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The Internationalization of English Arbitration Law

England is slowly shedding its conservatism in arbitration. There are modest signs that the long-standing ambivalence of English jurists to the finality of arbitration is coming to an end. Arbitral jurisdiction in England is emerging as independent and parallel to state courts rather than integrated and subordinate.

Almost four years ago, England introduced a new arbitration statute intended to update English law and bolster England's standing as an important arbitration venue.[1] Prior to the new Arbitration Act, English law was criticized as out of touch in an increasingly international world. A pair of controversial House of Lords decisions underscored the need for change.[2]

The process of reform in England was marked by resistance to harmonization, at least to the extent this might entail significant change to English law. A principal objection during debates on the drafting of the UNCITRAL Model Law was that certain aspects of it bore a civil law imprint without equivalent in common law. An additional obstacle was the old belief, on the part of many English jurists, that common law is inherently superior to other legal systems because of its regime of appeal against the legal merits of arbitration awards and its doctrine of *stare decicis*.[3] Some viewed English law as an already known and accepted international 'model law' in its own right.[4] England eventually decided, in 1989, against adoption of the UNCITRAL Model Law, considered inferior to common law, but suitable for what were viewed as countries with less developed legal systems.

The new English arbitration statute came into force in January 1997. It was, by any standard, conservative. Arbitrators were given more powers than ever before, particularly over procedure, and scope for court intervention was limited. But these developments mirrored features already in place in other jurisdictions. Although correct application of law by arbitrators ceased to be a matter of public policy in England, court-ordered appeal against the legal merits of an arbitration award was maintained where the arbitration takes place in England and English law applies to the merits. England was one of very few jurisdictions to scale back provisions of Article 28 of the Model Law, viewed as only a timid advance for arbitral authority when the Model Law was completed in 1985. The framers of the 1996 Arbitration Act went so far as to delete 'trade usages' from among the legal norms applicable by arbitrators in England without express authorization from the parties.[5] Numerous English particularisms were retained in an impressive codification that, in many respects, sought more to make English law accessible and comprehensible to foreign users than to harmonize English law.

1 The English Arbitration Act 1996 came into force on 31 January 1997.

2 *Copée-Lavalin SA/NA* v. *Ken-Ren Chemicals and Fertilisers* [1994] 2 W.L.R. 631 and *Hiscox* v. *Outhwaite* [1992] 1 A.C. 562.

3 See, for example, Lord Diplock's 1978 Alexander lecture (45 *Arbitration* 10 at 21), as well as his speech to the House of Lords on 15 May 1978 (44 *Arbitration* 195 at 202-3).

4 Lord Denning stated to the House of Lords, on 12 December 1978 (45 *Arbitration* 10 at 21), that: 'owing to arbitrations and cases which are stated for the opinion of the court, the commercial law of England is the commercial law of the world. Other countries do not have a procedure like ours by cases stated to get the points of law before the courts. They end with arbitrators.' See also the Response of the Departmental Advisory Committee to the UNCITRAL Model Law (the 'Mustill Report') (1990) 6 *Arbitration International* 3 which considered, at para. 76, that existing English arbitration law was a system already 'familiar to, and accepted and trusted by a very large international commercial community'.

5 Section 46 of the Arbitration Act amalgamates into a single category of non-law ('other considerations') trade usages, rules of law and *amiable composition*.