Journal of Energy Technologies and Policy
ISSN 2224-3232 (Paper) ISSN 2225-0573 (Online)
Vol.6, No.4, 2016

Dispute Settlement in the Oil and Gas Industry: Why is International Arbitration Important?

Bayuasi Nammei Luki* Nusrat-Jahan Abubakar

Ghana Technology University College, P.O Box MC 3262, Takoradi W/R, Ghana

Acknowledgement

We are heartily thankful to Prof. Peter D. Cameron whose encouragement, guidance and support from the initial to the final level enabled us to develop an understanding of the subject. The authors would like to express their appreciation to all those individuals who contributed to the successful preparation of the work. We would like to acknowledge the invaluable critique of the draft work by Wendy Treasure. The authors also want to thank the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) and the Ghana Technology University College for their support as well as providing necessary information regarding this piece of work.

Abstract

Merchants and investors have used International Arbitration (IA) for centuries in settling disputes. IA has become a benchmark for resolving disputes in certain industries such as energy, construction, commodities, shipping and insurance. Over the last five decades or so, the international community has adopted IA as an alternative dispute resolution mechanism. As of October 1, 2009, 142 of the 192 United Nations Member States have adopted the New York Convention. Currently, about 144 countries have ratified the New York Convention. International arbitration is one of the Alternative Dispute Resolution (ADR) mechanisms in settling contractual disputes and it is considered as a fair and efficient way of mitigating risk associated with international business transactions and investments. In 2007, the International Centre for Settlement of Investment Disputes (ICSID) indicated that out of 123 cases listed as pending, forty-six (representing 37%) of such cases were energy related disputes. On June 2007, the top fifty arbitration cases listed again by The American Lawyer, nineteen (representing 38%) of these were related to energy and the majority were oil and gas issues. This paper examines why IA is important in resolving disputes in the oil and gas industry using secondary sources such as books, articles, journals to do comparative and qualitative analysis. It also describes the types, rules, procedure, and limitations of IA. The paper recommends that, to improve our attitude towards arbitration, there should be a bold move to include arbitration courses in the curriculum of our legal education programs so that the academic training will acquaint the new law students and alike with the fundamental principles of international treaties and conventions and general code of international practice.

Keywords: Disputes; Settlement; International; Arbitration

List of abbreviations

AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
BP	British Petroleum
CREFAA	Convention on the Recognition and Enforcement of Foreign Arbitral Awards
EACC	Euro-Arab Chamber of Commerce
FDI	Foreign Direct Investment
HG	Host Government
IA	International Arbitration
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IT	Information Technology
LCIA	London Court of International Arbitration
LIAOC	Libyan American Oil Company

MNC	Multi National Company
NAI	Netherlands Arbitration Institute
NASD	National Association of Security Dealers
NOC	National Oil Company
PDVSA	Petroleos De Venezuela S.A
SCC	Stockholm Chamber of Commerce
TOPCO	Texaco Overseas Petroleum Company
UNC	United Nation Charter
UNCITRAL	United Nations Commission on International Trade Law
	Foreign Investors

1. Introduction

The world is a global marketplace as never before. Globalization over the years has played a tremendous role in promoting Foreign Direct Investments (FDI). Globalization is mostly driven by international trade and investment supported by Information Technology (IT). It is for globalization that most Foreign Investors (FI) now form partnerships and trade agreements with Host Governments (HGs) or some of the National Oil Companies (NOCs) in issues relating licensing, trade and direct investments.

While most economies encourage these FI, it is important to know that these companies (foreign investors) are privately owned entities aim at profit maximization. Therefore, whenever investing, they seek to ensure that returns on their investment are secured. These investment guarantees are however sometimes too difficult to obtain due to the complex nature of the energy industry. Besides, rules of doing business and resolving disputes differ across the world. When for example, there is a coincidence of motives in a contract say when crude oil price changes dramatically, parties that are engaged in a long-term contract especially HG might have a reason to renegotiate for a better deal and when this renegotiation fails, contractual disputes arise. Therefore, there is the need to find a neutral ground to settling such contractual differences. However, different investment contracts provide different dispute resolution mechanisms.

Disputes are unavoidable but unfortunate parts of business and investment life.[1] Disputes as spelt out in Article 33 of the United Nations Charter can be resolved through mediation, conciliation, arbitration, inquiry, use of good offices, and judicial systems. Though some disputes are resolved amicably, others cannot be resolved without the support of an impartial third party. In a worst case scenario, some resort to war. When a contract is negotiated, due diligence should therefore be given to the most appropriate mechanisms of resolving any future disputes.

Why should parties to an international dispute resort to arbitration, rather than domestic judicial system? Secondly, why has arbitration become so popular worldwide compare to other ADR mechanisms? Is it because of the ' neutrality ' element of arbitration compare to other ADR or the outcome (enforcement)? For example, if you put aside contractual cases in which government is a party and cases triggered by natural phenomena, then contractual cases been settled by arbitration are far more than cases settled through other ADR methods. The paper therefore analyses the role of IA in international dispute settlement in the energy (oil and gas) industry in the wake of other known and practiced mechanisms.

International Arbitration (IA) has been used as a method of resolving disputes between states, individuals, and corporations in almost every international transaction involving commerce, investment, inter alia for decades.[2] Arbitration can be national (domestic) or international. 'International' in arbitration is used to distinguish arbitration, which is purely national, and the one that transcends national frontiers. IA lends its legal relevance to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UNCREFAA)[3]

[1] Gray C and Kingsbury B, Developments in Dispute Settlement: inter-state arbitration since 1945, reprinted from the British year Book of International Law 1992

[2] Blackaby, N, et al,(2009:8) Redfern and Hunter on International Arbitration-Student Version (fifth edition),New York USA, Oxford University Press, 2009

[3] The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

(New York, 10 June 1958) also known as the New York Convention (NYC). This convention adopted by a United Nations diplomatic conference on June 10, 1958 and came into force on June 7, 1959. The convention requires contracting states to give recognition and approval to private contractual agreements to arbitrate and to recognize and enforce arbitral awards made in other contracting states. Article 1 states that *" This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought."* Though there are other international conventions that are applicable to cross border enforcement of arbitral awards, the NYC is by no means the most prominent and seen as the fundamental instrument for IA.

The paper comprises of five parts with each part dealing with a separate issue. Part one provides an overview of international arbitration follow by the definition and its importance using comparative and qualitative analysis. Part three and four briefly discuss the kinds, rules, and limitations of arbitration. Conclusion and some critical recommendations take the final part.

2. Arbitration and Mediation

2.1. Arbitration

How disputes are settled differ from society to society, and mankind throughout history has needed and used one or two methods in resolving disputes as and when they arise. An example could be the biblical story where Solomon proposed to cut the baby into two. Long before, and even today many societies still refer disputes to village councils, unit committees and opinion leaders for resolution. Roman Colonies referred their disputes to the Praetor Peregrinus. This suggests a common pattern i.e. Dispute settlement between people by an impartial third party after the parties failed to reach an agreement dated back as early as Solomon's days.[4] Society was able to unify itself through these traditional and informal modes of dispute settlement until we were ushered into the modern third party aided dispute settlement.[5] Arbitration is perhaps one of the earliest modes of settling contractual disputes by mankind. Arbitration is a legal and a private alternative use in settlement of contractual disputes. Arbitration is a binding and enforceable form of dispute resolution.[6] Arbitration can be differentiated from the court systems base on its private nature and from ADR through its enforcement and binding element that is associated with the final decision of the arbitral tribunal, though some scholars doubt the binding effect of IA. The term 'international' in the concept of arbitration is used to distinguish between the arbitration that is national (domestic) and the one that transcends national frontiers. To ensure efficiency and effectiveness in arbitral processes, any contracts with an arbitration clause should be properly and unambiguously documented.[7] Once this is carefully done, it does not only ensure smooth dispute resolution procedure,[8] but it also prevents disputes from occurring in the first instance. IA can be conducted either under the auspices of an arbitral institution (ICC Rules) or on an ad hoc basis (UNCITRLA Rules).

2.2 Mediation

Mediation which also connotes the settlement of disputes through an impartial third-party, however, does not enforce its outcome and for that matter any decisions reached by the mediator are not binding on the parties. The mediator usually proposes a recommendation and it is left to the parties to either accept or reject it.[9] There is no one best and universally accepted definition of mediation. Mediation comprises of all third-party intervention decisions but short of binding and enforcement i.e. arbitration. The mediator assists the disputants in a four step

---

also known as the New York Convention

[4] Journal by Hunter, M, International Commercial Dispute Resolution: The Challenge of the Twenty-First Century, (Arbitration International: Vol. 16, No. 4, LCIA 2000)

[5] Ibid.

[6] Buhring-Uhle, C, (1996), Arbitration and mediation in international business: designing procedure for effective conflict management, Hague, Netherlands, Kluwer Academic Publishers, 1996.

[7] Duval, C. et al (2010), International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects, New York, USA, (second edition), Barrows, 2010.

[8] Center for Transnational Law (2000, Vol. 20): Understanding Transnational Commercial Arbitration, Munster, Germany, Quadis Publishing, 2000

[9] supra note 6 at 4

fold procedure towards reaching a decision:[10] bringing the disputants to the table for negotiation, aiding in the negotiation process, providing impartial support to the parties regarding the issue at hand and then making feasible recommendations.

Sometimes mediation is used indifferently with conciliation. The main difference between arbitration and other ADR is[11] the legal quality of the final outcome. A classical epitome of a case resolved by mediation was the[12] Beagle Channel dispute over the ownership of certain islands between Chile and Argentina, which was successfully mediated by the pope in 1984. Mediation is provided as the first step to resolving contractual differences; then if one of the parties indicates that he/she is not satisfied with the outcome of the mediation process then the parties finally recourse to arbitration.[13]

3. Forms of International Arbitration

IA can take place under the umbrella of either an arbitration institution or on an ad hoc basis.

3.1 Institutional Arbitration

Many institutions throughout the world have set up arbitral institutions with their own predetermined set of rules so that business parties to an arbitration agreement can easily rely on to address their contractual differences.[14] Any arbitration that is conducted in the context of an institution must be done in accordance with the rules and regulations of the institution. Institutions such as: American Arbitration Association (AAA), the Euro-Arab Chambers of Commerce (EACC), the London Court of International Arbitration (LCIA), the Netherlands Arbitration Institute (NAI), the Stockholm Chamber of Commerce (SCC), ICC, UNCITRAL among others have[15] drafted their own rules for the conduct of arbitration and are able to attract business men and women with contractual disputes to their arbitration centers every year. In fact, unlike ad hoc arbitration, institutional arbitration is conducted under the auspices of an arbitral institution. One advantage of such institutions is that they may offer[16] assistance such as the appointment and replacement of arbitrators for the parties, issues regarding arbitrators' remuneration and communication of the final arbitration award to the parties involve. Parties agreeing to use these institutions can do so by referring in their contract to the use of arbitration rules of that recognized arbitral institution. However, parties deciding on which arbitration institution to use should pay attention to issues such as but not limited to: the reliability of the arbitral institution, the wording of the arbitration clause, the complex and intriguing interaction of all the clauses of these arbitration rules so that parties would not only select some of the clauses and leave others[17] *("wild cat arbitration").*

3.2 *Unadministered and Ad Hoc Arbitration*

Arbitration can be conducted unadministered or on an ad hoc rules.[18] That is when the disputants choose their own arbitration procedures and rules without the help of an arbitral institution. The arbitration process is considered ad hoc when the parties agree to a[19] procedural framework with special features designed to suit their particular need. Ad hoc arbitration is good for short-lived contracts[20] with little or no likelihood of serious conflict. The parties could agree to the arbitration to take place according to an established set of rules such as the UNCITRAL rules.[21] This may help save time and money of having to start from the scratch to draft a new set of rules before the case could be arbitrated. For the purposes of this research, the paper will focus on ICC arbitration rules since almost all these arbitration institutions' rules are much more alike.

[10] supra note 7 at 4
[11] supra note 8 at 4
[12] Collier, J et al (1999), The settlement of disputes in international law: institutions and procedures, New York, USA, Oxford University Press, 1999
[13] supra note 8 at page 4
[14] See United Nations Convention on trade and development, New York and Geneva, 2005, UNCTAD/EDM/Misc.232/Add.38
[15] supra note 6 at 4
[16] supra note 8 at 4
[17] Ibid.
[18] www.a4id.org
[19] see supra note 8 at 4
[20] see supra note7 at 4
[21] see supra note 2 at 2

3.3 ICC Arbitration Rules

ICC was established in 1919 in Paris, France. Many arbitration cases since then have been brought and arbitrated under its rules. ICC works hard to ensure that arbitration cases brought under its institutional umbrella adhered to all the rules of the institution. Parties to an arbitration clause may agree to use ICC arbitration rules as their terms of reference in drafting their arbitration provision. Such a provision could take a form of[22] *'all disputes arising out of this contract shall be resolved under the institutional arbitration rules of ICC by an arbitral tribunal of one or more arbitrators appointed in accordance with the said rules'*. If in the course of executing the contract, one of the parties is alleged to have breached the contract, any of the party's may apply to ICC headquarters for an arbitration process to be initiated.

Any request to arbitrate by the parties should spell out in detail such issues as the addresses of the parties, whether any of the parties is a representative of a state, date of consent, there should be information indicating that there is a legal dispute between the parties arising out of an investment and this information should be supported by empirical evidence when the need arises.[23] All these serve to authenticate the case. According to ICC rules, when a claim is brought before it the defendant has thirty (30) days to respond and to contest the jurisdictional existence and competence of ICC and until the accused party accepts that ICC has the jurisdiction and competence, the ICC court can decide whether or not the documents presented by the claimant amount to an existence of an agreement to arbitrate.[24]

The parties may decide on the tribunal, the number of arbitrators to constitute the arbitral tribunal. If the disputants find it difficult to agree on the number of arbitrators the ICC court appoints for them an arbitrator unless the case demands a team of three arbitrators. The parties may agree on one arbitrator and may nominate one each in the scenario of a three party agreement or contract.[25] This would however be confirmed by the ICC Court especially in situations where the third arbitrator is nominated by the parties. The seat of arbitration to some extent has the tendency of influencing where the arbitrators come from, for example for some time now, most of ICC arbitrators were chosen from Western Europe, but of late, some North American, North African and Middle Eastern arbitrators are being given the opportunity to serve. The choice of place of arbitration is important because of the effect of the law governing the arbitral proceedings.[26]

The ICC arbitration rules require the arbitral tribunal to commence its hearing within two months of receipt of claimant's request and the accused person's response, terms of reference which determines the party claims, issues under analysis to determine the final award, principles, rules and procedure guiding the case, the time span for the case and how the final award is going to be communicated.[27] These documents are agreed upon and signed by both the arbitral tribunal and the disputants and then submitted to the ICC Court. If any of the parties refuses to involve in drafting the terms of reference or fails to append his signature, the ICC Court can exercise its discretion to continue so far as the arbitral tribunal has prima facie jurisdiction and competence.[28]

If ICC Court rules do not address matters such as language of the arbitration, submission of evidence, time limits; the disputants may be called upon to address the issues as such. The ICC arbitration rules are designed in such a way that the refusal of one party to co-operate cannot jeopardize the arbitration process.[29] The arbitration process continues according to ICC Court rules even if one party absents itself without a valid reason. The applicable laws regarding the merits of the dispute are also determined by the disputants. If the parties fail to reach a consensus, the arbitral tribunal decides that taking into consideration the appropriate applicable law.

One unique feature about the ICC Court rules is that the arbitral tribunal is not mandated to communicate directly to the disputants about the final award. A draft of the decision reached by the arbitral tribunal is submitted to the ICC Court for further scrutiny. The role ICC Court is however, constrained to some extent.

Finally, the ICC Court checks that any requirements that are needed to make the arbitral tribunal judgment enforceable are included in the final draft award.

4. Importance of arbitration in the oil and gas industry

[22] see supra note 12 at 5
[23] See ICSID/15/Rev. 1, January, 2003
[24] see supra 12 at page 5
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.

Disputes in the oil and gas sector could arise as a result of any of the following but not limited to: environmental claims; shareholder value related issues, regulatory issues, trade restriction among others. Contracts in the oil and gas industry more often than not, involve individual foreign parties. It could be an individual, an agency representing a state or even a NOC. Recourse to a national court to address any contractual disputes between these parties would mean that, the national court would be a foreign court to the other party.[30] These courts have their own rules; formalities and procedure designed to deal with domestic issues and may not have the competence and experience to handle complex international energy investment cases. The language of these courts may not be the language of the contract and hence cannot be used to settle such international energy disputes. Any international contract signed by the parties that does not contain an arbitration clause will have recourse to foreign court systems to resolve their disputes.[31]

However, if the parties to an agreement provide for an arbitration clause, the parties will have the opportunity of resolving any disputes that may arise in future on a neutral ground rather than on the home grounds of one party or the other. Since most oil and gas contracts are international in nature, IA fits in as the best alternative to addressing any contractual disputes that may arise because IA gives the disputants the opportunity to participate in the nomination and appointment of the arbitral tribunal for their dispute. One popular example of an IA case was the Arabian American Oil Company (Aramco) case. The Saudi Arabian government in 1933 signed an agreement with Aramco; in the contract agreement, Aramco was given the exclusive right to extract and transport oil from its concession block within Saudi Arabia. Later in 1954, another agreement incongruent to the initial one (Aramco agreement) was entered into between the government of Saudi Arabia and Saudi Arabian Maritime Tankers Ltd. The dispute was finally resolved by arbitration in Geneva, 1955.[32]

One of the reasons why arbitration is popular can be traced to the fact; the arbitral tribunal decision is recognized and enforced internationally. Unlike litigation that the final decision by the judge could be subject to an appeal, the decision by an arbitral tribunal is not only final and binding; it is also recognized and enforceable even at the international level, i.e. the enforcement does not only take place in the place where the award is made but also in any other country where the party against whom the award was made has his assets. The decision of the arbitral tribunal in this case becomes a substance of acceptance unlike mediation (recommendation). Another case that was internationally settled through IA was the nationalization phenomenon that was carried out in Libya on December 7, 1971, culminating into three sets of arbitration proceedings against the Libyan government. The disputes were between government of Libya and British Petroleum (BP), Texaco Overseas Petroleum Company (TOPCO) and Libyan American Oil Company (LIACO).[33] A recent arbitration award enforced is the ICC ruling between Exxon Mobil and Petroleos De Venezuela, S.A. (PDVSA-Venezuela NOC), regarding the 2007 nationalization of assets by the Venezuelan government, which awarded Exxon Mobil $908 million and finally was reduced to around $750 million in favor of PDVSA; but in any case the award was enforced and recognized.[34]

Besides, privacy and its accompanying confidentiality that is enshrined in most arbitral proceedings makes IA more desirable to companies in the oil and gas industry relative to other ADR mechanisms.[35] Disputes involving some trade secrets, intellectual property issues, high-technology information and other competitive practices are sensitive and vital such that parties may want to protect them so as to avoid their competitors from taking undue advantage of them.[36] The only way to resolve a dispute away from media attention to be able to keep these business secrets is to resort to international arbitration.

Parties have the choice of selecting arbitrators that have the technical expertise and are experienced in their field of practice. Arbitration is faster and less costly compared to litigation. This has always been one of the fundamental arguments in favor of the IA. Concerns are now being raised as to whether arbitration is indeed faster and cheaper compared to litigation. There is no any available evidence to prove the claim in one way or the other. What can however be said is that the disputants can comparatively have a faster arbitration at a cheaper cost if they so desire.[37] Most arbitration rules have provided for speedy and efficient arbitration procedure for minor claims which according to Swiss Rules of IA constitutes claims that are less than one

[30] see supra note 2 at page 2
[31] Ibid.
[32] Cameron, D.P, (2010): International Energy Investment Law, (first edition), New York USA: Oxford University Press, 2010
[33] Ibid.
[34] Mobil Cerro Negro, Ltd. v. PDVSA and PDVSA Cerro Negro SA (ICC no. 15416/JRF)
[35] see supra note 2 at 2
[36] American Arbitration Association (2006): A Handbook on International Arbitration and ADR, New York USA: American Arbitration Association, 2006.
[37] see supra note 14 at 6

thousand Swiss francs (1,000,000 Swiss francs).[38] If the disputants also on the other hand decide to use every legal available means to pursue their case, then the cost will be high in arbitrations as it would be in the judiciary system.[39] The table below illustrates the relative importance of IA

Table 1.0 showing the relative importance of arbitration

RELATIVE TO:	LITIGATION	ARBITRATION
How faster and speedy	Months or years	Days, weeks or months
Enforcement of the final decision	Not always	Yes
Cost	Costly ($$$$$$$$)	Cheaper ($$$)
Privacy and confidentiality	No	Yes
Will the outcome be final and binding	No	Yes

4.1 Limitations of International Arbitration

Not all that glitters is gold. IA has its own shortcomings. Among the weaknesses of IA are: costs of arbitration, limited power of the arbitrators, the difficulty of bringing three or more parties before the same arbitral tribunal, delay sometimes due to the difficulty of communication and language and inconsistency. Fees and expenses of arbitrators, interpreters, translators, counselors and their transportation are borne by the parties unlike the salary of a judge in the judicial system.[40] These expenses could be substantial depending on the weight (amount involved) of the dispute in question. Sometimes, the parties may be required to hire conference rooms for hearings and proceedings instead of making better use of public facilities of the national court system.

One other weakness of IA is that it delays sometimes. An arbitral tribunal has to be constituted before the arbitration proceedings can commence. Delays are sometimes attributed to the difficulty of communication and language.[41] The arbitral tribunal would have to submit their decision for example to the ICC Court for the final award to be made and sometimes it takes months and even years for a final award to be enforced. It works well if the dispute involves two parties. For now, all the existing legal and institutional frameworks support disputes that are two sided i.e. a claimant and a respondent but there can be more than two or more parties on any of the two sides.[42] Until the passage of the Arbitration Law and enactment of the new constitution in Venezuela, the Venezuelan government was not consistent in its decisions regarding enforcement of arbitration awards. There is limited expertise about arbitration among judges and lawyers in serious issues regarding IA.[43]

5. Conclusion and recommendation

5.1 Conclusion

As it has always been in the past, changes in technology and international trade investments will always lead to changes in practice and consequently changes in international arbitration practice. IOCs, NOCs and other private companies will in no doubt continue to dominate as the largest number of parties in IA as they are mostly those engaged in international trade and investment. The paper noticed that the rise in FDI has led to increase in cases arbitrated between HGs and foreign investors and this is exemplified in the growing number of ICSID arbitration cases. It is also observed that there are new cases that are not based on arbitration provisions on their contract but by Bilateral Investment Treaties (BITs) whereby a HG can unilaterally submit to arbitrate.

The paper found out that the role of international arbitration could not be over emphasized. IA has brought some amount of predictability in international business transactions and a degree of fairness and consistency. It has brought about neutrality and flexibility which are very important to businessmen and women all over the globe,

[38] Ibid.
[39] Ibid.
[40] supra 2 at 2
[41] Smith, E.E, et al (2000), International Petroleum Transactions (Third edition), Westminster, Colorado USA: Rocky Mountain Mineral Law Foundation, 2000 (pg 129)
[42] supra 2 at 2
[43] Brunet, A. and Lentini, J.A, Arbitration of international oil, gas and energy disputes in Latin America, Northwestern Journal of International Law and Business, ___ (forthcoming, 2007

especially in the oil and gas industry where investments are made even in countries that are unstable. However, from the above analysis, one can observe that international arbitration has its own shortcomings such as the cost of the arbitration (fees and expenses of arbitrators), limits on arbitrators, and difficulty of bringing multi-parties together, enforcement of arbitral awards among others. Despite all these, International arbitration still stands tall in dispute resolutions wise compared to the other known and practiced mechanisms.

As a result of this, the paper anticipates an increase in investment disputes in the future. This expectation is confirmed by the wide range of acceptance of the Energy Charter Treaty and its associated arbitration systems which led to a number of cases. China which hitherto limited the use of arbitration in its BITs, has now taken a second look at its BITs with Germany and Netherlands now allowing for arbitration in issues regarding expropriation. All these new developments are as a result of confidence and trust that institutions have developed for IA.

5.2 Recommendation

Any serious recommendation of possible future developments will have to begin by assessing the past developments in retrospective. There should be a paradigm shift whereby international energy companies, NOCs, IOCs, HGs and other concerned stakeholders in the energy sector will begin to promote and encourage IA in their national court systems as a better alternative to dispute settlement. Venezuela for instance has done so by constitutionally recognizing IA as an ADR mechanism.

The HGs and their NOCs that have not signed and ratified all the important treaties and conventions should try to do so to endorse the practice of arbitration. For arbitration to grow especially in the developing world, the capacity building of all the necessary stakeholders should be strengthened to give them a better understanding of the benefits of IA as an alternative to litigation

The paper also recommends that, to improve our attitude towards arbitration, there should be a bold move to include arbitration courses in the curriculum of our legal education programs so that the academic training will acquaint the new law students and alike with the fundamental principles of international treaties and conventions and general code of international practice. This will broaden their scope of knowledge and decision making as to whether to arbitrate or litigate a dispute.

References

Books

1. Blackaby, N, Partasides, C, Redfern, A and Hunter, M 2009:8, Redfern and Hunter on International Arbitration-Student Version, (Fifth edition), (New York USA, Oxford University Press, 2009)

2. Buhring-Uhle, C 1996, Arbitration and mediation in international business: designing procedure for effective conflict management, (Hague, Netherlands, Kluwer Academic Publishers, 1996).

3. American Arbitration Association: A Handbook on International Arbitration and ADR, (New York USA: American Arbitration Association, 2006).

4. Cameron, D.P 2010, International Energy Investment Law: The Pursuit of Stability, (First edition), (New York USA: Oxford University Press, 2010)

5. Collier, J and Lowe, V 1999, The Settlement of Disputes in International law: Institutions and Procedures, (New York, USA, Oxford University Press, 1999)

6. Duval, C, Leuch, H.L, Pertuzio, A, and Weaver J.L 2010, International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects (Second edition), Barrows, 2010.

7. Smith, E.E, Dzienkowski, J.S, Anderson, O.L, Conine, G.B, Lowe, J.S, and Kramer, B.M 2010, International Petroleum Transactions, (Third edition), (Westminster, Colorado USA: Rocky Mountain Mineral Law Foundation, 2010)

8. Center for Transnational Law (2000, Vol. 20): Understanding Transnational Commercial Arbitration, (Munster, Germany, Quadis Publishing, 2000)

Journals and Articles

1. Gray, C and Kingsbury, B, (1992), *Developments in Dispute Settlement: inter-state arbitration since 1945*, reprinted from the British year Book of International Law.

2. Hunter, M, (2000) *International Commercial Dispute Resolution: The Challenge of the Twenty-First Century*, (Arbitration International: Vol. 16, No. 4)

3. United Nations Conference on Trade and Development: *Disputes Settlement*, 5.1 International Commercial Arbitration, New York and Geneva, 2005 (UNCTAD/EDM/Misc.232/Add.38)

4. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) also known as the *New York Convention*)

Some important websites

1. OGEL - Global Energy Law & Regulation Portal @ www.gasandoil.com/ogel (last visited January 10, 2012)