

Эталон утопии: реалии международных коммерческих судов

Р. Р. Гарагурбанлы

аспирант Института законодательства и сравнительного правоведения
при правительстве Российской Федерации.

Адрес: ФГНИУ «Институт законодательства и сравнительного правоведения
при Правительстве Российской Федерации»,
117218, Москва, ул. Б. Черемушкинская, д. 34.
E-mail: rafat.garagurbanli@gmail.com

Paradigm of Utopia: the Landscape of International Commercial Courts

R. R. Garagurbanli

Postgraduate Student of the Institute of Legislation and Comparative Law
under the Government of the Russian Federation.

Address: Institute of Legislation and Comparative Law
under the Government of the Russian Federation,
34 B. Cheremushkinskaya Street, 117218, Moscow, Russian Federation.
E-mail: rafat.garagurbanli@gmail.com

Аннотация

В настоящей статье предпринята попытка исследовать и проанализировать международные коммерческие суды с точки зрения их структуры, функционирования и основных аспектов деятельности. Основной упор делается на сравнительное изучение различных моделей и подходов, используемых в мировых коммерческих судах, с учетом их эффективности, эффективности разрешения споров и степени привлекательности для участников. В данной статье обобщены основные характеристики нескольких международных коммерческих судов в Азии, на Ближнем Востоке и в Европе. Методологической основой данного исследования стал диалектический метод. В процессе работы использовались общенаучные и частнонаучные методы научного познания, в частности описательный, формально-юридический, системный методы, метод анализа и некоторые другие. Их применение позволило исследовать вопросы, рассматриваемые в настоящей статье, целостно и всесторонне. В статье проанализированы различные аспекты процедур, правил и механизмов принятия решений в контексте международных коммерческих судов, а также их подходы к признанию и приведению в исполнение судебных решений. Автор подчеркивает значение и проблемы, связанные с такими судами, обсуждает их сильные и слабые стороны, предлагает рекомендации и направления для будущих исследований в этой области. Статья предоставляет комплексный обзор и анализ, который может быть полезен как для специалистов в области международного права, так и для тех, кто заинтересован в углубленном понимании функционирования международных коммерческих судов и их роли в решении глобальных коммерческих споров.

Ключевые слова: международное право, международный договор, международные коммерческие суды, разрешение споров, сравнительный анализ.

Abstract

This article attempts to explore and analyze international commercial courts, examining their structure, functioning, and fundamental aspects of their activity. The primary emphasis is placed on the comparative study of various models and approaches used in global commercial courts, with their effectiveness in dispute resolution and attractiveness to participants being considered. This article summarizes the main traits of several international commercial courts in Asia, Middle East and Europe. The methodological framework of this research relies on the dialectical method. General scientific and specific scientific methods were employed, including descriptive, formal-legal, systemic and analytical methods, among others. Their application allowed for a comprehensive and thorough examination of the issues addressed in this article. Various aspects of procedures, rules, decision-making mechanisms in the context of international commercial courts, as well as their approaches to the recognition and enforcement of court decisions, are analyzed in the article. The author highlights the

significance and challenges associated with such courts, discusses their strengths and weaknesses, and offers recommendations and directions for future research in this area. This article provides a comprehensive overview and analysis that could be valuable for specialists in international law and stakeholders interested in a deeper understanding of the functioning of international commercial courts and their role in resolving global commercial disputes.

Keywords: international law, international contracts, international commercial courts, dispute resolution, comparative analysis.

In an era where global commerce knows no borders, the establishment of International Commercial Courts (ICCs) stands as a pivotal development in the legal landscape. These specialized judicial bodies cater to resolving cross-border commercial disputes, providing a reliable and efficient platform for businesses and individuals engaged in international trade. As the complexities of international business transactions increase, the emergence of ICCs has become a crucial factor in fostering confidence and ensuring smooth functioning within the global marketplace.

The concept of ICCs traces its roots to the necessity of addressing intricate cross-border disputes arising from international trade and investment. Traditionally, resolving such disputes involved navigating through various legal systems, each with its own procedural complexities and interpretations. This often led to prolonged litigation, uncertainty, and substantial costs for all parties involved.

Recognizing these challenges, several jurisdictions worldwide began establishing specialized courts or divisions within their existing judicial systems to cater specifically to international commercial disputes. Countries such as England, France, Singapore, the Netherlands, Dubai, and China, among others, have launched dedicated courts or chambers within their judicial frameworks to handle these cases efficiently. Each of these courts offered unique features tailored to meet the demands of international business, such as expert judges, flexible procedures, and enforceability across borders.

The roots of international commercial dispute resolution can be traced back to ancient civilizations. Historical records indicate the existence of trade-specific tribunals in places like ancient Greece, Egypt, and Mesopotamia, where merchants resolved disputes arising from trade transactions. During the Middle Ages, European trade flourished, leading to the establishment of merchant courts, such as the Hansa courts in Northern Europe. These tribunals

administered justice according to merchant customs and practices, focusing on resolving disputes swiftly and fairly among traders. Rene David observed that the fundamental purpose of arbitration lies not in upholding the strict rule of law, but rather in fostering harmony and concord among individuals involved in disputes [4].

The expansion of colonial trade routes further necessitated mechanisms for resolving disputes arising from international commerce. Maritime courts emerged, primarily dealing with disputes related to shipping, trade contracts, and insurance in port cities like London, Amsterdam, and New York. The 20th century witnessed a surge in international trade, prompting the need for more structured dispute resolution mechanisms.

The establishment of the Permanent Court of Arbitration (PCA) at The Hague in 1899 marked a pivotal moment in providing a forum for resolving international disputes, although not exclusively commercial in nature. The rapid globalization of trade in the late 20th and early 21st centuries brought about the emergence of specialized ICCs.

The international commercial dispute resolution system is as crucial a part of this order as the World Trade Organization (WTO), International Maritime Organization (IMO), World Bank and other institutions. Just as the WTO oversees global trade regulations, the IMO manages international maritime activities, and the World Bank supports economic development, the international commercial dispute resolution system contributes to the smooth functioning of the global economy. It ensures that disputes among parties engaged in cross-border commercial activities are resolved fairly, efficiently, and according to established legal principles.

This system's significance lies in its ability to offer specialized forums, such as International Commercial Courts or arbitration institutions, where parties can seek resolution without being hindered by jurisdictional complexities or legal uncertainties. Its role in enforcing judgments and arbitral awards across borders enhances the predictability and

reliability of international business transactions, ultimately promoting economic growth and fostering international cooperation.

It is appropriate to give some consideration to what an “international commercial dispute” is and why such a dispute should be treated as distinct from commercial disputes generally. The key feature to note is the need for a wide definition to facilitate international commerce and not restrict the availability of international commercial dispute resolution mechanisms through artificially rigid or constrained definitions or categories.

Although by no means dispositive of the two questions just posed, the definition of “international commercial arbitration” in Article 1 of the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) provides some guidance as to the meaning of an “international commercial dispute”. An arbitration is “international” within the meaning of the Model Law if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

i. the place of arbitration if determined in, or pursuant to, the arbitration agreement;

ii. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country¹.

But what is an international commercial dispute? In what instances and for what reasons do specialized arbitration institutions become indispensable in resolving economic queries?

An international commercial dispute refers to a disagreement or conflict arising between parties engaged in business across different countries or jurisdictions. These disputes commonly involve contractual disagreements, breaches of commercial agreements, intellectual property conflicts, trade-

related issues, or disagreements arising from international business transactions.

Consider a scenario where two multinational corporations, one based in Canada and the other in Dubai, have entered into a complex agreement for the development of transformative drugs that aim to alleviate the profound suffering experienced by individuals fighting cancer. After significant investments and collaboration, disagreements arise concerning the intellectual property rights, breach of contract clauses, and the interpretation of the drug transfer obligations.

As the dispute escalates, legal actions are initiated in both countries, leading to a stalemate. The prolonged litigation in multiple jurisdictions not only escalates costs but also jeopardizes the continuation of their business relationship and delays the project's progress.

To address such complex conflicts, the parties might opt for arbitration or seek resolution through international commercial courts. International arbitration, often chosen for its flexibility and neutrality, offers a private, neutral forum for resolving disputes outside the national court systems. The appointment of experienced arbitrators skilled in both the legal intricacies and technical aspects of the dispute could facilitate a more expedient and specialized resolution.

The system of international commercial dispute resolution that has developed in recent decades has a level of complexity, reach and dynamism that has not been seen before. It differs from those of centuries past in that it relies, to a greater extent, on instruments and institutions that are the products of the individual or collective acts of sovereign state actors. It also has more moving parts than those simpler, merchant-focused and administered bodies of law. However, it is none the worse for that. It reflects the greater complexity of modern international trade. While these features provide the foundations and tools to be used in international commercial dispute resolution, the system remains intimately connected to the actions of commercial parties and the people who work within it.

The foundations of international commercial dispute resolution comprise several important legal instruments developed over the past 60 years. These permit a truly international system of commercial dispute resolution to operate. The most important of these is arguably the New York Convention, concluded in 1958. Chief Justice Bathurst has articulated the enforcement facet of the

¹ UNCITRAL Model Law on International Commercial Arbitration (as adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006). – URL: https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

New York Convention as the cornerstone supporting the international system for the peaceful and civilized resolution of disputes, founded upon principles of the international rule of law¹.

Additionally, it is important to acknowledge the Model Law, which was introduced in 1985 and underwent revisions in 2006. Although it does not possess the characteristics of a treaty akin to the New York Convention, it has garnered widespread international acceptance and should be acknowledged as an internationally recognized instrument. The Model Law was specifically crafted with the intention of being incorporated into national legislations across various jurisdictions. UNCITRAL reports that legislation based on the Model Law has been adopted in 80 States in a total of 111 jurisdictions².

The adoption of the Model Law into national legislation has helped to establish a coherent and harmonised approach to international commercial arbitration. With the New York Convention, it has created a framework for international arbitration that is an integral component of the international commercial dispute resolution system. Like the New York Convention, the Model Law secures the strength of the arbitral order. It limits the opportunities for intervention of a supervising court of the seat of the arbitration. The policy of the Model Law is to respect the authority of the arbitrator. This can be seen particularly in Article 16 of the Model Law which deals with the arbitral tribunal's competence to rule on its own jurisdiction. The Model Law also significantly limits the grounds upon which an arbitral award can be set aside (Article 34) or upon which recognition and enforcement can be refused (Article 36).

Instruments such as the Hague Choice of Court Agreements Convention of 2005 may also come to serve a facilitative role in regard to enforcement of court judgments, much as the New York Convention has for arbitral awards. This convention pertains to exclusive choice of court agreements in civil or commercial matters and stipulates in Article 8 that:

*A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention*³.

The most prominent contemporary institution of international commercial dispute resolution is international commercial arbitration. Its connection to the international rule of law has been described by other commentators. Arbitration's popularity has continued to grow worldwide over the past decade, particularly in the Asia-Pacific. The Model Law has done much to embed international arbitration into national legal systems. Ad hoc arbitrations continue. There are also a range of arbitral institutions, which have only continued to grow. Within the Asia-Pacific, these include the Singapore International Arbitration Centre (SIAC), the Singapore Chamber of Maritime Arbitration (SCMA), the Hong Kong International Arbitration Centre (HKIAC), the Asian International Arbitration Centre (AIAC), and the Australian Centre for International Commercial Arbitration (ACICA). In China, the institutions include the Beijing International Arbitration Centre (BAC) and the Chinese International Economic and Trade Arbitration Commission (CIETAC). Globally, they include the London Court of International Arbitration (LCIA), the London Maritime Arbitrators' Association (LMAA), the International Chamber of Commerce (ICC) in Paris, and the Permanent Court of Arbitration (PCA) in The Hague, along with the arbitral bodies of the US, such as the New York International Arbitration Centre and New York's Society of Maritime Arbitrators.

According to a study that was conducted by Queen Mary University of London, on international arbitration, 30% of lawyers from major companies engaged in global business activities named London as the optimal location for conducting arbitration proceedings (Geneva took the second place with 9%; Paris, Tokyo, and Singapore tied for third place with 7% each) [1. – P. 19]. London earned such a reputation not by chance, and the most significant factors influencing the specialists' choice should be primarily attributed to the approach of English courts to international arbitration and the activities of the

¹ Bathurst T. F. The Role of the Courts in the Changing Dispute Resolution Landscape. – UNSW Law Journal. – 2012. – Vol. 35 (3). – P. 870–888. – URL: <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/35-3-7.pdf>

² Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with Amendments as Adopted in 2006. – URL: https://uncitral.un.org/en/texts/arbitration/modellaw/comercial_arbitration/status

³ The Hague Choice of Court Agreements Convention, 2005. – URL: <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>

London Court of International Arbitration (referred to as the LCIA).

LCIA stands as a foremost arbitration institution globally, adeptly administering arbitration cases with impartiality, regardless of the geographical locations of the involved parties or the legal systems at play. Despite tracing its origins back to 1883, it continues to maintain a position at the vanguard of progressive arbitration centers.

In medieval times, within the City of London, the Mayor's Court held significant importance as a prominent court for personal actions, notably in cases involving debts. However, the origins of the modern Commercial Court likely trace back to the establishment of a Commercial List by the Judges of the Queen's Bench Division, initiated through a Notice dated October 1895. Despite its rapid recognition as the commercial court, it wasn't an independent court per se, but rather a segment integrated within the existing Queen's Bench Division of the High Court.

As the principal administering body for international arbitration within the United Kingdom, it operates from its base in London and attracts considerable attention from business leaders and legal practitioners from all over the world.

The LCIA operates as a non-profit entity governed by both a Board and a Court. The Board, primarily comprised of English legal professionals, concentrates on strategic matters, whereas the LCIA Court functions as the overseeing body for all arbitrations. These arbitrations are conducted either directly under the LCIA Rules or under alternative regulations, notably the UNCITRAL Arbitration Rules.

The LCIA comprises a President, 6 Honorary Vice Presidents, 7 Vice Presidents, and 29 members, with only 6 allowed to be citizens of the United Kingdom simultaneously. This structure ensures a genuinely international character to the activities of the LCIA. The primary functions of the Court mainly involve appointing arbitrators, considering challenges raised against them, and approving expenses incurred in conducting cases. However, the Court, in its entirety, does not handle the administration of individual cases separately; these responsibilities are delegated in accordance with Article 3.1 of the LCIA Rules to the President (or any of its Vice Presidents, Honorary Vice Presidents or former Vice Presidents) or by a

division of three or more members of the LCIA Court appointed by its President or any Vice President¹.

Before closely examining the international commercial chambers in France, understanding the backdrop of the establishment of the country's local commercial courts is valuable, as they share a rich history akin to their English counterparts. Presently, France houses 134 commercial courts, with the Paris Commercial Court being the largest, boasting a roster of 180 judges. The origins of these commercial courts in France date back to the Middle Ages. The Paris Commercial Court, in its current structure, was established in 1792, succeeding the Paris Merchant Court created in the sixteenth century following a Royal Order issued in 1563. During that period, resolving commercial disputes involved parties selecting referees from respected merchants, whose judgments were accepted [3]. This practice gained popularity nationwide. In the modern context, many judges within the Paris Commercial Court, including its International Chamber, have had backgrounds as entrepreneurs, legal advisors for major corporations, and senior executives involved in various sectors such as engineering, trade, insurance, banking, and financial services.

The International Chamber of the Paris Commercial Court (ICPCC) emerged in 1995 as a subdivision of the Paris Commercial Court². In 2015, this international chamber amalgamated with the EU Law chamber, which had been instituted in 1997 to handle cross-border commercial cases within the European Union (EU). Presently, the ICPCC holds authority over transnational economic and commercial disputes involving non-resident respondents in France or cases governed by foreign laws.

Although the ICPCC Protocols do not explicitly define what constitutes an "international" commercial dispute, its scope can be deduced from examples of cases heard, covering disputes concerning commercial contracts, termination of business relationships, transportation, unfair competition, damages from anti-competitive practices, and

¹ LCIA Arbitration Rules 2020. – URL: https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%203

² The International Chamber of the Commercial Court and the International Chamber of the Paris Court of Appeal // Rödl & Partner. – 2021. – May 4. – URL: <https://www.roedl.com/insights/litigation-arbitration/france-paris-international-chamber-commercial-court-of-appeal>

conflicts involving financial instruments and products [7. – P.32].

As part of the ongoing modernization of the French judicial system, a new chamber was established within the Paris Court of Appeal in 2018, known as the International Chamber of the Paris Court of Appeal (ICPCA). This chamber handles appeals and actions related to overturning arbitration awards issued in Paris, appeals against rulings denying recognition or enforcement of international arbitration awards issued in France, as well as appeals contesting decisions granting or denying recognition or enforcement of international arbitration awards issued abroad.

The Singapore International Commercial Court (SICC) was established on January 5, 2015, functioning as a division within the High Court of Singapore. Similar to judgments rendered by the High Court, an appeal against a ruling from the SICC is directed to the Court of Appeal of Singapore [5. – P. 177.], unless the involved parties mutually agree to exclude this right of appeal.

Concerning its jurisdiction, the SICC presides over three specific categories of cases. The **first category** pertains to cases that meet the following four criteria:

- the action falls within the scope of matters that the High Court can adjudicate under its original civil jurisdiction;
- the claims involved possess an international and commercial nature;
- the parties have consented to the SICC's jurisdiction through a written jurisdiction agreement, established either before or after the emergence of the dispute;
- the parties do not seek any relief in the form of or associated with a prerogative order, such as an order of mandamus, certiorari, or habeas corpus.

The **second category** refers to matters concerning international commercial arbitration regulated by the International Arbitration Act 1994¹. The **third category** involves cases transferred to the SICC from the High Court, either due to their international and commercial nature or because they fall within the scope of the second category².

Regarding the appointment of judges, apart from those from the Supreme Court of Singapore, the Singapore International Commercial Court currently includes 16 International Judges selected from civil and common law jurisdictions. The Chief Justice of Singapore appoints individuals as International Judges based on their deemed possession of the requisite qualifications, experience, and professional standing. Leveraging their diverse backgrounds in specialized areas of commercial law prior to joining the SICC, these International Judges offer expertise across various facets of international commercial law, spanning shipping, construction, intellectual property, fintech, joint ventures, and international trade. Matching their expertise with the context of specific cases, these judges are typically assigned to hear cases.

Contrary to the general practice in the Singapore High Court, where only lawyers holding the required Singapore qualifications are permitted to practice, the SICC allows foreign lawyers to represent clients in “offshore cases”³. This allowance is governed by Section 36P of the Legal Profession Act, enabling foreign lawyers to receive either full or restricted rights to appear before the SICC. To be registered, foreign lawyers must demonstrate proficiency in English, pledge adherence to a prescribed Code of Ethics, and possess a minimum of five years advocacy experience⁴.

SICC allows parties to establish foreign law through submissions, whether oral, written, or a combination of both. This approach diverges from the typical common law practice that necessitates proving foreign law as a factual matter via expert witness testimony.

When it comes to enforcing judgments, the SICC, being part of the High Court of Singapore, follows the same enforcement procedures as the regular High Court judgments. Additionally, SICC judgments hold extraterritorial enforceability due to international arrangements. These include agreements such as

³ Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC [2016] SGHC(I) 02 per Eder J. – URL: https://www.elitigation.sg/gd/sic/2016_SGHC1_2

⁴ Legal Profession (Foreign Representation in Singapore International Commercial Court) Rules 2014 (Cap 161) Part 2 sets out the requirements for registration under s 36P of the Legal Profession Act. This registration (and any renewal) is valid for one year: Legal Profession (Foreign Representation in Singapore International Commercial Court) Rules 2014 (Singapore) r 10.

¹ The Singapore International Arbitration Act 1994. – URL: www.acerislaw.com

² Overview of the SICC. – URL: <https://www.sicc.gov.sg/about-the-sicc/overview-of-the-sicc>

the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (RECJA) and the Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA). Singapore's participation in the 2005 HCCH Convention on Choice of Court Agreements further solidifies the international enforceability of SICC judgments¹.

The Dubai International Financial Centre (DIFC), established in 2002 within Dubai, one of the UAE's seven emirates, serves as the pioneering "special economic zone" in the region. It operates autonomously and possesses its own independent regulatory body and judicial system, primarily structured on a common law framework. In 2006, the Dubai International Financial Centre Courts (DIFCC) were established to preside over financial matters within the DIFC. Initially, the DIFCC's jurisdiction was confined to civil and commercial cases within the geographical boundaries of the DIFC. However, in 2011, with the introduction of Dubai Law No 16, the DIFCC was granted authority to adjudicate both local and international commercial cases, provided all parties involved in the dispute consented to its jurisdiction².

Regarding its organizational structure, the DIFCC comprises the Court of First Instance, Small Claims Tribunal and the Court of Appeal³.

The Court of First Instance, helmed by a judge, holds exclusive jurisdiction over several key areas:

- civil or commercial cases and disputes involving the DIFC, its entities, or establishments;
- civil or commercial cases and disputes arising from or linked to contracts executed, partially or wholly, within the DIFC, or incidents occurring within its premises;
- objections raised against decisions made by DIFC bodies, which are subject to objection as per the DIFC's laws and regulations;

- any applications falling within the jurisdiction of the DIFCC in accordance with the laws and regulations of the DIFC.

The Small Claims Tribunal (SCT) was established in 2007 within the jurisdiction of the DIFC. This tribunal holds authority to adjudicate claims in three distinct situations:

- claims where the amount or value does not surpass AED 500,000;
- claims linked to employment or past employment, exceeding AED 500,000, wherein all parties involved opt in writing for the SCT to hear the claim. In the context of employment claims, there exists no specific value limit for the SCT's elective jurisdiction;
- claims unrelated to employment, where the amount or value does not exceed AED 1 million, and all parties agree in writing for the SCT to have jurisdiction. Such agreement can be established either within the underlying contract (if applicable) or subsequently.

The Court of Appeal consists of a minimum of three judges, presided over by the Chief Justice or the most senior judge. It holds exclusive jurisdiction over:

- appeals lodged against judgments and awards issued by the Court of First Instance;
- the interpretation of any article within the laws of the DIFC, upon request by any of the DIFC's bodies or establishments. However, such a request necessitates prior permission from the Chief Justice before it can be entertained by the Court of Appeal.

The DIFCC has the provision for the appointment of foreign judges, and its current panel reflects diversity. Presently, the Chief Justice of the DIFCC is a former Chief Justice of Malaysia Justice Zaki Azmi. Court includes five judges from UAE, five representatives from Great Britain and three Australian judges. Additionally, foreign lawyers are permitted to practice before the DIFCC if they are registered with the Dubai Academy of Law and uphold the requisite professional ethical standards.

The official language of the Dubai International Financial Centre Courts is English. In case of any discrepancy between the Arabic and English versions of a judgment, order, or directive, the English version takes precedence and holds authority⁴.

¹ RECJA facilitates the reciprocal enforcement of judgments and awards in the UK and other commonwealth countries such as New Zealand, Malaysia and Australia. REFJA presently only extends to the Hong Kong, not the rest of the PRC: Reciprocal Enforcement of Foreign Judgments Act (Section 3(1)); Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of The People's Republic of China) Order, O 1 (GN No S 93/1999, Rev Ed 2001).

² Dubai Law No 16. – URL: [https://dlp.dubai.gov.ae/Legislation%20Reference/2021/Law%20No.%20\(16\)%20of%202021.html](https://dlp.dubai.gov.ae/Legislation%20Reference/2021/Law%20No.%20(16)%20of%202021.html)

³ URL: <https://www.difccourts.ae/about/court-structure>

⁴ DIFCC Rules Para 2.4 (3). – URL: <https://www.difccourts.ae/rules-decisions/rules/part-2>

The concept of creating a commercial court in the Netherlands emerged in July 2017, following the submission of a proposal to the Dutch Parliament. The proposal gained approval in December 2018. The Netherlands Commercial Court (NCC) encompasses the District Court, the Court of Appeal, and a Court for Summary Proceedings, primarily designated for interim measures.

The Netherlands Commercial Court (NCC) is a specialized judicial institution established in the Netherlands to handle complex international commercial cases. The NCC aims to provide a swift, efficient, and internationally oriented resolution platform for commercial disputes. NCC operates within the Amsterdam District Court and the Amsterdam Court of Appeal. The NCC has English as its primary language to cater to the international business community unless the parties unanimously request the use of Dutch.

One of the distinguishing features of the NCC is its focus on resolving disputes in a time-sensitive manner, primarily through the implementation of procedural rules designed for swift case handling. This includes the provision of specialized judges experienced in complex commercial matters, utilizing modern technology for proceedings, and allowing parties to present their case efficiently.

Moreover, the NCC's jurisdiction extends to a broad spectrum of commercial disputes, including contractual matters, corporate litigation, and issues related to international trade and commerce. Parties can choose the NCC to settle their disputes, particularly when dealing with cross-border transactions or cases involving multinational corporations.

By offering a specialized forum with English as the procedural language, coupled with expert judges and efficient procedures, the NCC aims to position the Netherlands as an attractive hub for resolving international commercial disputes, fostering confidence and reliability in its legal system for global businesses.

Judges serving on the Netherlands Commercial Court are exclusively selected from the Dutch judiciary. In most cases, apart from summary proceedings, trials conducted by the NCC involve a three-judge panel. Legal documents submitted by parties, such as statements of claim or defense, must be presented through a lawyer who is a member of the Dutch Bar.

Lawyers from the EU Bar, the European Economic Area, or Switzerland can collaborate with

Dutch Bar members for party representation but are not allowed to represent a party independently. The NCC's hearing procedures offer flexibility, allowing parties to mutually agree on various procedural aspects.

The NCC has integrated an e-NCC system, a sophisticated platform intended to streamline and optimize information exchange within the court's operations [6. – P. 6]. This advanced digital framework facilitates seamless communication between various stakeholders, including litigants, legal counsels, and the court itself. The e-NCC system is anticipated to offer features such as electronic filing, secure data transmission, and efficient document sharing, enhancing the overall efficiency and modernization of the Netherlands Commercial Court's processes.

In the dynamic landscape of international commerce, the role of specialized courts dedicated to resolving cross-border disputes has become increasingly vital. One such significant development is the establishment of the China International Commercial Court (CICC), reflecting China's commitment to fostering a conducive environment for international business. This article seeks to explore and analyze the emergence, structure, and significance of the CICC from a legal standpoint.

The CICC, was established in 2018, operates as a specialized judicial institution within the Supreme People's Court of China. The institution was set up to manage intricate international commercial cases, particularly those involving foreign entities, aiming to provide a fair, efficient, and transparent mechanism for dispute resolution. The CICC's formation aligns with China's growing integration into the global economy and its efforts to augment legal certainty in international business transactions.

The China International Commercial Court comprises two branches: the First International Commercial Court situated in Shenzhen, Guangdong Province, and the Second International Commercial Court located in Xi'an, Shanxi Province. Disputes of an international commercial nature brought before the CICC are adjudicated by a panel consisting of three or more judges. Notably, the CICC applies the law as mutually agreed upon by the parties involved, which may occasionally encompass principles from the common law tradition.

A distinguishing feature of the CICC lies in its adoption of the "first instance is final" system. This means that judgments rendered by the CICC hold finality and conclusiveness, thereby binding the

involved parties, without the provision of an additional avenue for appeal.

One of the remarkable aspects of the CICC is its utilization of diverse dispute resolution mechanisms, including litigation, mediation, and arbitration. CICC's International Commercial Expert Committee (ICEC) comprises legal professionals from various jurisdictions, offering specialized expertise in resolving intricate commercial disputes. Initially composed of 31 experts, the ICEC has since expanded its membership to over 50 members. Their multifaceted roles span both judicial and administrative domains, encompassing mediation services upon parties' requests, providing advice on foreign law matters when solicited by the CICC, and offering recommendations for the growth of the CICC and the Supreme People's Court of China [2].

As part of China's judicial modernization initiatives, the CICC has introduced digital platforms such as an electronic litigation service platform and a trial process information disclosure platform. These platforms enable streamlined processes, permitting parties to electronically file documents, make payments, exchange necessary paperwork, and even attend hearings entirely online. This technological integration underscores the court's commitment to enhancing procedural efficiency through contemporary digital solutions.

Furthermore, the CICC's emphasis on openness and transparency is evidenced by its provision of hearings conducted in both Chinese and English, reflecting China's commitment to enhancing accessibility for international litigants and ensuring fair proceedings.

Analyzing the impact of the CICC on international commercial law and its significance in the global legal landscape underscores the evolving nature of dispute resolution mechanisms in an increasingly interconnected world. Its contribution to promoting legal certainty, fostering a favorable business environment, and shaping international commercial law merits attention and scholarly examination.

China International Commercial Court stands as a testament to China's commitment to fostering a robust legal framework for international commerce, and its role in shaping the discourse on international dispute resolution is of paramount importance in contemporary legal scholarship.

The Japan Commercial Arbitration Association (JCAA) stands as a preeminent and enduring arbitration institution in Japan, offering invaluable contributions to the adjudication and resolution of

diverse international commercial disputes stemming from both global and domestic business collaborations.

Earning substantial acclaim, the JCAA boasts extensive expertise in effectively resolving a myriad of commercial conflicts, garnering widespread recognition and esteem among numerous corporate entities and arbitration institutions worldwide.

The inception of the JCAA, previously known as the International Commercial Arbitration Committee, dates back to 1950 when it was established under the auspices of the Japan Chamber of Commerce and Industry. With the backing of six other prominent organizations including the Federation of Economic Organizations of Japan, the Japan Foreign Trade Council, and the Federation of Banking Associations of Japan, its primary objective was to serve as a forum for the resolution of commercial disputes. This strategic initiative was aimed at fostering the enhancement of international trade practices, thereby catalyzing the advancement of Japan's economic landscape.

In 1953, as international trade continued its significant growth trajectory, the Arbitration Committee in Japan underwent a transformation into the JCAA. This pivotal change aimed to amplify and streamline its operations while achieving autonomy from the Japan Chamber of Commerce and Industry.

The Japan Commercial Arbitration Association was established as a financially independent and non-profit organization, dedicated to the resolution of both international and domestic commercial disputes. Over the course of the last seven decades, the JCAA has ascended to become a widely recognized arbitration hub. The association has further solidified its global presence by forging cooperation agreements with dozens of international arbitration centers, a testament to its commitment to international collaboration and dispute resolution.

Moreover, the JCAA proudly holds membership in the International Federation of Commercial Arbitrators, reinforcing its position as an esteemed entity in the international arbitration arena.

In recent times, the Japan Commercial Arbitration Association (JCAA) has been steadfast in its endeavors to efficiently resolve international commercial disputes stemming from global business transactions. As part of its proactive approach to mitigating such disputes, the JCAA has actively advocated for the adoption of Alternative Dispute Resolution (ADR) mechanisms. Additionally, the association has been instrumental in promoting the

utilization of counseling services and leveraging cutting-edge information and communication technologies. These initiatives are aimed at preventing conflicts from escalating and facilitating smoother resolutions in the realm of international commerce.

The association operates under a structured framework, encompassing a Board of Directors and an Arbitration Committee, comprising esteemed legal professionals and industry experts. This well-organized structure ensures the adherence to high standards of arbitration practices while upholding the principles of fairness, impartiality, and efficiency in dispute resolution.

International Commercial Courts (ICCs) have evolved as pivotal institutions within the global legal landscape, providing specialized forums for the resolution of intricate cross-border commercial disputes. This article delves deeper into the reasons behind the establishment of ICCs and their multifaceted benefits in international business and legal adjudication. ICCs emerged in response to the growing complexity of international commerce. Globalization led to intricate business transactions across multiple jurisdictions, necessitating specialized courts proficient in handling disputes arising from such complexities. Establishing ICCs aimed to elevate legal certainty, providing a platform that ensures predictability and uniformity in adjudication, bolstering confidence among international businesses in legal redressal mechanisms. These courts, dispersed across jurisdictions, act as magnets for foreign investments, attracting investors to regions equipped with efficient dispute resolution mechanisms, fostering conducive environments for economic growth.

ICCs are staffed with judges well-versed in international commercial law. Their expertise coupled with streamlined procedures expedites dispute resolution, reducing time and costs linked to prolonged litigation. Specializing in intricate commercial disputes, ICCs offer judges with specialized knowledge in international business matters, facilitating efficient resolution of complex legal issues. Additionally, ICCs offer flexibility allowing parties to select applicable laws and languages for proceedings. This adaptability fosters environments where parties navigate disputes in ways aligning with their commercial interests. The decisions from ICCs promote legal uniformity and predictability in international business transactions, ensuring consistent application of legal

principles across borders, instilling stability and confidence among stakeholders in cross-border commerce. Moreover, ICCs frequently advocate for alternative dispute resolution mechanisms like mediation and arbitration, facilitating amicable settlements and reducing the burden on traditional litigation processes.

The objective of establishing various International Commercial Courts such as the SICC, DIFCC, and CICC primarily revolves around their aspiration to become regional hubs for resolving disputes. These specialized courts are often created by respective states with a dual purpose, possibly motivated by geopolitical or economic interests. They are primarily designed to handle commercial disputes, aiming to attract more parties to settle international conflicts within their jurisdiction by offering a flexible institutional framework. This trend of setting up ICCs and specialized courts has gained traction as an international phenomenon in Asia and Europe.

In Asia, the setting up of ICCs has been remarkable, encompassing the establishment of the DIFCC in 2006, the Qatar International Court and Dispute Resolution Centre in 2009, and later, the initiation of the SICC in 2015. Other countries followed suit: Kazakhstan, India, and Abu Dhabi established the Astana International Financial Centre Court (AIFCC), the Commercial Court of India, and the Abu Dhabi Global Market Court (ADGMC) respectively. The most recent addition to this list is the CICC established in 2018.

In Europe, there was an uptick in the inclination toward specialized courts. In 2016, the UK introduced the Business and Property Courts of England and Wales, presenting a challenge to the conventional framework of commercial courts. Similarly, the Netherlands and France established the NCC and the International Chambers of the ICPCC, respectively. Moreover, Germany witnessed the establishment of International Commercial Courts in Stuttgart and Mannheim. Additionally, Belgium contemplated introducing an ICC into its court system, although this proposal has not been further advanced.

This widespread establishment of ICCs across continents demonstrates a global inclination towards specialized dispute resolution mechanisms, signaling a shift from conventional judicial systems to more adaptable and specialized forums for handling commercial disputes.

The principal merits of ICCs lie in their convenience and adaptable procedures, exemplified

by the SICC. Parties are granted the freedom to select the evidentiary regulations for their case and have the option to forgo their right to appeal or object to the recognition and enforcement of SICC judgments. Such characteristics, labeled as entirely unconventional within the European context, underscore the distinctive features of these courts. Additionally, the disclosure systems of SICC, the DIFCC and the Abu Dhabi Global Market Courts (AIFCC) closely resemble the discovery process in arbitration, following the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration. Regarding evidentiary rules, DIFCC holds the authority to apply regulations it deems suitable, including the discretion to handle issues of foreign law via direct legal submission rather than treating foreign law as a fact to be proven. Similarly, AIFCC maintains the flexibility to waive procedural requirements, emphasizing its commitment to the primary objective of ensuring fair case resolution.

Usually, national courts mandate the use of the official language of the country, even in cases involving foreign elements. Parties unable to present evidence in the designated language typically have the right to request interpretation services. However, many ICCs have the capability to conduct proceedings in English, which has become the de facto global language. The adoption of English as the primary language in ICCs contributes to a relative fairness for parties from diverse national backgrounds. This “standardization” does not imply exclusive use of English in all ICCs but highlights the prevalent use of English as the primary language for litigation across these courts. Additionally, in nearly all ICCs, both local and international judges are required to demonstrate proficiency in English. Recognizing the significance of language and communication skills is crucial in the effective resolution of international commercial disputes.

One of the primary challenges faced by ICCs revolves around jurisdictional matters. Determining the appropriate jurisdiction for a dispute can be intricate due to the diverse nature of international transactions. Issues concerning jurisdictional conflicts, parallel proceedings in multiple jurisdictions, and conflicting judgments across different courts often arise, leading to legal uncertainty and prolonged litigation.

Enforcement poses another significant obstacle for ICCs. Even when a favorable judgment is obtained, enforcing it across borders can be arduous

due to differences in legal systems, lack of reciprocal enforcement agreements, as well as bilateral treaties, multilateral conventions, Memorandums of Guidance (MOGs) between courts, or the domestic laws of a particular state and varying levels of judicial cooperation between countries. The effectiveness of judgments rendered by ICCs heavily depends on the ease and efficiency of their enforcement mechanisms.

The challenge with the bilateral treaty approach lies in its time-consuming nature. Negotiating treaties is a lengthy process, often followed by the requirement of signing and ratification by each participating state. For instance, China has presently engaged in about 36 treaties concerning the recognition and enforcement of judgments. Considering China's ambition within the Belt and Road Initiative to establish a network of bilateral treaties for recognizing and enforcing judgments among the countries involved, it implies the necessity of negotiating and finalizing over 60 separate bilateral treaties in the future. This undertaking is undeniably complex and might not yield immediate benefits for the Belt and Road Initiative [7. – P.34]. Additionally, the negotiation and implementation of multilateral conventions could further prolong the process, requiring an extended duration before coming into effect.

Efforts to expedite these treaty negotiations may involve exploring alternative approaches, such as adopting model laws or frameworks that facilitate mutual recognition and enforcement. Utilizing existing international legal instruments, like the Hague Conventions, might offer a starting point for harmonizing cross-border judgments. Additionally, encouraging dialogue and cooperation between nations could lead to the development of streamlined procedures for recognizing and enforcing judgments, promoting efficiency in dispute resolution along the Belt and Road Initiative and beyond.

On the contrary, a Memorandum of Guidance (MOG) can offer a more expedient route for recognizing and enforcing judgments, operating on the principle of reciprocity among the judicial entities of multiple states. An MOG, unlike a legally binding treaty, outlines the criteria and procedures governing the recognition and enforcement of each other's judgments by the courts involved. Typically endorsed by the judicial bodies of respective countries, MOGs differ from bilateral treaties or multilateral conventions that usually involve a state's executive or legislative branches.

Consequently, the negotiation and conclusion of MOGs are generally quicker in practice compared to formal international agreements. However, the downside is evident: MOGs lack binding force, meaning a court is not obligated to adhere to the MOG's provisions regarding the recognition and enforcement of a foreign judgment.

Procedural complexities also challenge the efficacy of ICCs. Balancing procedural fairness while maintaining expediency in resolving disputes can be a delicate task. Differences in procedural rules and practices among various jurisdictions may lead to procedural hurdles, potentially hindering the swift resolution of cases in ICCs.

ICCs function based on their individual regulations, presenting a hurdle for foreign entities and legal representatives in comprehending diverse legal systems. For instance, within the Netherlands, the Rules of Procedure of the Netherlands Commercial Court (NCC) do not explicitly outline the applicable evidentiary rules. It can be presumed that the evidentiary rules adhered to by the court align with those stipulated in the Dutch Code of Civil Procedure. This necessitates that parties and their legal counsels familiarize themselves with these specific evidentiary regulations to navigate proceedings effectively within the NCC. This highlights the crucial necessity for foreign parties and lawyers to acquaint themselves thoroughly with the intricacies of local legal provisions when engaging in ICC litigations.

Moreover, linguistic and cultural diversity can impede the smooth functioning of ICCs. Although many ICCs conduct proceedings in English, language barriers persist, impacting the clarity and comprehensibility of arguments presented, potentially leading to misinterpretations and communication breakdowns. Cultural disparities can also affect the understanding of legal concepts and practices, affecting the fair and equitable resolution of disputes.

The transparency and neutrality of ICCs are essential for their credibility and effectiveness. However, concerns related to the appointment of judges, conflicts of interest, and transparency in decision-making processes have been raised. Ensuring impartiality and transparency in the operations of ICCs remains a crucial challenge.

Financial considerations are another aspect that warrants attention. The cost of litigation in ICCs might pose a barrier for smaller businesses and individuals seeking redress. The expenses

associated with legal fees, procedural costs, and expert witness fees in international commercial disputes can be exorbitant, potentially limiting access to justice for certain parties.

Furthermore, the evolving landscape of international commerce brings forth new challenges for ICCs. The emergence of novel technologies, such as blockchain and artificial intelligence, raises complex legal issues that may not have clear precedents, thereby posing challenges in adjudicating disputes involving these technologies.

In contrast to arbitral awards, judgments in ICCs are usually open to appeals, with varying appeal mechanisms across different ICCs. This divergence in appeal procedures might conflict with a fundamental objective of ICCs, which is the prompt and efficient resolution of international commercial disputes. Appeal structures have been established for several ICCs, such as the Netherlands Commercial Court (NCC), the Singapore International Commercial Court (SICC), and the Dubai International Financial Centre Courts (DIFCC). For instance, decisions made by the SICC can be appealed to the Court of Appeal of Singapore, while judgments issued by the DIFCC are subject to appeal at the Court of Appeal of the DIFCC.

To overcome these challenges, several measures can be considered. Enhanced cooperation and harmonization of laws and procedures among jurisdictions can facilitate smoother resolution of cross-border disputes. Developing uniform international standards for the recognition and enforcement of judgments could significantly alleviate enforcement hurdles.

Investing in technology and innovative dispute resolution mechanisms could streamline ICC procedures and enhance their efficiency. Utilizing online dispute resolution platforms, AI-based legal analytics, and digital case management systems can aid in expediting proceedings and reducing costs.

Promoting judicial training programs that focus on language proficiency and cross-cultural understanding can mitigate linguistic and cultural barriers. Ensuring transparency in the appointment of judges and decision-making processes can enhance trust in the integrity of ICCs.

After presenting the insights shared throughout the article, the author aims to engage the reader with a thought-provoking question: *Do International Commercial Courts (ICCs) represent the sophistication and refinement of a well-aged wine, or*

do they mirror the intricacies and hurdles reminiscent of book with torn and scattered pages?

Some may perceive a commercial court as a good old wine, signifying its maturity, refinement, and improvement with time, offering a reliable and seasoned process for resolving disputes. Conversely, others might liken it to a book with torn and scattered pages, representing the complexities and challenges within the system that require effort to navigate and comprehend, indicating potential difficulties in accessing justice or understanding its workings.

In conclusion, while International Commercial Courts play a pivotal role in the resolution of cross-

border commercial disputes, they face multifaceted challenges that impede their effectiveness. Addressing jurisdictional complexities, improving enforcement mechanisms, streamlining procedures, fostering transparency, and embracing technological advancements are crucial steps towards enhancing the functionality and relevance of ICCs in the ever-evolving global business landscape. Efforts towards collaborative initiatives, legal harmonization, and innovative approaches will be instrumental in mitigating these challenges and strengthening the role of ICCs in facilitating international trade and commerce.

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