in contract and international commerce generally, science and social science can form an alloy to utilize human resources to the benefit of all.

The realities of video conferencing in arbitration is beginning to be known in Nigeria now. A decade ago, who could imagine the advantages of having a GSM as widely used today. However, it will be improper to state that video conferencing is entirely unknown in some other countries. So a work of this nature, in this area, at this time could be described as a writing in the jubilant tone of a proud advocate of the system. This is because the concept of video conferencing in arbitration is both a tool and a process and it is the point where law meets with technology. What is really needed is a good investment environment and encouragement from the government. With this, the necessary infrastructure will be put in place with constant or regular power supply and institution or corporate bodies that will invest in that regard.

4. Types of Arbitration:

There are many types of arbitration as will be listed hereunder. However, it is pertinent to state that which ever type of arbitration there is, it is not a court and is not **per se** vested with judicial powers.¹³ Also this point was reiterated in **Awosile v. Sotumbo**¹⁴ where *Nnaemeka Agu J.S.C.* said that **Section 6 of the Constitution of the Federal Republic of Nigeria, 1999** vests the judicial powers of the Federal Republic of Nigeria in the courts and not in non-judicial bodies such as arbitration. The types of arbitration are: (a) customary

¹² **Robin Widdison**, “*Electronic Law Practice: An Exercise in legal futurology*” *The Modern Law Review*, 1997, 143 at 147.

¹³ See **Agu v. Ikewibe (1991) 3 NWLR [Pt. 180]380 per** Nnaemeka Agu J.S.C. at 419.

¹⁴ (1992) 5 NWLR [Pt. 243] 514.

arbitration (b) common law arbitration (c) arbitration under the Act and (d) International Commercial Arbitration. In principle, arbitration is more flexible and adaptable and as such quicker and more efficient than litigation.¹⁵

It will appear a sweeping statement to state that video conferencing is not applicable to domestic arbitration. This is because even though a dispute is domestic, the distance to be travelled by the parties may be so much that they may opt to use video conferencing to arbitrate,¹⁶ if they can afford it. Also the circumstances prevalent in the domestic set-up may not be favourable for a travel as there may be ethnic or religious clashes at the states or towns in between the areas to be passed through before getting to arbitral tribunal venue.

Mostly, International Commercial Arbitration is the area where video conference in arbitration is more suitable. This is because the use of the infrastructure will be (1) more cost effective (2) the inconveniences of travelling will be eliminated (3) effect of any political factor in any country will not interfere with arbitration process (4) restriction of entry of any of the parties, arbitrators and witnesses will be eliminated (5) there will not be any diplomatic break – down or interference (6) there will not be need for transfer of funds to the venue of the arbitration proceeding for the administrative duties and convenience of arbitrators and witnesses (7) there will not be need for suitable rooms for hearing (8) shortage of hotel rooms for parties and arbitrators/witnesses will not arise (9) there will not be need for transportation facilities and hold – ups (10) need for support facilities, for instance shorthand writers and interpreters and so on, may not be there (11) the net cost will be very much less than the aggregate cost of rooms, air fare for all parties, arbitrators and witnesses (12) there will not be any need for justifiable, but paralyzing fear of flight due to terrorist attack and SARS (13) there may not be need for fear of natural disaster(s) where it normally occurs like earthquake, TSUNAMI, volcano etc (14) phobia for unfamiliar forum will be eliminated (15) there will be effective use of time by every person involved as only negligible time of each person may be used for arbitration by video conferencing and (16) the recording and storage of proceedings will be faster and easier. (17) dissemination of information will be faster.

Nature and Scope of Arbitration.

¹⁵ **Redfern and Hunter**, *Law and Practice of International Commercial Arbitration 2nd ed.*, 1999, 23.

¹⁶ The parties may have some constraints that will not allow them travel to the agreed point(s) of arbitration.

(a) **Nature:** Almost all business relationships take the form and nature of contract. Even some informal relationships have their foundation in contract. In most cases, these contracts are in writing and because dispute are anticipated in the relationships, a clause is provided in the agreement that any dispute which may arise shall be referred to arbitration.

However, it is trite law that parties cannot contract to oust the jurisdiction of the courts in any dispute that arises, or may arise, between them. If courts jurisdiction is ousted such a contract to oust the jurisdiction of the court is contrary to public policy¹⁷ and therefore illegal.¹⁶

It was stated in this work that arbitration in all nations appear similar if not the same. This is because arbitration seeks the ends of justice and no party who has subjected himself to arbitration has right to resile at any point. This re-echoes the principle of law restated by *Deane C.J.* in **Kobina Foli v Obeng Akese**¹⁸ in the following words:

...in submission to arbitration, the general rule is that as the parties choose their arbitrator to be the judge in the dispute between them, they cannot when the award is not good on its face object to its decision either upon the law or the facts.

In view of the above, it follows that parties who have voluntarily submitted their dispute or differences to their own nominated or chosen arbitrators should take the arbitrators for better or for worse as to decisions of fact and decisions of law¹⁹. This is what is discovered to be the law in almost all nations. Also this extends to international commercial arbitration wherein video conferencing is mostly applicable. It should be stated that issues that can be referred to arbitration must be justiceable issues, in a dispute that can be compromised by way of accord and satisfaction²⁰ The parties to agreement to arbitrate must have capacity to enter into an agreement as in contract. Any of the persons that are parties to the agreement is bound by it. This presupposes that any person who is a party must be a legal person either as an individual or group of persons or legal entity(ies). If the subject matter of the reference to arbitration is assignable then such assignee then becomes a party and

¹⁷ See Section 48(b) Arbitration and Conciliation Act Cap A18, LFN 2004.

¹⁶ Kill v. Hollister, 1 Wils 129, Thompson v. Charnock, 81 Rep. 139.

¹⁸ (1930) 1 W.A.C.A.1.

¹⁹ Kweku Assampong v Kweku Amuaku & Ors. (1932)1 W.A.C.A. 192.

²⁰ Blake's Case (1606)6 Co.Rep.436.

becomes bound by the agreement and ultimately by the decision of the arbitral tribunal called an award.

Although arbitral proceeding is not strictly a judicial process, it must be conducted in a judicial manner so as to qualify as arbitration recognizable by the court to facilitate enforcement of the award. The implication of this is that there must be impartiality²¹ and evidence received from parties and their witness(es) if any, should all aim at substantial justice. Both sides must be heard and accorded fair hearing,²² before it could be enforced by the court.²³

(b) Scope of Video Conference in Arbitration

The scope of arbitration is wide not minding that it tends to be limited. It covers both domestic and international disputes. However, this work deals more on international commercial arbitration. The Act refers to arbitration as a commercial arbitration institution.²⁴ This statute did not have any interpretation for domestic arbitration. It is clear that arbitration cannot cover criminal matters as it is the responsibility of the state, except if **fiat** is issued to a private person to prosecute. Arbitration does not also cover illegal contracts as they are against public policy.²⁵ Also void contracts are not covered by arbitration. It has also been held that arbitration does not cover unpaid debts.²⁶

Where the arbitration clause is provided in the agreement before the dispute arose, the clause could be in this form:

If any dispute shall arise between the parties thereto in respect of this contract, or any of the provisions herein contained, or anything arising here out, the same shall be referred to arbitration²⁷.

The quickest way of ascertaining arbitration clause in a contract agreement are the recitals in the agreement. In effect, recitals serve to narrow the scope of an arbitration.²⁸ By the provision of arbitration clause in an agreement of parties in the contract they have consented

²¹ See Section 8(i) of Arbitration and Conciliation Act, Cap A18, L.F.N. 2004.

²² Section 36 of the 1999 Constitution of the Fed.Rep of Nig.; *Andrews v Mitchell [1905] A.C. 78*, Section 15 of the Arbitration and Conciliation Act Cap A18, Laws of the Fed. 2004.

²³ *Re Morphett (1845)2 Dow & L.967*; *Walker v King (1723) Mod. Rep. 63*.

²⁴ Section 57(j) Arbitration and Conciliation Act Cap A18, L.F.N. 2004.

²⁵ See Section 48(b) Arbitration and Conciliation Act, Cap. A18 LFN, 2004.

²⁶ *United World Ltd v Achugwu (1998) 10 NWLR [pt. 568]106*.

²⁷ *Heyman v Darwins (1942)1 All E.R. 337*. See **Ezejiogor G.** *The Law of Arbitration in Nigeria*, Longman Nig. Plc, 1997,74.

²⁸ *Thompson v Anderson L.R.9eq. 523*; See however, *Charleton v Spencer (1842)3 Q B.693*.

to be bound by the decision or award of the arbitral tribunal.²⁹ Although this is as it concerns arbitration in both Common Law and statutory arbitration but in Customary arbitration it is applicable as evident in the decision of the Judicial Committee in **Kwesi & Ors. V Larbi**³⁰ where in it was said:

*Since it is established that the parties gave their consent to the submission of the dispute to elders without any express reservation of a **right to resile**³¹ and since there is certainly no right to resile after the award is made, it is for the appellants to satisfy the Board that a right so contrary to the basic conception of arbitration is recognized by native customary law.*³²

In either domestic or international commercial arbitration the parties will be bound by the award if there is no factor that would necessitate and ground impeachment or challenge³³ of the award.

6. International Commercial Arbitration, how determined?

By the statute of some countries, for instance Austria, an arbitration agreement must be regarded as international when it has been made outside Austria and its award will be enforced by Austrian court only on the grounds of the provisions of multi-lateral conventions which have been ratified by Austria or bilateral treaties which provide that arbitration awards made within the territory of the other country will be recognized and enforced³⁴.

By the nature of arbitration, if the arbitration clause specifies that the arbitration should be regarded as an international commercial arbitration and there is nothing that indicates that it cannot be an international commercial arbitration it becomes one. This is because of party autonomy.

- a. The nature of the dispute which has arisen with respect to the particular transaction knowing whether or not it involves the interest of international trade³⁵.
- b. Focusing attention on the parties in the dispute to know their nationality³⁶ or usual place of residence, if the party is a corporate body, the seat of its central control or

²⁹ Obemaka v Achugwu (1998)9 N.W.L.R. [pt.564]37 at 61 para. C-D. .

³⁰ (1952)12 W.A.C.A 79.

³¹ Emphasis mine.

³² Ibid at 80.

³³ Sections 8 and 9 of Arbitration and Conciliation Act.

³⁴ **Wener Melis**, *A Guide to Commercial Arbitration in Austria*, 1983, 8.

³⁵ Art. 1492 of the French Code of Civil Procedure, Decree Law No 80-50 of 12th May, 1981.

³⁶ See Section 44 (4) of Arbitration and Conciliation Act, Cap A 18LFN, 2004.

management.³⁷ In this regard, if the arbitral dispute involves a British citizen and a Nigerian, it is international.

- c. One major body in international arena, the International Chamber of Commerce (I.C.C.), did not have any option but to adopt a specific stand as to what is international commercial arbitration or not. This is why the I.C.C. in 1923 adopted the nature of the dispute as their criterion or guiding principle in determining whether or not an arbitration was an international one under its rule or not. Later in their Rule of 1927, it altered its rule to cover disputes which contain a foreign element even if the parties are resident at two different places or countries.³⁸ The nationals may be resident at two different places or countries and at the same time their transaction in which the dispute arose may take place out of their country.

One should also observe in the case of I.C.C. that there is no definition in the Rules as to what is meant by ‘business dispute of an international character’. If this definition was stated, it would have worked hardship in international trade and commerce. This is because the court cannot properly assume a mistake in order to avoid the logical consequences of a literal construction. “If we do so”, warned *Grove J. in Richard v McBride*³⁹ “We should render many Acts uncertain by putting different constructions on them according to our individual conjectures”. Rather than presume a mistake, the court should be guided by *Lord Halsbury L.C.’s* principle that: “What the real fact may be ... a court of law is bound to proceed upon the assumption that the legislature is an ideal person that does not make mistake. It must be assumed that it has intended what it has said ...”⁴⁰ So, the only mistake which the court can admit is one which is apparent and demonstrable by reference to some other provisions of the statute.⁴¹ In the circumstance of international trade and commerce, the best is not to state specific definition if it is discovered that there cannot be an all embracing definition and which should be omnibus. This is because *general tantrum valet in generalibus quantum singulare in sigulius* (when words are general they are to be taken in general sense, just as words relating to a particular thing are to be taken as referring only to that thing).

³⁷ **Redefern and Hunter**, *Law and Practice of International Commercial Arbitration*, 1999, 15

³⁸ Article 1.1 of I.C.C. Rules.

³⁹ (1981)8 Q.B.D. 199 at 122-123.

⁴⁰ *Income Tax Special Purposes Commissioner v Pemsel* (1891) A.C. 531.

⁴¹ *R v Wilcock* 115 E.R. 509.

7. National Laws in Domestic Arbitration

Every society has its own law(s). In the same way, every nation has its own law(s). This is because law is not of universal application it varies with people and ages. It comes and goes with the “people’s spirit”, their customs and practices. So there is the unity of law with society. It is for this that all laws necessarily stem from society. Since there are interactions and relationships in every society, laws emerge or are legislated to order the society or nation; knowing that a nation is the voluntary unification of political communities into a unit.

It is based on the above background, that what is termed public policy varies from place to place time to time, from country to country. For this, all nations have their Arbitration laws. For instance, no nation will enforce an arbitral award that is against public policy of the country.⁴² For this reason also, it was indicated in **Section 48(a)(ii) of the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria, 2004** that:

The court may set aside an arbitral award -

(ii) *that the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria.*

(a) The National Laws of Arbitration

The laws that emerge from the customs of the people and those that are legislated are utilized in arbitration in Nigeria. In fact, **Section 315 of the Nigerian Constitution, 1999** preserves the pre-existing laws or rules of law in Nigeria. Part of this pre-existing laws or rules of law is the customary Law. It is noteworthy that arbitration practice is part and parcel of that customary law. Following from this, one can conclude that customary arbitration practice is preserved by the Constitution of the Federal Republic of Nigeria, 1999.

English common law and the doctrines of equity together with English statutes of general application, were received into the country by local legislature during the period of the colonial administration of the country.⁴³ Local legislation have terminated the reception of English statutes of general application in some parts of the country,⁴⁴ but the English

⁴² See for Nigeria Section 48(b) (ii) of the Arbitration and Conciliation Act Cap A18, LFN, 2004 it was stated “The court may set aside an arbitral award – that is against public policy of Nigeria”.

⁴³ See Interpretation Act Cap I 23, Laws of the Federation of Nigeria, 2004; Section 45 and also High Court Laws of the states of Nigeria. See generally **Okonkwo**, *Introduction to Nigeria Law Sweet & Maxwell* 1980, 4.

⁴⁴ Laws of England (Application) Law, Cap 60 Laws of Western Nigeria, Section 4; For instance see Section 4 of laws of Oyo State, 1978.

common law and the doctrine of equity have remained part of our law throughout the country. Consequently, English common law rules on arbitration are part of our laws.

Extra-judicial settlement of disputes has always been a feature of our indigenous customary law.⁴⁵ Such settlements are accepted and enforced by the courts, provided that they satisfy certain pre-requisites.⁴⁶

The Arbitration and Conciliation Act⁴⁷ regulates arbitrations arising from written and voluntary agreements to arbitrate. Some statutes stipulate that specific disputes must, or may, be settled by arbitration.⁴⁸ Such statutory arbitrations may, or may not, be conducted in accordance with the provisions of the Act.

Before the promulgation of the Arbitration and Conciliation Act, arbitrations arising from written agreements were regulated by the Arbitration Act⁴⁹ or law,⁵⁰ whose provisions are identical with the provisions of the English Arbitration Act, 1889⁵¹ This enactment has been modified and expanded by subsequent statutes to produce the modern English Law on the subject. The Arbitration Act 1934, amended the 1889 Act and was read as one with it, as Arbitration Acts 1889-1934. The two Acts were repealed and re-enacted in a consolidated form by the Arbitration Act, 1950, The latter also repealed and re-enacted the Arbitration Clause (Protocol) Act, 1924 and the Arbitration (Foreign Awards) Act, 1930, which was concerned with the procedure for the enforcement of certain foreign awards.

The 1950 Act, has remained the principal Act, but has been amended and supplemented by the Arbitration Act, 1975, which gives effect to the New York Convention on the recognition and enforcement of foreign arbitral awards and the Arbitration Act, 1979,

⁴⁵ **Per Uwaifo J.C.A** in *James Okpuruwu & Ors. V Kierian Okpokam & Anor* (1988)4 N.W.L.R (pt.90)554 at 573.

⁴⁶ *Ofomata & ors, v Anoka & ors.* (1972) 4 ECCLR 251.

⁴⁷ Cap A 18, Laws of the Federation of Nigeria, 2004.

⁴⁸ See for instance, Trade Disputes Acts 1976.

⁴⁹ Cap A 18, Laws of the Federation of Nigeria, 2004.

⁵⁰ Laws of various states of the former Eastern Nigeria, Western and Northern Nigeria.

⁵¹ The "Common Law" consists of (a) The rules of common law and the doctrines of equity in force in England from time to time. Per **Park**, *Sources of Nigerian Law*, 36, **C.O. Okonkwo**, *Introduction to Nigerian Law*, Sweet & Maxwell, 1980, 70; **Obilade**, *Nigerian Legal System*, 1979,70-71. See generally, **I.O.Agbede**, "Anglo Nigeria Law: Common Law of England or Common Judicial Assumption," N.L.P.J. vol 7,2003-2006, 1 (b) *The rules of common Law and the doctrines of equity in force in England on January 1, 1900 per Allot*, "The Common Law of Nigeria" ICLQ (Supplement No. 10, 1965, 31-49; **Jegede**, **Principles of Equity**, 1981,2; **Agbede**, *Themes on conflict of Laws*, 1989, 8-169. (c) Nothing more than what one may conveniently refer to as judicial techniques evolved by English judges (that is judicial as opposed to specific rules of English common law; **Nwabueze**, *Machinery of Justice in Nigeria*, 19-22; **Asein**, *Introduction to Nigerian Law*, 1988,102.

which among other things, abolished the power of an arbitrator to state a special case for the opinion of the court and the power of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.⁵² It, however, provides for an appeal to the court on any question of law arising out of an award made on arbitration agreement.⁵³

Quite significantly, the authors of the Arbitration and Conciliation Act have departed from precedent and have not followed the English model. That enactment, which is modern and more comprehensive than its previous editions, is for commercial Arbitration and the UNCITRAL Model Law on International Commercial Arbitration and it contains Arbitration and Conciliation Rules. It is noteworthy that Nigeria is a signatory to the UNCITRAL Model Law as well as New York Convention and ICSID (International Centre for the settlement of Investment Disputes).

(b) Arbitration in an Internet Milieu

The present stage of development in the world has shown that the whole world is now a global village with the aid of Law, Science and Technology. In fact, we are in the midst of a dramatic extension in the global reach of the patent system. Information, communication and Technology are now changing the cost of distance in quite different ways or different types of activities. One of such activities is arbitral proceedings by way of video conferencing in International Commercial Arbitration.

Today, it is possible for two or more people to converse or discuss at any time and place they choose while at unimaginable distance from each other. During this interaction each can notice or see and assess the countenance on each others face. If there is need, the record could be kept of the details of the discussions or proceedings. Also, if the need arises, the details of the discussions or transactions could be circulated to all parties; this could be in written form, visual form as well as audio form. All these are the properties and the advantages of video conferencing. For this, globalization where video conferencing is used involves the inexorable integration of markets, nation states and technologies to an unprecedented degree, enabling individuals, corporations and nations to reach around the world farther, faster and more cheaply than ever before. So, globalization with the aid of video conferencing can bring with it a democratization of international dispute resolution,

⁵² See Section 28 of the Arbitration and Conciliation Act Cap A 18,2004 L.F.N; See also Art. 36 of the Rules.

⁵³ See Rusell on Arbitration, 20th edn. 2-4. Generally see **Ezejiolor G.,***The Law of Arbitration in Nigeria*, Longman, (1997) 15-16.

financial transactions, information flows and political decision making that can only be healthy to all.

In most internet processes television or monitor is/are used. This shows that television used in internet/video conferencing, is hardly a glass eye, a benign and remote technology”, but it is in fact “a powerful and **active** observer” in which “pictures are enlarged, reduced, or eliminated altogether to dictate ‘meaning’ that fits into specific constraints and structural make-up of this image-driven medium”. The pictures react upon the audience and upon the participants. They also produce what people call a “translucent fiction”, which probably conceals as much as it reveals about the way in which the legal system operates. The fear in video conferencing is that “the social experiment we call ‘camera in the court room, may bring about a dramatic and irreversible shift in the way we think about and act upon justice”.

The culminating point of dispute resolution is the Arbitral Award. With video conferencing, the question will be where the award was made, since people (parties and arbitrators) will be at different parts of the world at the same time arbitrating a dispute or set of disputes This work will focus on this issue and solve the problem with the aid of national and International Laws, Conventions and Treaties. Both **Section 16 of the Arbitration and Conciliation Act, Cap A18, 2004** and **Article 32 of the UNCITRAL Model Law** indicate that the arbitrators can decide the place of arbitral proceedings. Also, when the disputing parties agree on the internet as the place for the arbitration, then it becomes the place of the arbitration. Presently, Nigeria has not legislated much on internet and its applications/procedures. However, Nigeria acceded to most United Nations treaties and conventions that are on internet and internet related matters.

On the issue of enforcement of arbitration awards, the conventions and treaties will be used particularly for the nations that are signatories to the UNCITRAL. Model law, New York Convention etc. Since there is no international court(s) to deal with the issued award in international commercial disputes; this work will shed light on such problems and proffer solutions. **The New York Convention, ICSID** and **UNCITRAL Model Law** influence should be advanced as the heroes behind the significant and basic feathers/or achieving principles of universal application aimed at the success of international commercial arbitration.

The use of the internet has, for better or for worse come to change the legal landscape of business and commerce, so there is bound to be new problems with different remedies or solutions. Now time and space are limitless as they have been reduced by computer and the internet. The concomitant problems and changes will necessitate altering the content of the law. We know that the scope and the applicability of the law made in a particular society is definitive and clear only when the courts in that society have an authoritative pronouncement made as to its true meaning and bounds. Even the courts make law. This view was patently emphasized by *Lord Denning MR* (the oracle of English common law) in **Seaford Court Estate v Asher**⁵⁴ when he said:

*He (the judge) must set out to work on constructive task of finding the intention of parliament, and he must do this not only from the language of the statutes, but also from a consideration of the social condition which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word_ so as to give force and life to the intention of the legislature.*⁵⁵

In 1982 when the western world had started to use the internet and computer in business; *Lord Denning MR* said:

*I think the time has come when we should lay down a different rule. Business convenience requires it.*⁵⁶

This was in **European Grain Ltd v Johnston**.⁵⁷ Perhaps the learned Law Lord and Master of the Roll concurred with our *Coker J.S.C*(as he then was), who in 1969 observed that the law cannot be and is not ignorant of modern methods and must not shut its eyes to the mysteries of the computer.⁵⁸

In the internet regime, the judges cannot afford the luxury of not being law-makers in view of the emerging complexities in the global world. A legal problem may arise in the use of computer and internet before the legislature perceives the problem. The problem must be solved by the court. Technology is advancing and the law should walk in tandem. This is because the task of stating the position of the law by deciphering the intention of the scientists or the law makers is placed squarely on the shoulders of the judges. Law is made

⁵⁴ (1949) 2 All E.R. 155 at 164.

⁵⁵ Emphasis mine.

⁵⁶ *European Grain Ltd v Johnston* (1982)3 ALL E.R. 992 para. D.

⁵⁷ *Ibid.*

⁵⁸ *Esso(W.A.) Inc. v Oyegbola*(1969) N.S.C.C. 350 at 354, See also *Ogulo v I.M.B.I*(1995) 9 N.W.L.R [pt.419]314.

up of statutes enacted by the legislature and “case laws” by the courts. From case law, we build up a body of precedents i.e. former decision of the courts.

With the current and future developments in the internet facilities and utilization, it is only a body of globally generated precedents that the world can keep up with and maintain the speed of science and technology for a peaceful, united and progressive world. As stated by *Chief Justice Marshall* of America in **Marbury v Madison**⁵⁹

*It is emphatically the province and duty of the judicial department to say what the law is.*⁶⁰

Also another America judge, **Mr Justice Frank** said:

The law for any lay man with respect to a particular state of facts is a decision of court, and: until a court has passed on those facts, no law on that subject is yet in existence. Prior to such decisions, the only laws available is a guess as to what a court will decide.

Back home, **Rt. Hon. Justice Chukwudifu A. Oputa JSC** said:

*Law is an organic thing. It has to grow, lest it atrophies and die. The law should be kept alive, should be nourished and carefully cultured and tenderly nurtured lest it grows static and becomes inadequate to serve the needs of non-static but dynamic and changing society.*⁶¹

Since change is the only constant, we have, the court should continue to make law. **Paton** on his own said:⁶²

*Whether a community lives in rural simplicity or in modern complexity, whether it pins its faith to case-law or to a code, the judicial method plays an important part in the development of the law.*⁵⁸

Again **Justice Holmes** in **Southern Pacific Co v Jansen**⁶³ said:

*I recognize without hesitation that judges do and must legislate----- It was due to change that **English Evershed Committee** advised that:---- --- legislation is a slow and cumbersome process. Parliamentary time is in modern conditions notoriously limited and may well become in the future ever more precious. Clarification of the law by judicial decisions is a swifter and surer process.....*⁶⁴

⁵⁹ I Cranch (1803) U.S.139.

⁶⁰ Marbury v Madison (supra).

⁶¹ **C. Oputa**, *The Law and Twin Pillars of Justice*, Nigeria: Government Printer, Owerri- Selected Law Lectures and Papers, 1981,63.

⁶² **Paton**, *A Textbook of Jurisprudence*, 4th ed, Oxford Publishers, 1972,198.

⁶³ (1916) 244 US 205.

⁶⁴ Final Report of the Committee of Supreme Court Practice and Procedure (1953), 647.

To further reiterate the point that Nigerian Arbitration and Conciliation Act prepared a landing pad for video conferencing in arbitration, we notice that **section 16 (1) of Arbitration and Conciliation Act** provided:

Unless otherwise agreed by the parties, the place of the arbitral proceedings shall be determined by the arbitral tribunal⁶⁵ having regard to the circumstances of the case, including the convenience of the parties.⁶⁶

In 2006, the Nigeria Supreme Court placed its stamp of authority and acceptance on **Section 16 of the Arbitration and Conciliation Act** in the case of **N.N. P.C v Lutin Investment & Anor.**⁶⁷ The decision is to the effect that if parties agree as to the place of arbitration, that place is final, provided that the parties agree also that their arbitration is under the Act. In the same way, if parties agree that their arbitration should be via the Internet, (video conferencing) that will be final. According to the Act, if the parties agree that their arbitration shall be in accordance with the Act then the arbitrators will only be mindful of **the convenience of the parties.**

Since video conferencing in arbitration takes place at far distance from one another, the problem of signature on the arbitral award⁶⁸ issued by the respective arbitrators constitute a serious nut to crack. On this point of signature on arbitral award this author concurs and adopts the argument of the learned author of **The Law and Practice of Commercial Arbitration in Nigeria, Greg C. Nwakoby** in the case of **Re Thompson**⁶⁹ wherein he said:

*Arbitration is a condition precedent to the enforcement of such an agreement under the Act. In **Re Thompson**,⁷⁰ the court held that signature is not necessary for the enforcement of an arbitration agreement between parties except where expressly required by the law governing a particular form of agreement. However, in **Tinplate Co v Hughes**⁷¹ the court held that there was no valid arbitration agreement because the signatures of both parties were not there.⁷²*

⁶⁵Emphasis mine.

⁶⁶ See also Articles 16 and 25 (4) UNCITRAL Model Law of the United Nations.

⁶⁷ (2006)2 N.W.L.R. [pt. 965]560 S.C. see the same case in (2001)50 WRN 81 C.A.

⁶⁸ Sections 24 (1) and 26 (1) and (2) of the Act; Articles 31 and 32 (2) UNCTRAL Arb. Rules.

⁶⁹ (1894)Q.B. 462.

⁷⁰ Ibid.

⁷¹ (1891) 60 L.J. 189.

⁷² **Prof Greg C. Nwakoby**, *The Law and Practice of Commercial Arbitration in Nigeria* 2004 Iyke Ventures Production, 20-21.

It will be observed that the case of **Re Thompson** did over rule the case of **Tinplate Co. v Hughes**⁷³ as the former came later in time. This made the learned author Prof Nwakoby aforesaid to state:

It is a better view to state here that the signature of both parties are not necessary for enforcement of an arbitration agreement under the Act except where the agreement respecting particular issues or subject matters are specifically required to be in writing and signed by the parties thereto or their agents...

Particularly in the internet regime, there is no need for signature. This is because SMS text by each person at whatever point or typing into the computer to either e-mail or website is enough. Every one has pin words. As one is typing the persons mind is flowing with his typing hand. The Arbitration and Conciliation Act is very well suited for Internet transactions more especially video conferencing in Arbitration which is the subject of this work, **Section 47 (1) of Arbitration and Conciliation Act** provide that:

- (1) The arbitral tribunal shall decide the dispute in accordance with the rules in force in the country whose laws the parties have as applicable to the substance of the dispute.

The implication of this section in its sub-section is that it depends on what the parties have chosen as the applicable law. Also by **Section 44(4) and(10) of the Arbitration and Conciliation Act** the issue of nationality of arbitrators shall not constitute a problem.⁷⁴ Going by the provisions of the Act, the death of a party shall not invalidate an award or the operation of the agreement, but shall in the event, be enforceable by or against the personal representatives of the deceased.⁷⁵ Also, an arbitration agreement under the Act will bind not only the actual parties to it, but also an assignee of a contract containing it, the agents of the parties, and the personal representatives.⁷⁶

c. International Treaties and Conventions in Arbitration

Each country has laws that regulate its internal transactions and interactions. As countries build up relationships with other countries so they build up body of laws that enable them nurture their relationship with other countries. Sometimes certain differences between countries go out of hand that their differences grow to crisis dimension. It is this

⁷³ Op cit.

⁷⁴ Section 44 (4) of Arbitration and Conciliation Act.

⁷⁵ See also Art.6 (4) of UNCITRAL Arbitration Rules

⁷⁶ See Section 3 of the Act and Article 13 of the UNCITRAL Arbitration Rules

type of problem that necessitated world bodies to fashion out laws and rules to regulate transactions, interactions and relationship between nations. These Laws and rules are in the forms of Treaties and Conventions. On its own, Conventions are “Rules of political practice which are regarded as binding by those to whom they apply, but which are not laws as they are not enforced by the courts or by the House of parliament”.⁷⁷ Also treaties are (1) the negotiations prior to and leading up to a contract or agreement (2) an agreement between the governments of two or more states. The treaty making power is part of the Royal or (Executive) prerogative, but the private rights of a subject of this country is not affected by a treaty unless its terms are embodied in an Act of parliament.⁷⁸

The basic features which are uniform in the legal framework for resolution of international commercial disputes “can be broken down into three states: (1) jurisdiction (ii) choice of law (iii) the recognition and enforcement of awards”. The most striking thing in video conferencing in arbitration when fully adopted is the fluidity of jurisdiction. Once parties agree to the use of the Internet no matter their locations, video conferencing unites their jurisdiction. Due to the fluidy nature of the jurisdiction in this case, the jurisdiction of the countries concerned now mix and crystalise.

8. What is Internet?

The internet is an electronic world that parallels our physical world. It was born out of the fusion of an immense number of networks into one overarching network of networks. By the internet, all the basic ingredients required for dramatic and accelerating change are in place. Already today, we possess an integrated, worldwide environment in which digitized information can be created, stored, processed and communicated.⁷⁹ This is what video conferencing in arbitration require.

However, the first issue that addresses a conflicts lawyer/arbitrator when considering the internet is whether it is a novel form of communication, or more than the natural progression of existing methods of communication such as the telephone, facsimile, television, etc. In terms of the issues relevant in the conflict of laws it is generally to be considered no differently from existing means of mass communication. The conflict of laws

⁷⁷ **O. Hood Philips**, *Constitutional and Administrative Law*, 7th ed, 113.

⁷⁸ See generally, **Leslie Rutherford and Sheila Bone**, *Osborn’s Concise Law Dictionary* 8th ed., Sweet & Maxwell, 309. Most human rights treaties are now part of national Constitutions.

⁷⁹ **Robin Widdison**, *Electronic Law Practice: An Exercise in Legal Futurology* *The Modern Law Review*, Vol. 60 No 2, March 1997, 143 at 144.

principles that have been developed in the light of, and have been applied to, the press, telephone, facsimile and television apply equally to this new form of communication. It is essentially old wine in new bottles from a conflicts perspective.

Information placed by a web-site provider for access over the Internet is sent by that person to others (potentially millions of others, simultaneously, in many different jurisdictions) just as a fax or letter or TV transmission is sent by its author, albeit that the information passively awaits access being made to it by web users.⁸⁰ It is pleasing to note that with the development of the Internet and computer, and the emergence of the radio, television and satellite technology and their convergence, there is now a revolution that has accelerated often beyond imagination. This has laid the foundation of today's **knowledge economy** on which video conferencing in arbitration is now possible.

9. Video Conferencing in Arbitration

Video conferencing in Arbitration is a contemporary issue in an Internet Regime. This showed the novelty of video conferencing practice as it pointed to the fact of what **Roscoe Pound** had described as the modern age which is the age of socialisation of law. So law has socio-economic accountability in terms of not only what it says, but also what it does. Arbitration which has progressed and developed from time immemorial is now fusing with science and technology to form an amalgam all in pursuit of justice. Today the quest for justice is the master idea of modern world.

Never before in the long history of human thought has law had to face a more challenging situation than that in contemporary world. The prevailing social, economic and technological forces call for a type of arbitration in which a lawyer is at once a social engineer and an analyst, a pericle and a plumber, capable of appreciating the values of existing institutions. Again ever ready to make a contribution to the maintenance of a proper balance between the need for stability and the need for change, between the claims of the state and those of the individual. Law and society should engage in a continuous dialogue both as to the choice of means and as to the end in view.

In the world, law can fulfil the role of stimulating economic growth, peace, unity, social well-being and cohesion, evaluate the moral tone of the diverse ethnic, religious, cultural groups and become a common law for the world under which no man is oppressed, It

⁸⁰ Shetland Times Ltd v Wills, The Times, January 21, 1997

is now making an important contribution in the world of ideas for the cause of human betterment.⁸¹

As scientists are striving to fashion out devices that will make man comfortable, law and lawyers will garner ideas that will enable man enjoy the comfort in-peace. These are the essence and purpose of both law and science. The search to realize these have become an irresistible, psychological force. Men and women are never again to accept willingly the concept of slavery, suppression and oppression even if government and/or “behavioral scientists” tell them it is good for them. Everyman today has new awareness of himself. Everyman today knows that he is a person, an invaluable being, equal to others, rational and self active, free and responsible. It is this that has made Americans in their choice of Presidential candidate for the Democrats know that character is more important than skin in their choice of **Barack Obama** at their 2008 primaries. Certain things are due to man. These things are his (man’s) rights. Certain things are due from man. These are his (man’s) duties.

Justice expresses this inward and outward flow of the personality of man – his two fold moral movement of rights and duties. Today there is a resolution of rising expectations among the peoples of the global world. Even the people in the “third” world are for the first time trying to raise their heads with a new hope and new expectations which the internet has brought and that is why the present century has become the unique century of new consciousness and rising expectations from almost all directions of human endeavour. The world is on the threshold of a new era of freedom, unity and progress because with a passion and opportunities unequalled in the past centuries, people of the world are today demanding freedom and comfort, if not leisure. Internet is the bridge now provided by science to link all geographical/digital divide. Video conferencing in arbitration will provide the blissful scenario for unity in diversity due to the endless horizon of law, science and technology.

The legitimacy of law demands that the Internet now centrally located for everyone and everywhere should facilitate arbitration process; its awards and enforcements without difficulty to anyone no matter what. The filtering of the gains of the internet to every one through available and affordable video conferencing in arbitration is the bench mark for legitimacy of world legal, economic, political and social order.

⁸¹ **Justice Chukwudifu Oputa (rtd)** *Nigeria Lawyers and the New challenges – Legal system cannot function in Isolation.* The Guardian, Tuesday, June 13, 1989, 19.

10. Nature of the on-line technology

It is heart warming that courts at various jurisdictions have started to utilize the information technology to do complete justice, the foundation of this was laid by Lord Denning MR as far back as 1982

Also the same *Lord Denning MR* refused to follow previous decision "... Owing to lapse of time, and the change in social condition..." that "the previous decision is not in accord with modern thinking"⁸²

Perhaps the learned Master of the **Rolls, Lord Denning** concurred with our **Coker J.S.C** (as he then was) who in 1969 observed that the law cannot be and is not ignorant of modern methods and must not shut its eye to the mysteries of the computer".⁸³

The following cases show that courts have embraced on-line technology. In **M/S SIL Import, USA v M/S Exim Aides Silk Exporters**⁸⁴ the words "notice in writing" were construed to include a notice by fax technological advancements like fax, Internet, E-mail, etc were on swift progress even before the bill for the Amendment Act was discussed by the parliament. When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future.

The requirement of a written notice will be satisfied if the same is given in the form of a fax, e-mail etc, using the information technology of which one is video conferencing. It must be noted that a notice by e-mail can be sent instantaneously and its delivery is assured and acknowledged by a report showing the due delivery of the same to the intended recipient. This method is more safe, accurate, economical and lesser time interval as compared to its traditional counterpart which is postage.

In **Basavaraj R. Patil v State of Karnataka**⁸⁵ the question was whether an accused need to be physically present in court to answer the questions put to him by the court whilst recording his statement. The majority held that the relative section of the law had to be considered in the light of the revolutionary changes in technology of communication and

⁸² Dyson Holdings Ltd v Fox (1976)Q.B. 503 at 703

⁸³ Esso (W.A.) Inc. v Oyegbola(1969) N.S.C.C. 350 at 354; also see Ogulu v I.M.B (1995)9 N.W.L.R [pt. 419]324.

⁸⁴ See Praveen Dalal, On-Line Dispute Resolution in India, 2 or <http://www.e-arbitrationt.comm/modules.php?name=News> & file = print&sid=57.

⁸⁵ Ibid., 2.

transmission and the marked improvement in the facilities of legal aid in the country. It was held that it was not necessary that in all cases, the accused must answer by personally remaining present in the court. Once again, the importance of information technology is apparent. If a person residing in a remote area is required to appear in the court for giving evidence, then he should not be called from that place, instead the medium of “video conferencing” should be used. In that case the requirements of justice are practically harmonized with the ease and comfort of the witnesses, which can drastically improve the justice delivery system.

Again, in **State of Maharashtra v Dr. Praful B. Desai**⁸⁶, the Supreme Court of India observed:

The evidence can be both oral and documentary and electronic records can be produced as evidence.

Also, in **Polanski v Condé Nast Publications Ltd.**⁸⁷ examination of witness was by live television link – claimant applying to give evidence in libel action brought by him by video conference link to avoid risk of arrest and extradition. In Nigeria, if the infrastructure had existed for video conferencing, a case such as **N.N.P.C v Lutin Investment Ltd & anor**⁸⁸ could not have gotten to the court but would have ended in the arbitral tribunal. Thanks to God, some people are taking up the initiative of setting up video conferencing infrastructure in Nigeria.⁸⁹

11. Legal Effects of Electronic Arbitration Agreement

Legal effects of electronic arbitration agreement and effects on the rights and obligations of parties focused on the practice of video conferencing in arbitration. It stated that it is the sun which melts the candle that also hardens the clay. Again, that it is the arbitration which is used to settle disputes in off-line dispute resolution that is used in settling disputes on-line in form of video conferencing.

⁸⁶ Ibid., 3.

⁸⁷ (2005)1 All E.R 945; See also R(on the application of the D.P.P) v Redbridge Youth Court; R (on application of L.) v Bicester Youth Court (2001)4 All E.R.411; Rowland & anor. v Bock & anor. (2002)4 All E.R.370.

⁸⁸ (2006)2 N.W.L.R. [pt. 965]506 S.C.

⁸⁹ See Money Wise of 15th – 22nd October, 2007 vol. 2 No 40, 14 where it was indicated that Kapstone Solutions is to launch video-conferencing in Nigeria however, one of the problems will be power supply from the national grid. Outside this power supply the cost will be high for the generality of the people.

Electronic commerce is experiencing continued rapid growth and contractual practices are constantly changing. To keep abreast of disputes that might be referred to them, legal professionals must develop their analytical spirit and rigorously apply known, proven concepts to this new phenomenon. It is to be stressed that electronic activities lend themselves to a methodical approach. This shows that international commercial arbitration law can cope with the peculiarities of electronic commerce, even if these peculiarities (especially dematerialization) have an impact on the methods of dispute resolution.⁹⁰

Submitting disputes in electronic commerce to the kind of arbitration practiced off-line or in classical alternative dispute resolution (ADR) raises immediate problems. (1) Can the parties become properly engaged through electronic channels? (2) Will they be able to furnish electronic evidence in support of their claims? Additionally difficulties arise with the emergency of on-line dispute resolution or video conferencing in arbitration as in this work. (3) Under what conditions can an exclusively electronic arbitration procedure be organized without the litigants having to be present? (4) Can an award be made electronically?

Electronic commerce operations are based on contracts concluded electronically between “absent” co-contractors (that is, those who do not physically meet). The conclusion of an electronic contract is often prolonged by the electronic execution of contract, which consists of opening access to a data base. These electronic operations can give rise to disputes, just as in traditional commerce.⁹¹

In answer to the above four questions, it will be answered that (1) With the advent of the Internet and its computer linkages, it is possible to enter into electronic agreement wherein arbitration clause will be provided. As dispute arises, parties can through video conferencing⁹², arbitrate and issue the award. (2) Satellite transmissions now perform an increasing range of functions. By means of electronic gadgets evidence of witnesses can be generated and transmitted to any number of places at the same time and can appropriately be admitted as primary evidence and also serve as business or public records.⁹³ (3) Under the present technological break through resulting in video conferencing, the parties to an

⁹⁰ **Mr O. Cachard** *UNCTAD Dispute Settlement, International Commercial Arbitration 5.9 Electronic Arbitration*, UN New York and Geneva, 2003,1.

⁹¹ *Ibid.*, 3.

⁹² *Polanski v Conde Nast Publications Ltd.* (supra).

⁹³ **Osipitan Taiwo**, “*Legal Impact of technology on Rules of Evidence in Banking and Commercial Litigation in Developments and Reforms*” *Nigeria’s Commercial Law*, op cit.

arbitration agreement need not be present at the same place and arbitration will take place at the instance of their appointed arbitrators. This is because in the words of **Lord David Donaldson of Lynton MR.** “in order to decide where an award is made, one must look at the arbitration as a whole, and not just at the place of signature, and the proper criterion is the central point of the arbitration proceeding”.⁹⁴ With video conferencing, an award can be said to be made where the parties choose.⁹⁵

12. Conclusion

Since most telecommunication service providers leased bandwidths and transponders they should put their resources together so as to put structures in place for video conferencing. The National Television Authority (NTA) and other Federal Government institutions and agencies should supervise the workings of the video conferencing centres to be established. This will unite nations faster and better. With this, presidents of nations can have meetings without any one leaving his country. However, combined efforts and its synergy will yield a better control of internet harkers for more secured world.

This work therefore concludes that:

- a. Arbitration by video conference will serve as a unifying factor which will bring about unity of all human family with no white, no black, no developed, no undeveloped countries. This may well be called in short, the "principle of unity in diversity".
- b. Dispensation of justice to save cost and time for all persons including fugitives as shown in the case of **Polanski v Conde Nast Publications Ltd.**⁹⁶ and avoid prolonged litigation as in **N.N.P.C. v Lutin Investment & Anor.**⁹⁷
- c. Security and confidentiality will result if arbitration is by video conferencing since there will not be wild travels as technological devices will be used to maintain confidentiality of information.
- d. Recognition and Enforcement will be easier by the use of video conferencing in arbitration while embracing "Fluidity of jurisdiction" or "juridical unity of constituency". This will enhance the confidence of investors.

⁹⁴ **Hiscox v Outhwaite**, The Weekly Law Report, 7 June, 1991, 1321 at 1337.

⁹⁵ See Section 16 of Arbitration and Conciliation Act, Cap A18, LFN 2004; See also **N.N.P.C. Lutin Investment Ltd & anor.** (2002)2 NWLR [pt.165]506.

⁹⁶ (2005)1 All E.R.. 945.

⁹⁷ (2006)2 NWLR [pt.965] 506 S.C.

- e. Proceedings by adversarial or inquisitorial practice acceptable in both common and civil law jurisdictions to converge so as to highlight the independence and impartiality of the arbitrators. Every party or arbitrator would see everything taking place during the proceeding.
- f. Arbitration by video conferencing will end forum shopping.

It is recommended that there should be unification of laws to streamline procedures as well as recognition and enforcement requirements. This will enable practitioners enjoy the synergic effect of law, science and technology in arbitration for world peace and progress.

Also documents and information in arbitral proceeding should block unnecessary parties and intruders by the use of numbers/codes. The number of time each party down loads information relative to the arbitration should be made known to all parties through electronic device.

Again, it is recommended that arbitral awards should be attached to national foreign reserves for ease of enforcement and more confidence in arbitration. Surely, this will enhance investment flow and mobility of labour.

Furthermore, this work recommends more liberal terms and conditions for lease of transponders or bandwidths to interested investors. This will make video conferencing in arbitration infrastructure more competitive, affordable and available more than mobile phones.