Abstract

In the first chapter this thesis traces the development of arbitration from its early foundations to the well-established dispute resolution mechanism that it has become today. In particular, emphasis is placed on the tumultuous relationship that has existed between the judiciary and the autonomy of arbitration and, moreover, attention is drawn to the consequences of this 'suspicious attitude' on the part of the courts. Furthermore, the extent to which arbitration has become an alternative to litigation, and the reasons for such, is assessed in light of an examination of the inherent attributes of arbitration in solving commercial disputes in an international context.

The locus of the Thesis turns to arbitration in the United Kingdom in Chapter 2. First, the statutory history of arbitration is charted and the need for change that prompted the Arbitration Act 1996 identified. Following this, the 1989 Report of the Departmental Advisory Committee that laid the groundwork for the radical change which the new Act would effect is considered. The object of the Thesis in this part is to make a novel contribution to academic discourse by examining the Committee's reasoning for choosing not to adopt the UNCITRAL Model Law and, particularly, whether these reasons are still applicable two decades on. Finally, this chapter provides an overview of the Arbitration Act 1996. The guiding philosophy, structure and primary tenets of the Statute are introduced and discussed.

In the third chapter, an objective and comparative analysis is conducted in respect of certain provisions of the Arbitration Act 1996 and the UNCITRAL

Model Law. Four key areas have been identified as offering the most substantial differences between the two legislative frameworks and are the subject of acute examination, namely: arbitrability, seperability, competence of the arbitral tribunal to rule on its own jurisdiction and judicial intervention at all stages in arbitral proceedings. Through the course of this comparison, a well-defined methodology is followed. First, the respective provision is introduced under the Arbitration Act and the UNCITRAL Model Law. Secondly, an objective analysis is discreetly conducted of each provision. Next, the critical comparative analysis between the 1996 Act provision and the UNCITRAL Model Law provision is undertaken. This is subsequently followed by a conclusion of the findings.

Chapter 4 contains an empirical inquiry as to recent trends in international arbitration. Reference is made to a number of leading studies to highlight, in particular, those features of dispute settlement which concerned parties find attractive. Of the empirical data cited, an analysis in terms of the Thesis' parameters is given. Furthermore, a specific case study of a jurisdiction currently in the process of adopting the Model Law – Ireland – forms the final part of this chapter.

The Conclusion of the Thesis draws these various strands together in attempt to decipher whether, in order to preserve London as a leading arbitral hub, England and Wales should adopt the UNCITRAL Model Law as the legislative regime in place of the Arbitration Act 1996.