

The Digital Technology Era and International Commercial Arbitration and Commercial Interests

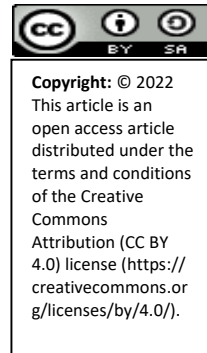
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Abstract

The practice and procedure of international commercial arbitration (ICA), like any other human endeavour, has experienced the disruptive incursion of digital technology. The main objective in this article is to critically interrogate the impact digital technology has made on the practice of international commercial arbitration and commercial interests. The article presents an exegesis on the meaning and rationale for the preference of arbitration as an amicable dispute resolution mechanism by disputants. It discusses various impacts which digital technology has had on the practice of international commercial arbitration and commercial interests. It then highlights the challenges militating against the deployment of digital technology in the practice of international commercial arbitration and way-forward.

Keywords: Digital technology, Arbitration, Commercial, Covid-19, Dispute Resolution

Introduction

The mainstreaming of digital technology in International Commercial Arbitration is exacerbated by the occurrence of the audacious Covid-19 and its attendant global lockdown utilised as a non-pharmaceutical means to curtail its virulence.¹ Aside this, digital technology has drawn attention to the possibility of adoption and deployment of artificial intelligence devices in the conduct of international commercial arbitration as well as the evolution of borderless arbitration through online arbitration within the sphere of online disputes resolution.² One of the main drawbacks of Nigeria's *lex arbitri* i.e. the Arbitration and Conciliation Act 1988 patterned after the United Nations Committee on International Trade Law (UNCITRAL) Model Law is that owing to several advancements in the field of international commercial arbitration over the years, the law had become obsolete and inadequate because since its enactment, it has neither been amended nor reviewed. Interestingly, the National Assembly in 2022, enacted the Conciliation and Mediation Act, 2022 which repealed the ACC 1988 which is expected to mainstream digital technology into international Commercial arbitration practice under Nigerian law.

The Meaning and Justification for the Preference of Arbitration as a Dispute Resolution Mechanism

While it is safe to assume that arbitration and international commercial arbitration are not controversial concepts as far as their meaning is concerned, for the purpose of precision in understanding and accuracy in presentation, it is apt to define these concepts howbeit passively. Ahiaramunnah posits that arbitration is a private process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute... acting in a judicial fashion, but without regards to legal technicalities, applying either existing law or norms agreed by the parties, and acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award to resolve the dispute...in other words, arbitration is a process in which a dispute is submitted by agreement of the parties to a transaction, to one or more arbitrators who make a binding decision on the dispute in order to avoid costly and lengthy litigation.³

¹ National Judicial Council. "The Covid-19 Directives of the Chief Justice of Nigeria and State of-the Judiciary". Punuka.com. <https://punuka.com/the-covid-19-directives-of-the-chief-justice-of-nigeria-and-state-of-the-judiciary> accessed 26 August 2022.

² Christabel Ogechi Ifezie "An appraisal of Alternative Dispute Resolution and Online Dispute Resolution" <https://guardian.ng/issue/an-appraisal-of-alternative-dispute-resolution-and-online-dispute-resolution/> accessed 1 September 2022.

³ Precious-Ann N. Ahiaramunnah, "Emerging Trends in the Enforcement of International Commercial Arbitral Awards" (2015)1(1) *ABUAD Journal of Public and International Law* 13.

Arbitration is one of the dispute resolution processes available to individuals, group of persons, corporations and entities; other than litigation.⁴ It is a method whereby two or more people agree to settle their civil dispute(s) privately, by referring such dispute(s) to a person or persons who would hear the parties and resolve the dispute in a judicial manner, by entering into a decision known as an arbitral award, which shall be binding on the parties.⁵ Eyongndi extrapolating on the nuances of arbitration has argued that by its characteristic nature, it is generally consensual (although in some instance, it could be mandatory as in instances where a law which established a government corporation provides that all disputes in which the corporation is a party, shall first be submitted to arbitration for settlement; anyone that contracts with the corporation does so, subject to the statutory option to mandatorily submit any dispute arising from the contract between it and the corporation to arbitration.⁶

The consensuality expected for the making of arbitration agreement is tacitly lacking as it is not a matter of mutual bargain but statutory preconditioning). The agreement of the parties (preferably written), is the foundation of the arbitration. It encapsulates the incidences of the arbitration which are hereunder discussed. Arbitration could be institutional or *ad hoc*. It is the former when it is administered by an accredited arbitral institution such as the London Court of International Arbitration, American Court of Arbitration, European Court of Arbitration, World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre, International Chambers of Commerce (International Court of Arbitration), Chartered Institute of Arbitration, etc. and it is the latter when it is administered by means other than through an arbitral institution.⁷ An ad hoc arbitration has certain advantages over institutional.

International Commercial Arbitration (ICA) is a private dispute resolution process in which parties from different countries choose to have their disputes decided by one or more arbitrators, without the involvement of the courts of a particular country. Ajogwu⁸ has defined ICA as arbitration of commercial disputes which are beyond national boundaries.⁹ For an arbitration to be considered as international, there must be a foreign element either that the parties are from different

⁴Simon O Oweazim, "The Status and Impact of a *Functus Officio* Arbitrator in Settlement of Disputes" (2017) 4(1) *Nasarawa Journal of Public and International Law* 171.

⁵ Paul O Idonigie, and Adebawo Adewopo, "Arbitrating Intellectual Property Disputes: Issues and Perspectives" 2016, 7(1), *The Gravitas Review of Business and Property Law Journal* 1.

⁶ David T. Eyongndi, "Statoil (Nig.) Ltd. & Anor. v. FIRS & Anor. Balancing the Doctrine of Non-Interventionism and the Need to Protect Public Interest in Arbitration" (2018) 3(3) *Miyetti Quarterly Law Review* 71-96.

⁷ Simon Green and David Savage Bahrain: Ad Hoc v International Arbitration <https://www.mondaq.com/arbitration-dispute-resolution/236404/ad-hoc-v-international-arbitration>

⁸ Fabian Ajogwu, *Commercial Arbitration in Nigeria: Law and Practice* (Lagos: Commercial Law Development Services, 2009) 184.

⁹ Alan Redfern & Martin Hunter, *International Commercial Arbitration*, 6 Ed. (London: Sweet & Maxwell, 2004) 12.

jurisdictions, the subject matter of the dispute or the transaction is cross border but there must be a foreign element. Several elements could make an arbitration to be international. For instance, where the disputants are from two different jurisdictions, the obligation accruing from the contract is to be performed in another jurisdiction other than that of either of the parties, or the seat of the arbitration or the applicable law.¹⁰ This may be illustrated as follows: An Indian contract with a Nigerian for the supply of cement from a French company operating in Germany in which the parties have provided an arbitration clause for the resolution of any dispute that may result from the contract, the seat of the arbitration will be Paris and the applicable law will be Nigerian law. An arbitration result from this contract is obviously an international commercial arbitration because of the presence of foreign element. A single foreign element such as the party, seat of arbitration or nature of the contract is sufficient for an arbitration to be considered international and not necessarily the presence of multiple factors as in the scenario painted above.

Amongst the amicable dispute resolution mechanisms, ¹¹ prudent businessmen seems to prefer arbitration.¹² This argument can be safely accepted due to the inherent advantages of arbitration.¹³ Once an arbitral award is rendered at the end of the proceedings, same is deemed automatically binding and enforceable between the parties and their lawful privies unlike other amicable dispute resolution that may require post completion sanctioning by the parties to become binding. This element of binding and enforceability gives an assurance to the parties that once they have concluded the proceedings, the outcome is reliable.¹⁴ Arbitration when compared to litigation is relatively expensive and speedier. Disputes arising from commercial transactions by their nature, require expeditious settlement as in most cases, time is usually of the essence just as continuance of the relationship. Arbitration is capable of ensuring that such disputes are settled with dispatch and the relationship of the disputants are preserved in the process.¹⁵

¹⁰ Faith Saiki, "Nigeria: International Commercial Arbitration: An Effective Tool for Resolving Commercial Disputes in Nigeria"

<https://www.mondaq.com/nigeria/arbitration-dispute-resolution/888074/international-commercial-arbitration-an-effective-tool-for-resolving-commercial-disputes-in-nigeria> accessed 29 August 2022.

¹¹ Eyongndi, D. T. and Ojuade, O. O. "Applicability of Immunity Clause to Arbitration in Nigeria" (2019) 1(2) *International Review of Law and Jurisprudence, Afe Babalola University* 29-37.

¹² David T Eyongndi and John I Ebokpo, "Principle of Taking a Step in the Proceedings under Nigerian Arbitration Law: The Need for Delineation" (2018) 7(3) *Port Harcourt Law Journal* 119-132.

¹³ Amuche, O. A. "Court and Arbitration: Friend or Enemy?" 3(2) *Chukwuemeka Odumegwu Ojukwu University Law Journal* (2018) 97.

¹⁴ David T Eyongndi, "Espousing the Conundrum of Finality and Bindingness of Arbitral Awards" (2017) 2(2) *University of Maiduguri Journal of Private and Property Law*, 135-152.

¹⁵ Abimbola, A. O., "Prospects in Arbitration: An Overview" *Diverse Issues In Nigerian Law, Essays in Honour of Hon. Justice Okanola Akintunde Boade*, Olatunbosun, A. I., and Laoye, L., (Eds.) (Ibadan, Zenith Publishers, 2013) 27.

Arbitration is generally flexible, the parties enjoy autonomy to determine the incidence of the arbitration such as the number of arbitrators, their qualifications, the seat of the arbitral proceedings, the applicable law, the procedural guidelines in tendering evidence, the language in which the proceedings are to be conducted, etc.¹⁶ Arbitral awards enjoy universal recognition and enforceability.¹⁷ Once an arbitral proceedings terminates with a validly made award, subject to the right to have same set aside, the successful party can enforce same in any part of the world pursuant to several international arbitration legal frameworks unlike a court judgment.¹⁸ Also, the formality and rigidity associated with litigation is totally eliminated in arbitration. It is a known fact that from the dressing to the manner of conduct of court proceedings, the atmosphere is strictly regimented and formal, in fact, litigants (who are owners of the disputes), are excommunicated from the process.¹⁹

Parties to international commercial arbitration avoid the technicalities associated with national courts practice and procedure and most are not only reluctant but unpersuaded to submit themselves.²⁰ The reverse is the case with arbitration, the parties actively participate in the proceedings together with their counsel and the tribunal. The rancorous potentiality of litigation when compared to the relationship fostering nature of arbitration, makes the latter preferred. In fact, there is a general belief amongst the Yoruba people of South Western Nigeria to the effect that *parties do not return from court to be or continue being friends*.²¹ The aforementioned are the reasons that accounts for the preference of arbitration over litigation and other amicable dispute resolution mechanisms.

Explicating the Impact of Digital Technology on International commercial arbitration and Commercial Interests

There is no contestation that digital technology has meaningfully impacted the law and practice of international commercial arbitration and commercial interests. This article chronicles some impacts which digital technology has had on international commercial arbitration. It is apposite to state that it is impracticable for a single treatise particularly of this nature to exhaustively interrogate the impact that

¹⁶ Fabian Ajogwu, *Commercial Arbitration in Nigeria: Law and Practice* (Lagos: Mbeyi and Associates (Nig.) Ltd. 2013) 34.

¹⁷ Ananaba, P. C. *Recognition and Enforcement of Foreign Judgment and Awards in Nigeria* (Lagos, Jamiro Press Link, 2017) 139-141.

¹⁸ Daibu, O. A., "The Lagos State Arbitration Law and the Doctrine of Covering the Field: a Review" (2015) *The Gravitas Review of Business and Property Law* 45.

¹⁹ Moneke, E. U., "Strengthening the Legal Framework for the Recognition and Enforcement of Arbitral Awards in Nigeria" 9 (3) *The Gravitas Review of Business and Property Law* (2018) 18.

²⁰ Dicey, Morris & Collins, *The Conflict of Laws* 15 Ed., (Sweet & Maxwell, 2015) 137.

²¹ Opeyemi Oke "Alternative Dispute Resolution in Nigerian Legal System: Past, Present and Future" in Deji Olarenwaju Ed. *Law and Its Leeway, Essay in Honour of Emeritus Professor Isaac Oluwole Agbede* (Lagos, Gem Communications Resources, 2014) 214.

digital technology has made on International commercial arbitration hence, the scope of this article. Digital technology has impacted International commercial arbitration by the evolution and crystallisation of the innovative practice of online arbitration.²² Traditionally, arbitral proceedings are conducted offline or in person such that the arbitrator (s), disputants, their counsel, witnesses and other personnel converge within the same physical space.²³ This convergence, will last for as long as the proceedings takes with it incidental cost.²⁴ The implication of this mode of conducting arbitral proceedings is that, inability of any of the key persons (either the disputants, arbitrator or witnesses) to be physically present due to any unforeseeable circumstance, the proceedings are stalled.

However, the mainstreaming of digital technology into disputes resolution has seen the ushering in of online dispute resolution which is an innovative and cost effective medium of settling disputes. Online dispute resolution is a set of dispute resolution processes that allow for the resolution of disputes via online mechanisms such as the Internet or some form of technology that allows for virtual communication without requiring the parties to be in a room together.²⁵ Online dispute resolution allows disputants to utilise technology developed platforms to resolve disputes particularly commercial disputes online through wholly or partially. This can be done through various technology facilitated media such as the different applications for videoconferencing. The innovativeness of online dispute resolution which is based on digital technology has been recognised and accorded special status as the “fourth party or person” in dispute resolution, reason being that in traditional offline dispute resolution, the composition is: the disputant, the arbitrator (or panel), and their counsel.²⁶

Through Online dispute resolution, the concept of online arbitration has evolved. Zamzam has defined online arbitration as “the agreement of the parties on settling

²² Ahmed, R. I., “The Concept of Online Dispute Resolution in the Administration of Justice”, Vol. 12, Nigerian Law Practice Journal, 2013, page 136.

²³ Eyongndi, D. T. and Ibitoye, T. R. “Challenges and Prospects in the use of Online Dispute Resolution in Settling Commercial Disputes in Nigeria” (2018) 5, *Joseph Ayo Babalola University Law Journal* 101-115.

²⁴ Biukovic, L., “International Commercial Arbitration in Cyberspace: Recent Developments” (2009) 22 (3) *North-western Journal of International Law and Business* 49.

²⁵ Feliksas, P., and Eglé K., *Online Dispute Resolution in Consumer Disputes*. Available online at <https://www.mruni.eu/upload/iblock/f96/8_Petrauskas_Kybartienht-1.pdf> Accessed on 29th August 2022. They assert thus “The collective term “On-line Dispute Resolution (ODR)” is used internationally for different forms of on-line dispute settlement by means of ADR-methods. ODR supplements existing ADR methods based on the assumption that certain disputes (more specifically e-disputes) can also be resolved quickly and adequately via the Internet. ODR can be defined as the deployment of applications and computer networks for resolving disputes with ADR methods. Both e-disputes and brick and mortar disputes can be resolved using ODR. At the moment there are four types of ODR systems”

²⁶ Katsh, E and Rifkin, J. 2001, *Online Dispute Resolution: Resolving conflicts in cyberspace*. Jossey-Bass: San Francisco at p. 93-117.

the dispute constituted between them or which may be constituted in the future by referring to arbitration using the internet.”²⁷ Al-Khaledias opined that online arbitration is the contract in which the proposal and acceptance meet through the world communication network using electronic exchange of data with view to refer to arbitration all or some of the disputes arising or which may arise between them concerning a contractual or non-contractual specific legal relation.²⁸ It is important to note that online arbitration has been described through various nomenclatures including but not limited to cyber-arbitration,²⁹ cyberspace arbitration,³⁰ electronic arbitration,³¹ or arbitration using online techniques,³² cybitration,³³ and virtual arbitration.³⁴ From the foregoing definition, parties could elect to settle their dispute via online platforms hence, the whole or part of the proceedings could take place via online platforms agreeable to by the parties.

The American Arbitration Association (AAA) offers arbitration services and parties are at liberty to select it as their preferred arbitral institution. Aside the in-person arbitration facility, the AAA maintains a website which can be accessed by the public to file claims.³⁵ The AAA has several trained and skilled arbitrators who specialises in offering online arbitration services at a fee. The International Chamber of Commerce (ICC) is one of the foremost international arbitration bodies in the world. Interestingly, it maintains a website called NetCase, where arbitrators and the parties can conduct their arbitration in a secure environment.³⁶ The process is seamless and efficient. Online arbitration goes through the same process of traditional online arbitration. Processes such as sending of the notice of arbitration by the claimant to the respondent, contacting/appointment of the arbitrator (s), filing of claims and responses, conduct of the proceedings including tendering and

²⁷Zamzam Abdul Menem, *Law on Online Arbitration*, Cairo, Al-Nahdha Al-Arabia Publishers, 2009, P. 53.

²⁸ Al-KhalediInas, *Online Arbitration*, Cairo, Al-Nahdha Al-Arabia Publishers, 2008, P. 202.

²⁹ D. Girsberger & D. Schramm, ‘Cyber-Arbitration’, (2002) 3 *European Business Organization Law Review* 605 at 606; and T. J. Lanier, ‘Where on Earth does Cyber-arbitration Occur?: International Review of Arbitral Awards Rendered Online’ (2000) 7 *ILSA J. Int’l & Comp. L.* 1 at 1.

³⁰ K. Lynch, ‘The Forces of Economic Globalization: Challenges to the Regime of International Commercial Arbitration,’ (The Hague: Kluwer Law International, 2003) at 389.

³¹ Cachard, O., ‘International Commercial Arbitration: Electronic Arbitration,’ (New York: United Nations Conference on Trade and Development, 2003), pg. 1 available online at <http://www.unctad.org/en/docs/edmmisc232add20_en.pdf> Accessed on 15th April, 2017.

³² J. Hörnle, ‘Online Dispute Resolution: More than the Emperor’s New Clothes’ in E. Katsh & D. Choi, eds., ‘Online Dispute Resolution (ODR): Technology as the “Fourth Party”’. Papers and Proceedings of the 2003 United Nations Forum on ODR (2003), pg. 3, available online at <<http://www.odr.info/unece2003/pdf/Hornle.pdf>> Accessed on 15th April, 2017.

³³ Herrmann, G., ‘Some Legal E-flections on Online Arbitration (“cybitration”)’ in: R. Briner, L. Y. Fortier, K. P. Berger, J. Bredow, eds., *Law of International Business and Dispute Settlement in the 21st Century* (Köln: Liber Amicorum Karl-Heinz Böckstiegel, 2001) at 267. Herrmann claims copyright for the word ‘cybitration’.

³⁴ Carrington, P., ‘Virtual Arbitration,’ (2000) 15 *Ohio St. J. on Disp. Resol.* 669 at 669.

³⁵ Eyongndi and Ibitoye (note 27) 107.

³⁶ International Chamber of Commerce. (2006) <https://www.iccwbo.org> 27 August 2022.

receipt of evidence, examination of witnesses, filing and exchange of briefs and delivery of award are conducted online.

Thus, where circumstances beyond the control of disputants (one of such being the audacious Covid-19 pandemic that boisterously ravaged the globe for over two years with its concomitant lock-down as a non-pharmaceutical means to curtail its spreads), makes it impracticable for them to travel and participate in the traditional offline/in-person arbitration to take place, online arbitration is a reliable alternative. It could be argued that, if it were not for digital technology impacting international commercial arbitration, several arbitrations would have been stalled during the global Covid-19 lockdown thereby frustrating the intention of parties to arbitrate. The effect of having commercial disputes linger on commercial interest due to impracticability of the parties meeting physically to resolve them is better imagined than experienced. However, through online arbitration, distance or inability of travel is no longer a barrier. This innovation is made possible via digital technology.

Also, at the expense of repetition, it is worthy to reiterate that, one of the advantages of amicable dispute resolution in comparison to litigation is that it is speedier and relatively less expensive. While it might be easy to agree that arbitration (domestic or international) is speedier, it may be strenuous to substantiate the latter. For traditional international commercial arbitration to take place, the parties, arbitrator (s) experts (witnesses) and any other vital person to the proceedings, will have to travel, lodged, fed and incur other ancillary expenses aside the fees to be paid these personnel. In fact, this seems to suggest that arbitration is likely to be more expensive especially in money's worth aside time. However, through the mainstreaming of digital technology into international commercial arbitration, disputants can now save cost by leveraging on online arbitration. The effect is that, the cost associated with international travels and the danger associated, are totally avoided as the proceedings could be conducted from wherever the parties are located once there is internet facility. Thus, digital technology has made the practice of international commercial arbitration a lot easier and faster.

One of the knotty issues that confront international commercial arbitration is application of mandatory rules of the seat of the arbitration.³⁷ The seat of the arbitration is the place where the arbitral proceedings are being conducted. Pursuant to the doctrine of party autonomy.³⁸ This principle enables the party to

³⁷ Andrew I Chukwuemerie, "An Overview of Arbitration and the Alternative Dispute Resolution Methods ADRs," *A Journal of the Civil Litigation Committee of the Nigerian Bar Association* (Lagos, Pearls Publishers, 2010) 102.

³⁸ Fagbemi, S. A., "The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?" (2015) 6(1) *Journal of Sustainable Development Law and Policy* 224. He opined that party autonomy is the principle that gives the parties to an arbitration proceedings the power and

determine the incidence of the arbitration within the bounds of law.³⁹ Thus, even where the disputants have chosen their *lex arbitri*, they are bound to strictly adhere to the mandatory rules of the seat of arbitration especially when it deals with substantive and not procedural matters.⁴⁰ This situation may create a logjam for the parties. Some of these mandatory rules, could constitute avoidable constraints that can lead to delay of the proceedings thereby negatively impacting on the touted speediness of arbitration as a dispute settlement mechanism.

Nevertheless, through the impact of digital technology, parties to international commercial arbitration need not labour themselves about the hurdles of mandatory rules of the seat of arbitration. Where the disputants opt for online arbitration, especially *ad hoc*, one challenging issue is determining the seat of the arbitration in online space due to its fluidity. While one may argue that the location of the arbitrator (where it is a sole arbitrator), preferably, is the seat of the arbitration. This contention is more presumptuous than real. Thus, owing to the boundless and indivisibility of the online space, it is difficult, if not impossible to hold on to one particular jurisdiction as the seat of arbitration. This is so especially where the disputants, their counsel and the arbitrators are in different jurisdictions while participating in the proceedings online.

Challenges Militating against the Deployment of digital technology in the Practice of international commercial arbitration

From the preceding section, it is crystal clear that digital technology has positively impacted the law and practice of international commercial arbitration. Based on this, one would ordinarily expect that its deployment in International commercial arbitration will be welcomed however; it is not without some inherent challenges despite its prospects. This chapter discusses the challenges militating against the deployment of digital technology in international commercial arbitration and proffered solutions. One of the challenges militating against the deployment of digital technology in international commercial arbitration is security and confidentiality of the proceedings.

The online space is very volatile and highly susceptible to the activities of nefarious elements. Incidences of hacking are rampant. Moreover, one of the issues associated with digitalisation is the less involvement of humans in the process. The mainstreaming of digital technology into international commercial arbitration means that some of the work usually performed by humans is taken over by

authority to decide within the confines of the law who, where, when and how the arbitral proceedings will be conducted.

³⁹ Ajayi, M.O, Eyongndi, D.T and Onu, K.N.O “Arbitrability and the Doctrine of Party Autonomy in Arbitration: Same or Strange Bed Fellows?” (2017) 6 *University of Ibadan Journal of Jurisprudence and International Law*, 162-183.

⁴⁰ Simon Greenberg, Christopher Kee & Romesh J Weeramantry *Commercial Arbitration: Asian Pacific Perspective* (Cambridge: Cambridge University Press, 2011) 2.14.

machines. There are several machines that could scan through several documents at a very high speed and accuracy than human. The implication is that, the adoption of such machines, invariably sequester humans who usually perform such functions. The income such persons earn from performing such role, is extinguished leaving them less financially capable. Thus, digital technology in international commercial arbitration is capable of increasing job loss.

While internet facility is a free commodity in some jurisdictions, in others (especially in developing climes), it is a luxury. Even when it is available and affordable, its reliability for complicated engagements like online arbitration cannot be guaranteed. It is imperative for government and arbitral institutions to ensure that there is made available constant electricity and reliable internet facility.

Data protection and data privacy is another challenge associated with the mainstreaming of digital technology in international commercial arbitration. In modern economy, data and not oil or any other natural resources is regarded as the most valuable commodity.⁴¹ Online arbitration as a variant of digital technology enables international commercial arbitration platform. During the proceedings, critical and confidential information (such as trade secrets and even details of financial transactions), are shared. How these pieces of information are stored to ensure their safety from virus, hackers and even alteration is of utmost importance.⁴² The fact that parties could entertain some concerns about this cannot be contested and this fear, possess as a challenge to the deployment of digital technology in international commercial arbitration.

Extrapolating from the analysis above, it is crystal clear that international commercial arbitration is the most suitable means for resolving cross border commercial and contractual disputes giving that it is relatively cheaper, speedier, less rancorous, and relationship fostering. Over the years, international commercial arbitration has witnessed many practical advancement including the adoption of digital technology in its practice and procedure. Thus, since its adoption, digital technology has significantly impacted the law and practice of international commercial arbitration and commercial interests through reduction of the cost of international commercial arbitration, reduction of workload and time saving, enabling the continuance of international commercial arbitration amidst debilitating supervening situations such as the audacious Covid-19 that made in-person meetings impracticable. Despite its laudable impacts on the law and practice of international commercial arbitration, the deployment of digital technology has raised several issues such as privacy and confidentiality of the proceedings owing to

⁴¹ Uche Val Obi, "Data Privacy and Data Protection Law in Nigeria"

<https://www.mondaq.com/nigeria/privacy-protection/1183140/data-privacy-and-data-protection-law-in-nigeria> accessed 29 August 2022.

⁴² Olumide Babalola "Data Protection and Privacy Challenges in Nigeria"

<https://olumidebabalolalp.com/privacy-challenges-nigeria/> accessed 28 August 2022.

the activities of cyber hackers, data privacy and protection, rendering of human redundant through the use of machines to perform task hitherto performed by humans, and safety of online correspondences from virus. There is also the challenge of infrastructure and human capital deficit in some jurisdictions especially Nigeria which is capable of hampering the deployment of digital technology in international commercial arbitration.

Based on the findings above, it is recommended that arbitral institutions that adopt digital technology in the practice of international commercial arbitration should ensure that when online arbitration is opted for, the privacy and confidentiality of the proceedings is maintained. Necessary precautionary measures to safeguard this ends are put in place. The proceedings must be kept safe from cyber hackers who do not only eavesdrop on conversations but causes severe hardship. Also, to ensure data privacy and protection, data used in the course of the proceedings as supplied by the parties and even witnesses, must be handled with utmost confidentiality and care to ensure that same is neither altered not corrupted by virus.

There is a need for arbitrators and arbitral institutions to acquire and improve on their digital literacy ability skills and ability to enable gainful deployment of digital technology in international commercial arbitration. Jurisdictions such as Nigeria where there is both infrastructure and human capacity deficit, efforts should be made to provide such digital technology support infrastructure such as good internet connectivity and regular electricity supply.