Audley Sheppard QC, Chair of the Board of the London Court of International Arbitration

Japanese British Lawyers Networking Reception – 28th February 2019

Your Excellency, Lady Arden, distinguished guests, ladies and gentlemen. I had the honour and pleasure to be invited to Tokyo in January to give a keynote speech at a symposium on international arbitration. I was asked whether I could share my thoughts with you this evening on that symposium and the future of international arbitration. And given this particular audience, you all know that it is an inevitable aspect of business life that disputes arise which cannot be resolved by negotiation or mediation, and require a process for determination by a third party, be it through litigation in national courts, or through arbitration.

But parties to a contract are often reluctant to accept the courts of the other party, because of unfamiliarity, or language barriers, or perceived home advantage, and they therefore look to arbitration as a more neutral process. Not only is it more neutral, it has the benefit of being able to select an arbitrator who is familiar with the governing law, or the subject matter of the contract, or the culture of the witnesses and the party; it is generally private and confidential, and the procedure is flexible; the New York Convention facilitates the enforcement of awards. But I should add the caveat that arbitration is not the perfect panacea, and sometimes arbitrations can go off the rails and end up in the courts for supervisory correction. But I think it is fair to say that international arbitration is the preferred method of dispute resolution in cross-border trade and investment.

That recent symposium in Tokyo was part of the Government's decision to support the vitalisation of arbitration in Japan. As we discussed at that symposium, this requires efforts to be made on three fronts.

The first goal should be educating Japanese companies, so that they are well informed when it comes to choosing the most appropriate arbitration rules in their contract, choosing an appropriate venue and choosing specialist lawyers if a dispute arises. The great Japanese trading, manufacturing and financial companies operating around the world should be familiar and feel comfortable should a dispute and an arbitration arise.

The second goal, in my opinion, of vitalisation of international arbitration in Japan should be the promotion of Japanese lawyers – and other professionals, engineers etc. – as arbitrators. Japanese lawyers are of course as good as any others in the world; as you said Ambassador, many are world class. Many have studied and worked in other countries; many are bi- and trilingual. There are notable exceptions, but unfortunately at present, not many Japanese lawyers are as well-known as they might be on the international arbitration circuit, and therefore not being considered as often as they should as arbitrators.

And the third goal, in my opinion, is to attract arbitrations to Japan – to have Japan as the seat. The foundation is there: there is a modern fit-for-purpose arbitration law, transport links, etc. I also understand that the Government is minded to contribute some money to modern facilities at which to hold hearings, which will prove attractive no doubt.

So I heartily congratulate and commend the Japanese Government for the decision that they have made to support the vitalisation of international arbitration in Japan. It is not without its challenges - there are many competing venues and institutions - but I am very confident that progress will be achieved. And in my role as Chair of the Board of the London Court of International Arbitration, I look forward to supporting these initiatives, as I am sure does everyone here, and all the members of British Japanese Law Association.

Moving on to the future of international arbitration, what do I see in my crystal ball? Let me mention four things. First, undoubtedly, greater use of technology: certainly electronic filing and document

management, but I also see virtual hearings and I see Japanese companies being at the forefront of those technological innovations.

Secondly, there is substantial criticism of the existing bilateral investment treaty regime. Japan is party to over thirty such treaties, and the question is, is it sustainable? At present I understand Japanese companies have been claimants in four arbitrations, but Japan has not been a respondent in any such treaty claim. But the European Commission is pushing for a permanent multilateral investment court, as well as revising the standards of protection and also the process for starting and pursuing claims. It is hoped that this does not dilute respect for the Rule of Law that His Excellency mentioned, by making it too difficult to bring claims for indirect expropriation and reach of fair and equitable treatment standards, and from what I heard encouragingly, Japan is going to make a significant contribution to the debate to maintaining the Rule of Law.

Third, also on the international plain, there are attempts to create a standing arbitration tribunal to hear claims in the area of business and human rights, and breaches of the so-called Ruggie (UN Guiding) Principles, and it will be very interesting to see what traction that gets with governments and with corporations, which are also essential to the Rule of Law.

Fourth and finally, as the Asian economies continue to grow with inward and outward investment, so will the need for international arbitration, which makes the Government's present initiative so timely.

So in conclusion, I am sure that international arbitration is an area of law where British and Japanese lawyers can collaborate closely so that it helps our clients, both businesses and governments, to resolve disputes efficiently and fairly. Thank you very much.