

The Arbitration and Party Autonomy: A Comparative Review between the English Law, the UNCITRAL Model Law and the Qatari Law

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Abstract

The aim of this paper is to review the position of the UK Arbitration Act 1996, the UNCITRAL Model Law on International Commercial Arbitration 1985 as well as the new Qatari Arbitration Act 2017 in regards to the commencement of arbitration and the time constraints placed on the party's during the arbitration and party autonomy. The emphasis of this paper will focus on whether these legal bodies support the rule that parties who submit their international commercial dispute to arbitration are autonomous or not?

The paper will also determine which party should be responsible for the commencement of arbitration, whether that is the court, the arbitration panel or both parties. Whilst doing so, the question of why the National courts have restricted party autonomy in domestic arbitration unlike with international arbitration, where party autonomy is unrestricted will be explored in terms of whether this is a justifiable advantage and to be encouraged into the practice of modern arbitrators.

Both the party autonomy and commencement of arbitration are examined within the three legal regimes mentioned above.

The paper consists of five sections exploring party autonomy; commencement day of arbitration; time restrictions; limitations to court interventions and finally exceptions to court interventions all as apply within the three legal bodies.

Keywords: The UK Arbitration Act 1996, the Qatari Arbitration Act 2017, the UNCITRAL Model Law on International Commercial Arbitration 1985, Commencement of Arbitration, Party Autonomy.

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Introduction

The aim of this paper is to review the position of the three legal bodies under examination, namely, the UK Arbitration Act 1996⁽¹⁾, the UNCITRAL Model Law on International Commercial Arbitration 1985⁽²⁾, as well as, the new Qatari Arbitration Act of 2017⁽³⁾, in regards to the commencement of arbitration and the time constraints placed on the party's during the arbitration and party autonomy. Emphasis will be focused on whether or not these legal bodies, really support the rule that parties who submit their international commercial dispute to arbitration are autonomous.

In addition, the paper will also determine which party should be responsible for the commencement of arbitration, whether that is the court, the arbitration panel or both parties. The reasons on why the National courts have restricted party autonomy in domestic arbitration compared to international arbitration, who are free to exercise full party autonomy will also be explored and incorporated within the discussions in relation to its impact on the practice of arbitrators.

Arbitration is an alternative to the court route⁽⁴⁾. Where litigation is not considered, arbitration is the only other significant alternative for parties wishing to resolve disputes arising from commercial interactions. This option avoids the constraints and limitations associated with dealing with the courts⁽⁵⁾.

(1) UK Arbitration Act of 1996 accessed at <http://www.legislation.gov.uk/ukpga/1996/23/contents>.

(2) The UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/985Model_arbitration.html.

The UNCITRAL Model Law on International Commercial Arbitration ("the Model Law"), adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission. The General Assembly, in its resolution 40/72 of 11 December 1985, recommended "that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice". The Model Law was amended by UNCITRAL on 7 July 2006.

(3) The New law was published in the Official Gazette of the State of Qatar on 13th of March 2017.

(4) The Arbitration Act (1996) in the UK, as part of the common law is the governing body responsible for processing the arbitration procedure. The 'arbitration procedure' defined as a method of "obtaining the fair resolution of disputes by an impartial tribunal, without unnecessary delay or expense".

(5) The Right Hon, Sir Michael Kerr in Ronald Bernstein ed., Handbook of Arbitration Practice, Sweet and Maxwell, 1987, p. 3. See for more details: Litigation, Arbitration & Dispute Resolution, Edited by Oliver Hargreaves, 2010 Digital Guide, p. 9, accessible at:

https://www.kkg.pl/wp-content/uploads/2015/02/1_2_3_4_6_2010_PDF_EN.compressed.pdf. See =

Other advantages include, saving time and expense whilst still gaining the benefits of similar rules with access to an arbitrator who has specific experience related to the matter in dispute⁽⁶⁾.

Another significant benefit of pursuing arbitration over court proceedings within international commerce is that there is no need to face foreign jurisdictions. This saves the parties from having to experience prolonged, complex and often considerably costly court proceedings particularly when there is an additional risk where the foreign court's decision may result in unenforceable decisions in other countries⁽⁷⁾.

Despite arbitration being associated with much faster and less costly systems when compared to litigation procedures⁽⁸⁾, arbitration does confidently allow parties to be more autonomous. This infers that the parties have notably more freedom to determine how their dispute is resolved once they have officially submitted their dispute. As dispute resolution procedures are exclusively regulated by certain legal modalities, they are subject to legal considerations, for the purpose of protecting public interest. Whereas arbitration, which is in place to provide a dispute resolution procedure in its own right and not merely as a litigation alternative, ensures that party autonomy is arguably the most important characteristic of arbitration⁽⁹⁾.

= also for more on this, Lembo, S, (2010). The 1996 UK Arbitration Act and the UNCITRAL Model Law - A contemporary Analysis- PHD Thesis on "Internal and International Arbitration Law" XXI Cycle, Università di Luiss Guido Carli Faculty of Law, pp. 13-15.

(6) Paulsson J., International Commercial Arbitration, Bernstein's Handbook of Arbitration and Dispute Resolution Practice (2003) in John Tackaberry, Arthur Marriot QC and Ronald Bernstein (eds), 4th ed., Sweet and Maxwell, UK, 2003, p.335 onwards.

(7) Ibid.

(8) Kritzer & Anderson, commenting on American domestic arbitration, has concluded that AAA arbitration was faster but not necessarily less expensive than litigation, see Kritzer & Anderson, The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts, 8 Justice Systems Journal 6 (1983) cited in Christian Buhring-Uhle, "A Survey on Arbitration and Settlement in International Business Disputes: Advantages of Arbitration", in Towards a Science of Arbitration: Collected Empirical Research, Christopher Drahozal and Richard Naimark eds, Kluwer Law International, 2005, at 38. See also, Lembo, Sara, supra note, at p.17.

(9) For more on the doctrine of autonomy in arbitration, see Pryles Michael, President, Australian Centre for International Commercial Arbitration; court member, London Court of International Arbitration; Immediate Past President, Asia-Pacific Regional Arbitration Group; consultant, Clayton UTZ. Can be accessed at: http://www.arbitrationicca.org/media/4/48108242525153/media012223895489410limits_to_party_autonomy_in_international_commercial_arbitration. =

Certain legal parameters form part of the governance process in international commercial arbitration, however, parties are not necessarily bound by the legal procedures at local or national level. This subsequently allows the parties to retain their authority to determine which legal system they wish to adopt in the event of a dispute.

The UN has developed a comprehensive legal system enabling the governance of commercial arbitration at international level. Under both the UK Arbitration Act as well as the Qatari Arbitration Act there is in place a dispute resolution system, which applies to both national and international disputes. One of the main criticisms put forth for the UK Arbitration Act is that party autonomy is not a part of the dispute resolution process. This implies that certain clauses neglect to consider the party of autonomy as significant⁽¹⁰⁾.

1- Party Autonomy⁽¹¹⁾ under the English Law – the UK Arbitration Act 1996, the UNCITRAL Model Law and the Qatari Arbitration Act 2017

Autonomy refers to the amount of court intervention at any stage of the resolution process in relation to the process of arbitration. Section 30 of the UK Arbitration Act, involves the jurisdiction of the arbitral tribunal, which facilitates arbitrators with the power to govern their own jurisdiction and to protect the principle of autonomy. The arbitration tribunal ruling concerning what constitutes the jurisdiction signifies the main difference between the Arbitration Act and the UNCITRAL Model Law. Both laws differ in their methods of instilling a certain degree of control for the disputing parties, whereas the similarities lie in how both laws allow the arbitrators to rule

= pdf, pp1-13. See also, Sharar, Z. (2017) An Examination of the Basic Principles in the New Qatar Arbitration Law Measured against the UNCITRAL Model Law as an International Benchmark. *The Legal & Judicial Journal*. First edition, eleventh year, pp 11-15.

(10) Paulsson, J. *International Commercial Arbitration*, Bernstein's Handbook of Arbitration and Dispute Resolution Practice in John Tackaberry. Arthur Marriot QC and Ronald Bernstein eds., 4th Edition, Sweet and Maxwell, UK, 2003, at p.335.

(11) «Party autonomy is the guiding principle in determining the procedure to be followed in an international commercial arbitration. It is a principle that has been endorsed not only in national laws, but by international arbitral institutions and organisations. The legislative history of the Model Law shows that the principle was adopted without opposition...». Redfern A. & Hunter M., *Law and Practice of International Commercial Arbitration*, 4th Edition, 2004, p.315.

on their jurisdiction⁽¹²⁾. It is important at this juncture, to also acknowledge other schools of thought which principally illustrate that party autonomy within international arbitration is more respected in comparison to national arbitration.

In regards to the question of why the National courts have restricted party autonomy in domestic arbitration when compared to international arbitration, it is clear that despite its autonomous character, in a national arbitration it still depends on national courts to provide effectiveness, support and assistance for the process.

Whereas, in International arbitration, the march of party autonomy has been in comparison unobstructed because international arbitration does not depend on national courts for legitimacy, this exists as of right, based on the agreement of the parties (p. 536).

This is further clarified by Lew who reinforces that access to the autonomous domain of international arbitration is obtained via contract and the ‘relinquishment of rights’ by National courts. In doing so, once it has entered into the domain of international arbitration, it exists in its own ‘rarefield domain’, in other words, beyond control.

This explains why it is difficult to be restricted by the courts, which in itself cannot be seen as negative, especially as with the international model law, which acts more on an advisory basis as party autonomy is restricted, so in this capacity there is no requirement for legal power or intervention⁽¹³⁾ (p. 535-36).

There are also other key principles that ought to inform the way in which national courts approach the issue of their involvement with international arbitration. National courts should become involved where they are asked to give effect to the agreement to arbitrate and support the process agreed between the parties. In addition, once an award is made, courts should seek to give effect to the tribunals’ award because it is a recognition of the autonomous character of arbitration, an implied agreement

Although the UK Arbitration Act allows parties to decide on whether the

(12) See Section 30 of the UK Arbitration Act.

(13) Lew, JDM, Does National Court Involvement Undermine the International Arbitration Processes? American University International Law Review, Volume 24, Issue 3, Article 3, 2009.

‘Kompetenz-Kompetenz’ principle⁽¹⁴⁾ is applied or not in the first instance, once the parties have decided to utilise it, they are then limited to challenge it from that point onwards. This stems from the provision indicating that any denial or objection to a ruling on jurisdiction has to be raised before or concurrent to the defence being served. This therefore restricts the parties’ ability to further dispute the rulings on jurisdiction, once they are facilitated with the power to rule on where the jurisdictions sit. In contrast, under Article 16 of the UNCITRAL Model Law, the arbitral tribunal is left to determine the jurisdiction and the concerned parties are unable to remove the arbitrators’ ability to rule on jurisdiction.

Unlike the UK Arbitration Act, parties under the UNCITRAL Model Law, article 16(3), have the ability to plea that the tribunal does not have jurisdiction, where the tribunal rules that it does. Parties can then submit an application to the court to challenge this decision however; it needs to occur within 30 days of the initial decision. By limiting delays to the arbitration proceedings, both principles therefore, aim to preserve the efficiency of the process allowing both principles to achieve successful outcomes.

Party autonomy⁽¹⁵⁾, is given due importance in the UNCITRAL Model Law under Article 11 where it puts party autonomy at the core of its provision. This is evident where a decision on how they chose to adopt the appointment of arbitrators is given. Where both parties are unable to reach an agreement, the court, the existing arbitrators or another relevant authority as agreed by all parties can intervene, as long as both parties consent to this. The differences between the two models of law lie within the wording of the two provisions. Section 18 of the UK Arbitration Act, outlines the restrictions of the powers of the courts regarding the appointment of arbitrators⁽¹⁶⁾.

Under the UNCITRAL Model Law, the emphasis is upon the competence and

(14) That allows the arbitrators to rule first on their own jurisdiction. For more on this principle, see Sharar Z., *An Examination of the Basic Principles in the New Qatar Arbitration Law Measured against the UNCITRAL Model Law as an International Benchmark*, 2017, *supra* note, pp 19-20.

(15) For more on party autonomy in Arbitration, see: Levi O.W.O, *Party autonomy and enforceability of arbitration agreements and awards as the basis of arbitration*, University of Leicester, 2014. Accessible at <https://core.ac.uk/display/20365773>.

(16) See Section 18 of the Arbitration Act 1996.

suitability of the arbitrator, which the court finally decides to appoint⁽¹⁷⁾. In doing so, this law, provides the parties with more freedom to determine the process of settling and to deciding upon which method is utilised to choose their own arbitrator, unlike the UK Arbitration Act.

Under the UK Arbitration Act, the scope of the court is defined more rigorously, whereby it facilitates the court with significantly more power than is currently possible under the UNCITRAL Model Law⁽¹⁸⁾.

From reviewing both legal modalities, it is evident that there are clearly different underlying values and principles that underpin each. To illustrate this point further, in Article 5, under the UNCITRAL Model Law, it is explicit that no court shall intervene. It is felt that this is both logical and useful to have in place, especially where the court's intervention is not explicitly clear on the matter. However, the courts appear to have more empowerment within the UK Arbitration Act, to revoke both present and previously appointed arbitrators including those arbitrators appointed by the disputing parties themselves.

This last point is highly relevant, as it illustrates that despite any explicit legislative clause indicating that the court refrains from intervening, in reality, the courts are in fact, able to facilitate the removal of the power from the disputing parties and to make their own rulings as to who should be the appointed arbitrator⁽¹⁹⁾.

In final, unlike the UK Arbitration Act, it is evident from the characteristics of the UNCITRAL Model Law, that it would clearly not be possible to remove the power from the disputing parties to make their own rulings about appointing an arbitrator.

The position taken under the Qatari Arbitration Act in relation to this as outlined in Article 33⁽²⁰⁾, sets out the means for making an application to challenge the

(17) See Article 11 of the UNCITRAL Model Law.

(18) Tweeddale & Tweeddale, *Arbitration of Commercial Disputes: International and English Law and Practice*, supra note, p. 494.

(19) See section 18 of the Arbitration Act 1996.

(20) Section 33 of the Qatari Arbitration Act 2017 reads as follows:

1. Arbitral awards may be challenged only by a request for annulment in accordance with the provisions of this law before the Competent Court.
2. An application for annulment of an arbitral award shall be admitted only if the applicant provides a proof of any of the following:

arbitral award.

Such a challenge has been streamlined into an ‘application for annulment’, which must be made to the ‘Competent Court’.

2- Commencement day of Arbitration within the three legal regimes

It is important to determine how each legal regime defines their commencement day in terms of arbitration as well as determine who has the authority over the commencement of arbitration.

“There are default rules governing commencement of arbitral proceedings (section 14, UK Arbitration Act), including:

- Where the arbitrator is named or designated in the arbitration agreement, arbitral proceedings commence when one party serves a notice requiring them to submit the matter to the person so named or

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- A. A party to the Arbitration Agreement was, at the time of conclusion, lacking the necessary legal eligibility or capacity under the law agreed to by the parties as the applicable law or under this law, unless the parties otherwise agree.
 - B. The applicant for annulling the award was not duly notified of appointing an arbitrator or of the Arbitration proceedings, or the applicant failed to submit a defence for any reasons falling beyond such applicant’s control.
 - C. The arbitral award has decided matters not covered by, or has gone beyond the limits of, the Arbitration Agreement. However, if parts of the arbitral award relate to matters covered by the Arbitration Agreement and are separable from those not so covered, the annulment shall be effective only with respect to the parts not so covered.
 - D. The composition of the Arbitral Tribunal, the appointment of arbitrators or the Arbitration proceedings have not occurred in accordance with what the parties agreed to, unless such agreement is in conflict with any provision of this law, or, in case there is no such agreement of the parties, where the proceedings were carried out in violation of this Law.
3. The Competent Court, on its own discretion, shall annul an arbitral award where the subject matter of the dispute is, pursuant to the laws of the State of Qatar, not arbitral, or where the arbitral award involves a violation of the public order of the State of Qatar.
 4. Unless the parties agree in writing to extend the deadline set for filing the application for annulment of the award, such application shall be filed before the Competent Court within one month from the date of delivery of a copy of the arbitral award to the parties; from the date of summoning the applicant for annulment of the arbitral award; or from the date of issuance of the correction, explanation/ interpretation or supplemental award as provided for under Article 32 of this Law.
 5. Unless the parties otherwise agree, the Competent Court may, for the period to be determined thereby, suspend reviewing the application for annulment, upon the request of any party, where the Competent Court deems such request appropriate, on order to allow the Arbitral Tribunal the opportunity to complete the Arbitration proceedings, to take any other measure deemed sufficient by the Arbitral Tribunal to eliminate the grounds for annulment.
 6. The Competent Court’s ruling shall be final and not subject to appeal by any means of appeal.
For more on this see, Fisher, Paul, Qatar’s new Arbitration Law, accessible at http://www.4newsquare.com/wp-content/uploads/2017/04/PEF_Qatar_arbitration_note.pdf.

designated. Therefore, under this regime, the parties hold the authority over the commencement of arbitration.

- Where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced when one party serves on the other party notice requiring them to appoint an arbitrator or to agree to the appointment of an arbitrator⁽²¹⁾.

Under the UK Arbitration Act, the court have the ability to extend time limits regarding the commencement of arbitration in specific circumstances outlined in sections 12(1) and (2) of the Arbitration Act 1996. However, where an application is submitted to the court in order to extend the time limit, it is expected that all other arbitral options have been exhausted prior to court application and that there are no other options remaining in order to proceed.

The UNCITRAL Model Law, considers the date of completion of the formation of the arbitration authority, which means that the previous procedures do not count as arbitration proceedings (UNCITRAL, 2006)⁽²²⁾. Arbitration proceedings shall be deemed to commence on the date on which the respondent receives the notice of arbitration as mentioned in Article 3. This indicates that under this regime, the authority of commencement of arbitration lies with the respondent party.

The Qatari Arbitration Act considers the day on which the defendant received the request to refer the dispute to arbitration, as the commencement day of arbitration, unless the parties have agreed to the contrary⁽²³⁾. Therefore, the authority of commencement of arbitration, under this regime lies with the recipient of the request to refer the dispute to arbitration except where the parties decide otherwise. This indicates that the parties hold ultimate authority to decide the commencement of arbitration.

Having said so, there are certain circumstances where the court will take over the authority from the parties over the commence of arbitration which will be explored further in section 5 below.

(21) <http://uk.practicallaw.com/4-502-1378?service=arbitration#a296886>.

(22) Article 21 of the the UNCITRAL Model Law. Accessed in December 2017. <https://openair.rgu.ac.uk/bitstream/handle/10059/1564/ALOBAILDLI%202016%20Arbitration%20law%20in%20Qatar.pdf?sequence=4>. P. 279.

(23) Section 21 of the Qatari Arbitration Act 2017.

3- Time restrictions to challenge the jurisdiction under the “Kompetenz-Kompetenz” principle

Under the UK Arbitration Act parties have the right to appeal as they have more bearing on the arbitrators’ jurisdiction. Despite the parties being given the option of opting in and out of adopting the Kompetenz-Kompetenz principle, once it is adopted and the parties disagree with the arbitrators’ ruling on the chosen jurisdiction, they are then limited by means of significant time restrictions to challenge the jurisdiction. This illustrates the extent to how limiting the UK Arbitration Act has on the parties concerned⁽²⁴⁾.

When trying to determine whether there is a valid arbitration agreement under the UNCITRAL Model Law, it becomes evident again that the parties using this legal framework have more autonomy. Under the UK Arbitration Act, the tribunal rules and determines whether there is a valid agreement or not⁽²⁵⁾. On the other hand, under the UNCITRAL Model Law, article 16 indicates that the tribunals’ power to rule is limited to the consideration of a party’s objections to whether there is a valid agreement. Therefore, the parties are more empowered to determine the course of action under the UNCITRAL Model Law unlike the UK Arbitration Act, where the parties are disempowered and the outcome is determined by the validity of an agreement regardless of whether there have been any objections or disputes specifically regarding this matter⁽²⁶⁾. Therefore, Article 16 of the UNCITRAL Model Law offers a detailed outline of the wider concept of competence, which appears to be more successful in restricting the involvement of the court in this respect in comparison to the UK Arbitration Act.

Article 16 of the Qatari Arbitration Act begins with reaffirmation of the principles promoted by the UNCITRAL Model Law the ‘Kompetenz-Kompetenz’ (the Tribunal’s authority to rule on questions pertaining to its own jurisdiction⁽²⁷⁾).

(24) Lembo S., *The 1996 UK Arbitration Act and the UNCITRAL Model Law- A Contemporary Analysis*, PhD Thesis, 2010, *supra* note, pp. 55-60.

(25) Davidson F., *The New Arbitration Act- A Model Law?*, *Journal of Business Law*, 1997, 101 at 117.

(26) *Ibid.*

(27) See Section 16 of the Qatari Arbitration Act 2017.

4- Limitations on Court intervention within the UNCITRAL Model Law; the Arbitration Act 1996 and the Qatari Arbitration Act of 2017:

Under the UNCITRAL Model law, the court's intervention is limited by Article 5, which states that: "no court shall intervene" in order to achieve certainty regarding the maximum extent to which courts cannot intervene⁽²⁸⁾. This was considered a positive move, which would ultimately result in a positive attitude from the courts⁽²⁹⁾.

When reviewing those nations who have adopted the UNCITRAL Model Law, it is clear that the provisions of Article 5 clearly outline the extent to which the court intervenes and thus restricts it within the arbitration process. It has been judged as a body, which captures the freedom from disruptive court interventions⁽³⁰⁾.

Section 1 of the UK Arbitration Act has since amended its wording to become more definite from 'shall' to 'should', thus reading that no court should intervene as it was considered wise to entirely remove the ability of courts to intervene⁽³¹⁾. *Vale Do Rio Doce Navegacao SA & Anor v Shanghai Bao Steel Ocean Shipping Co Ltd*⁽³²⁾ indicates how this section was interpreted and highlighted that it did not entirely prohibit court intervention in the arbitral process. Therefore, in this case, the UNCITRAL Model Law was not seen to be appropriate.

This case outcome outlined that despite the initial intent of the UK Arbitration Act, the intended outcome did not transpire. It does however; highlight the complexities associated with differing interpretations of the legislation in particular with regards, to the UNCITRAL Model Law and the Arbitration

(28) Report of the Department of Advisory Committee on the UNCITRAL Model Law. Hong-Lin has commented that. "...arbitration, unlike national court systems, is a commercially orientated product that flourishes on the basis of market forces. To avoid fading away, the popularity of this product depends on whether the demands of customers are satisfied. However, excessive interference exercised by state courts can result in the dissatisfaction of the customers. Hong-Lin Yu, *Five Years On: A Review of the English Arbitration Act 1996*, 19(3) *Journal of International Arbitration* 2002, at 209

(29) Working Group Report on the Arbitration Bill.

(30) Binder P., *International Commercial Arbitration in UNCITRAL Model Law Jurisdictions*, Sweet & Maxwell, UK, 2000, Article 5.

(31) Landau P., *New Duties and Liabilities: Party Autonomy versus Powers of the Tribunal*, IBC Conference, 4 July 1996.

(32) *Vale Do Rio Doce Navegacao SA & Anor v Shanghai Bao Steel Ocean Shipping Co Ltd*, 2000 EWHC 205 (Comm) (14 April 2000).

Act in the UK. The UNCITRAL article 5 is evaluated as largely prohibiting court intervention, whereas the UK Arbitration Act warrants a level of interpretation allowing courts to potentially go beyond the realms of the act to allow intervention in some cases.

The UK Arbitration Act refers to two particular conditions, which need to be adhered to when interpreting an arbitral proceeding by the court, particularly when determining whether the court intervenes or not. The first has already been discussed above in section 1 of the UK Arbitration Act and the second is concerned with correcting any fundamental errors⁽³³⁾. Therefore, the second condition is utilised to avoid injustice and is mainly referred to when exceptional circumstances apply and where the court's intervention is unwarranted. However, the mandate in terms of autonomy can be overridden in certain situations where the court can intervene regardless of whether it is warranted, requested or even desired by any of the parties. Although this does not occur often, nevertheless, full control in reality is never absolute for the involved parties and this can result in the courts, at any point, to intervene at any stage of the arbitral proceedings and thus disempowering the parties⁽³⁴⁾.

5- Cases whereby courts may intervene with arbitral proceedings as an exception

The first step of the arbitration procedure, which is considered the commencement of arbitration, is often seen as the most fundamental step in the whole process⁽³⁵⁾. A key aspect to focus on related to the commencement of arbitration is the time constraints attributed to it. For example it is noted that if notice of the initiating of arbitral proceedings falls outside of the time limit set to bring disputes to arbitration, it is unlikely to be considered and thus the dispute remains unresolved⁽³⁶⁾. One instance whereby a court may intervene in

(33) General principles.E+W+N.I. The provisions of this Part are founded on the following principles, and shall be construed accordingly—

(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;

(b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

(c) in matters governed by this Part the court should not intervene except as provided by this Part

(34) Tweeddale & Tweeddale, *Arbitration of Commercial Disputes: International and English Law and Practice*, Oxford University Press, UK, 2005, p. 35.

(35) *Ibid* at 36.

(36) *Ibid*

the arbitration procedure during the initial commencement of the arbitration stage is where the arbitrator is facilitated with the ability to extend time limits. The other instance is where the courts intervene to appoint an arbitrator when a party has failed to do so. Both instances illustrate that the main purpose of intervening is to assist and facilitate the arbitral process.

This is evident under the UK Arbitration Act, where courts have the ability to extend time limits regarding the commencement of arbitration in specific circumstances outlined in sections 12(1) and (2) of the act. However, where an application is submitted to the court to extend time limits, it is expected that all other arbitral options have been exhausted prior to court application and that there are no other options to take to proceed⁽³⁷⁾. In the case of *Marc Rich Agricultural Trading SA v. Agrimex Ltd*⁽³⁸⁾, where the court application was submitted as a last resort, it is evident that despite the court agreeing to intervene, it did so reluctantly. In the case above, the court ruled that it was up to the arbitral tribunal to rule on whether to extend the time for commencing arbitration and that the court felt it was inappropriate for them to intervene.

From this, it is evident that the courts prefer that the power of whether or not to extend the time limit regarding the commencement of arbitration is best left to the arbitrators rather than to the courts which can delay the arbitration process unnecessarily. This presumption is made on the understanding that the arbitrator comprehends the details of the case more in depth than the court and is therefore better placed to determine whether an extension of time is indicated. It has also been pre agreed by parties that if they wish to arbitrate their dispute that it is better to consult an arbitrator with regards to extend the time limit. Conversely, by having to apply to the court to request time limit extensions, which in itself consumes valuable unnecessary time, this process ultimately undermines the role of the arbitrator.

The UK Arbitration Act, unlike the UNCITRAL Model Law, considers this in much more depth. For instance, the UNCITRAL Model Law fails to indicate its position on the role of time limits and the power vested in the courts on this matter. Although the UNCITRAL Model Law is vague in

(37) Lembo S., *The 1996 UK Arbitration Act and the UNCITRAL Model Law: A contemporary Analysis*-PHD Thesis on "Internal and International Arbitration Law" XXI Cycle, Università Luiss Guido Carli, Faculty of Law, 2010. Can be accessed at: <file:///C:/Users/hb16089/Desktop/lembo-20100713%20xx.pdf>, pp. 121-122.

(38) *Marc Rich Agriculture Trading SA v Agrimex Ltd* [2000] APPL.R. 04/06

how it defines its procedures regarding the ruling on the extension of time limits, this may be deliberate in order to deter the arbitrator from seeking court intervention, which could potentially encourage an arbitral settlement. As indicated previously if the arbitral procedure is adopted, this should be the method pursued when deciding on dispute matters, such as whether to extend time limits regarding the commencement of arbitration, which may arise in a commercial situation.

The UK Arbitration Act, under Section 18, facilitates a court to exercise discretion on whether to appoint an arbitrator where one of the parties have failed to do so and illustrates one of the ways a courts can chose to explicitly intervene or not. If the decision to intervene, by a court is decided upon following a request from one of the parties, this is often the preferred mode as it allows the party to regain a certain level of control over the appointment of an arbitrator in partnership with the courts.

The court therefore, would be seen to be both supporting and facilitating the party to appoint an arbitrator, where there had not been one in place, and thus in doing so, would ensure the future smooth running of the arbitration process. The courts intervention here may be particularly welcomed if there has been any attempt by any of the parties to hinder, halt the process of arbitration by the party failing to appoint an arbitrator⁽³⁹⁾. The court has power to make the necessary appointments, remove any appointments already made or to give any direction as to the making of such appointments⁽⁴⁰⁾.

Under the Qatari Arbitration Act the competent court may intervene with arbitral proceedings in certain scenarios relating to certain matters including; the appointment of arbitrators⁽⁴¹⁾, challenges of arbitrators⁽⁴²⁾, termination of the mandate of an arbitrator⁽⁴³⁾, decisions on arbitral jurisdiction⁽⁴⁴⁾, providing assistance in taking evidence⁽⁴⁵⁾, setting aside of arbitral awards⁽⁴⁶⁾ and order interim or precautionary measures⁽⁴⁷⁾.

(39) Tweeddale and Tweeddale, *Arbitration of Commercial Disputes: International and English Law and Practice*, p.494.

(40) Section 18(3) of the Arbitration Act 1996.

(41) Section 11(5), 11 (6) of the Qatari Arbitration Act 2017.

(42) *Ibid*, Section 12.

(43) *Ibid*, section 12.

(44) *Ibid*, section 16 (1) , 16 (3).

(45) *Ibid*, section 27.

(46) *Ibid*, section 33 (2) (3)

(47) *Ibid*, section 9 and section 17(1).

Conclusion

Considering the UNCITRAL Model Law, the UK Arbitration Act and the Qatari Arbitration Act regarding who holds the authority over the commencement of arbitration, it is evident that the authority initially sits with the parties unless specified exceptions apply. In which case, the court has the jurisdiction to take over as mentioned above. Also, when considering which regime provides more details regarding the commencement of arbitration, initially it would appear that the UK Arbitration Act is more thorough when compared to both the UNCITRAL Model Law and the Qatari Arbitration Act. However, following further scrutiny, most of the limitations and detail only relate to the amount of legal intervention.

Although the main objective of the UK Arbitration Act appears to minimise court interference, and thus promote party autonomy, following further examination, it is clear that this is not the case. Concerning extension of the time limits, requesting the court to intervene on this matter and to decide whether the time is extended or not appears pointless in terms of both time and cost. No justification is provided as to why the court would be better suited to rule on the matter of selecting an arbitrator over the disputing parties. In fact, to the contrary there are multiple justifications offered as discussed earlier in the paper, suggesting that the arbitrator is better suited to decide rather than the court. One explanation is that by intervening, the court inevitably undermines the role of the arbitrator as well as the process of arbitration.

In conclusion, therefore, despite its implied intention to the contrary, within the detailed UK Arbitration Act, this act will actually facilitate more intervention by the court regarding the commencement of arbitration than is actually necessary. When compared to both the UNCITRAL Model Law as well as the Qatari Arbitration Act, this fact becomes more apparent. In other words, the UK Arbitration Act appears to allow the interpretation of its frameworks and thus permits courts to make their rulings regarding the appropriateness of court intervention.

The UNCITRAL Model Law on the other hand, although appears to offer a more broad interpretation, actually limits the courts ability to intervene beyond the realms outlined in the framework with regards to the time limits and the discretion in appointing arbitrators. The UNCITRAL Modal Law, Article 5, which provides that no court shall intervene, is likely to be consulted in the event of a potentially broad interpretation. It is clear that the presence of Article

5, which provides the back bone to the UNCITRAL Model Law framework with regards to limiting the amount of court intervention and does not allow for broad, varying interpretations in this area⁽⁴⁸⁾. The Qatari Arbitration Act seems to follow the UNCITRAL Model Law on this matter by listing the scenarios under which the competent court may intervene in an arbitration proceedings as aforementioned.

It is evident from earlier discussions in the paper, that there are occasions where some intervention by the courts is necessary in certain cases and that this intervention can actually benefit the parties by facilitating the continuation and smooth running of the arbitration process. The negative outcome of this however, is that it can impact on party autonomy. From revisiting the earlier discussion, it is clear that compared to both the UNCITRAL Model Law and the Qatari Arbitration Act regarding the commencement of arbitration, the UK Arbitration Act, does somewhat depart from the rule that parties who submit their international commercial dispute to arbitration are autonomous. This is because at times, it actually facilitates the withdrawal of party control and the empowering of courts to govern the arbitral proceedings.

The question posed earlier, relating to which party would be the most appropriate to determine the commencement of arbitration, it is clear from reviewing the literature that the arbitration panel should have the ultimate authority to decide this. This goes in line with the whole concept of arbitration, which is for the parties to have the ultimate freedom to choose who will represent them. However, when certain circumstances warrant, there is no harm in seeking the court's authority to decide on this matter.

Concerning the role of party autonomy in the success of the arbitration process, it is important to recognise that arbitration will fail if parties are denied the autonomy to opt into the resulting system of dispute.

Drahozal⁽⁴⁹⁾ supports this via his argument that party autonomy is preserved by firstly, adhering to that which the parties have agreed to and secondly, in translating that which the parties have agreed to, parties should be permitted to connect around the statutory provisions. In other words, by making those provisions default rules rather than mandatory rules.

(48) See UNCITRAL Model Law Article 5.

(49) Drahozal CR., Party Autonomy and Interim Measures in International Commercial Arbitration, University of Kansas, School of Law, August 5, 2011.

Drahozal is clear that not only is it important to consider contracting practices with respect to interim measures in determining the allocation of authority aligned to the preferences of the parties, but also critical that statutory provisions addressing interim relief should be default rules, which the parties can change by contract, unlike with mandatory rules. Drahozal further elaborates on this by stating that the former implication should apply wider than merely reviewing arbitration agreements, and should extend to incorporate provisions of their arbitration agreements that may override institutional rules and address issues that the rules are silent.

The recognition of using this approach of arbitration and the associated benefits are becoming more popular as we can see an uphill trend where modern arbitrators are increasingly adopting this approach of arbitration.

In answering the final question posed at the onset of this paper regarding why the National courts have restricted party autonomy in domestic arbitration, it is clear that despite its autonomous character, in a national arbitration it still depends on national courts to provide effectiveness, support and assistance for the process.

Whereas, in International arbitration, the march of party autonomy has been in comparison unobstructed because international arbitration does not depend on national courts for legitimacy, this exists as of right, based on the agreement of the parties.

This is further clarified by Lew who reinforces that access to the autonomous domain of international arbitration is obtained via contract and the 'relinquishment of rights' by National courts. In doing so, once it has entered into the domain of international arbitration, it exists in its own rarefield domain, in other words, beyond control.

This explains why it is difficult to be restricted by the courts, which in itself cannot be seen as negative, especially as with the international model law, which acts more on an advisory basis as party autonomy is restricted, so in this capacity there is no requirement for legal power or intervention.

Other key principles that ought to inform the way in which national courts approach the issue of their involvement with international arbitration include accordingly national courts should become involved where they are asked

to give effect to the agreement to arbitrate and support the process agreed between the parties.

once an award has been made courts should seek to give effect to the tribunals award because it is a recognition of the autonomous character of arbitration, an implied agreement.

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