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The rise of international commercial courts in commercial disputes

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Abstract

Although not a novel concept - London Commercial Court dates back to 1895 - International commercial courts (ICCs) have expanded significantly in recent years. Their global rise reflects a shift in dispute resolution, driven by geopolitical ambition, economic incentives, and legal market expansion. Countries establish ICCs to attract foreign investment, enhance their influence in global commerce, and offer an alternative to arbitration. Elite law firms also play a role in promoting ICCs, intending to expand international litigation markets. Despite challenges in gaining traction, ICCs represent a growing trend that could reshape the landscape of global commercial dispute resolution.

Understanding ICCs: A new forum for international disputes

In essence, ICCs are specialized courts within national legal systems designed to handle complex international commercial disputes. Despite variations in their institutional design, common features include adaptable procedural rules similar to those in international arbitration, multilingual proceedings, reliance on common law traditions, and the appointment of foreign judges or legal experts.^[1]

The growing trend

Since 2010, at least eleven new ICCs have been established worldwide, including Europe, North America, Asia, and the Middle

East. In post-Brexit Europe, where English court rulings are now more difficult to enforce, jurisdictions are developing their ICCs to compete with arbitration and the London Commercial Court.

[2] Several European countries striving to become the next financial and commercial hubs recognize the need for efficient commercial courts.^[3] Recent amendments to the Swiss Civil Procedure Code, effective January 1, 2025, illustrate this trend by allowing Swiss cantons to establish ICCs where disputes can be litigated in English.
[4]

The rise of ICCs reflects broader geopolitical and economic trends, including growing trade protectionism, a rise in nationalism, and the strengthening of national sovereignty, all of which impact both private and public international law.^[5] While the motivations for establishing ICCs differ, each having its own unique history and rationale, this article highlights the common factors driving their creation.

Geopolitics, soft power, and economic motivations

Legal scholarship proposes three main explanations for the rise of ICCs: geopolitical considerations, soft power projection, and economic incentives.

From a geopolitical standpoint, ICCs may serve as tools for states to enhance their power within the global political economy.

Soft power consideration suggests that ICCs help jurisdictions bolster their status as regional business hubs, export legal and political ideas, and gain prestige among international leaders. This

theory has been applied to the creation of ICCs in regions such as the Gulf, Kazakhstan, Singapore, and post-Brexit Europe.

ICCs also function as instruments of economic statecraft, aiming to attract foreign direct investment (FDI), promote the development of legal and financial sectors, and broaden the national tax base. ICCs generate demand for legal and support services (e.g., paralegals, taxis, hotels, restaurants), benefiting local economies.^[6] In this context, specialized law firms might view the rise of ICCs as an opportunity to expand their global reach and help create a legal-institutional environment conducive to growing business operations in commercial law and dispute resolution.^[7]

For instance, ICCs in Abu Dhabi, Dubai, Qatar, and Kazakhstan offer reliable dispute resolution mechanisms to attract international investors. In contrast, France and Germany have taken a more modest approach, introducing specialized commercial chambers to improve cross-border dispute resolution for local and regional businesses. China's motivation is more geopolitical; the creation of its ICCs is closely linked to the Belt and Road Initiative, serving as both a legal and economic tool to protect and promote Chinese investments abroad.^[8]

The role of elite law firms in ICC expansion

One theory, drawing from the New Interdependence Approach, distinguishes itself from other legal scholars by arguing that elite law firms drive the creation of most ICCs to expand the global market for commercial litigation. These law firms collaborate with domestic

judiciaries or political leaders to establish ICCs, responding to the demand for specialized, cost-effective dispute resolution services.

International commercial disputes often involve multiple jurisdictions, leading to overlapping legal claims that domestic courts struggle to handle efficiently. Arbitration, while widely used, can be expensive and lacks certain procedural safeguards of litigation. In contrast, ICCs offer high-quality, specialized services at lower costs, making them attractive to litigants. Recognizing these advantages, law firms actively promote ICCs as institutional innovations that boost national economies by attracting FDI, capital, and tax revenue.

Empirical findings largely support this theory, although with some exceptions. No evidence suggests law firm involvement in China's ICC, and in some cases, judiciaries have played a more proactive role than anticipated. This highlights further research is needed on the roles of judges, court administrations, and other non-state actors.^[9]

The influence of arbitration on ICC development

Despite the apparent competition between ICCs and arbitration, some argue that the latter has been a major driver behind the ICCs development. The increasing formalization of arbitration, sometimes referred to as “arbitralization” of dispute resolution, has led some jurisdictions to develop ICCs, incorporating arbitration’s most attractive features.

Initiatives like the Netherlands Commercial Court Plan and the proposal for setting up Chambers for International Commercial Disputes and Commercial Courts in Germany point to the “vanishing trial” phenomenon - the outflow of cases to arbitration. By modernizing courts and offering more flexible procedural rules, European ICCs seek to reclaim disputes lost to arbitration.^[10]

Most Asian ICCs, by contrast, view themselves as partners rather than competitors to arbitration. The Singapore International Commercial (SICC) emphasizes its advantages as a public court, targeting disputes that would otherwise bypass Singapore, thus expanding its dispute resolution market without reducing arbitration’s caseload.^[11] Further, the creation of a new litigation model serves as a marketing tool to build Singapore’s brand image. For users, it offers a choice between two litigation systems, emphasizing the importance of autonomy in litigation services under Singapore law.^[12]

Challenges and prospects

Despite their potential, ICCs face several challenges in gaining widespread adoption. Arbitration remains the preferred dispute resolution mechanism for most international commercial disputes. The relatively low caseload suggests that ICCs have yet to gain significant traction and remain only a minor challenge to arbitration. Additionally, concerns about transparency, judicial independence, and the geopolitical implications of ICCs in non-democratic regions may hinder their broader influence on promoting the rule of law.^[13]

The choice of dispute resolution forums is heavily influenced by the reputation of a national justice system and established market

practices. Building a positive reputation and convincing parties to revise their dispute resolution clauses in favor of these new courts will take time.^[14] Furthermore, for ICCs to become viable alternatives, an international instrument is necessary to ensure that courts in other countries respect jurisdiction clauses referring disputes to these ICCs and that the judgments delivered by ICCs are enforceable in other jurisdictions. The Hague Convention on Choice of Court Agreements (HCCCA) aimed to bridge this gap and provide these two essential guarantees. However, despite its clear potential benefits, only a handful of countries, aside from the EU, have ratified or adopted it so far.^[15]

Nevertheless, ICCs represent an innovation in global dispute resolution. By blending the benefits of arbitration with the structure of traditional courts, they offer businesses new options for resolving complex commercial disputes. As international commerce continues to evolve – particularly with the rise of digital trade, cryptocurrency disputes, and complex cross-border contracts – ICCs may play an increasingly prominent role in shaping the future of commercial law.

An eminent jurist has described ICCs as “a careful marriage between litigation and arbitration”, reflecting their attempt to balance the advantages of both systems. In this sense, ICCs function much like technology companies, they seek to address market inefficiencies by offering a more effective and attractive product.^[16] Whether they succeed in reshaping global dispute resolution will depend on their ability to gain the trust of international businesses and legal practitioners alike.

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