International Commercial Courts: Similarities and Disparities

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Among the leading jurisdictions, there is an increasing realization that something has to be done to arrest the alarming decline in litigation before the courts. State-funded courts, too, have to innovate and adapt if they wish to remain relevant players in transnational commercial dispute resolution. And so we will see the rise of international commercial courts. (V. K. Rajah, *W(h)ither Adversarial Commercial Dispute Resolution*, 33(1) Arbitration International 17, 26 (2017).)

Summary

During the last years the world has seen the rise of international commercial courts. This article analyses the similarities and disparities the existing international commercial courts have, to determine whether they comprise a single avenue for the resolution of transnational commercial disputes or if they are completely different things. Towards this end, several key features of the courts are covered: their international or domestic nature, the confidentiality of the proceedings, the existence of foreign judges, the possibility to have foreign representation, the existence of an appeal mechanism, and the enforcement of the courts' judgments.

1 Introduction

Alongside globalization came an increase in the transnational flow of goods, services, capital, information, and technology, both in volume and value.[1] In such international business transactions and operations, disputes eventually arise. Under the traditional rules of private international law – and unless the matter is submitted to arbitration – domestic courts will be called upon to resolve such disputes.[2] The problem is that domestic courts commonly have neither the flexibility nor are capable of understanding international business transactions in a holistic fashion. At least with the dynamism and legal predictability these types of markets and instruments need to function properly. This is because domestic courts – whether due to pragmatism or legal tradition – are not preconceived nor do they have the technical strength to comprehensively resolve transnational economic disputes.[3]

In this context, the number of cross-border controversies that the transnational business community submits to international arbitration is immense, contrasted to the amount submitted to domestic courts.[4] During the last years, arbitration has been expanding even further.[5] Arbitration is the chosen method mainly to overcome the problems that submitting international commercial disputes to national courts entails, as the latter 'were not designed to deal with complex cross-border disputes, and generally lack the structure and expertise required to handle the difficulties which arise when a single dispute has resonance in several jurisdictions'.[6] Of course, there are other issues: corruption, fear of protective judges, unfamiliarity with local laws, inconsistent outcomes, preference of private conflict resolution to public trial, and unfamiliarity with local language and custom.[7]

However, international commercial arbitration is not the only avenue for resolving transnational business controversies. Modern trends aim towards different forms of dispute resolution, such as mediation, med-arb,[8] and the international commercial courts.[9]

The international commercial courts are the result of the innovation assumed by the states of the leading jurisdictions of the world, as pioneers in the creation of this kind of contentious fora. The first one was the Commercial Court of the High Court of Justice of England and Wales (ECC). Since then, the world has seen the rise of new international commercial courts, such as the Dubai International Financial Centre Courts (DIFC), the Qatar International Court (QICDRC), the Abu Dhabi Global Market Courts (ADGM), the Singapore International Commercial Court (SICC), and the two international commercial courts launched by the Supreme People's Court of China (China's ICCs),[10] both assisted by the International Commercial Expert Committee of the Supreme People's Court (Expert Committee).[11]

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[1] In the 2017 World Trade Statistical Review presented by the World Trade Organization, its General Director affirmed that the value of the world's merchandize exports had increased by 32% since 2006, and international exports of services had increased by 64% since the same year. World Trade Organization, 5 World Trade Statistical Review (2017); 'According to the Bank of International Settlement (BIS), the international swap market exceeded USD (equivalent) 600 trillion (un-netted) in outstanding swaps by the end of 2012, a little lower than the year before'. Jan Dalhuisen, *Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law*, vol. 1, 17 (Hart Publishing, 2019).

[2] *See* Dalhuisen, *supra* n. 1, at 447.

[3] *See* Dalhuisen, *supra* n. 1, at 447.

[4] V. K. Rajah, *W(h)ither Adversarial Commercial Dispute Resolution*, 33(1) Arb. Int'l 17, 19–20 (2017).

[5] *Ibid*.

[6] Dalhuisen, *supra* n. 1, at 23.

[7] F. Peter Phillips, *The Challenges of International Commercial Dispute Resolution*, CPR: The Int'l Inst. For conflict prevention and resolution. http://www.businessconflictmanagement.com/pdf/BCMpressOl.pdf (accessed 6 Oct. 2018).

[8] Med-Arb, or Mediation-Arbitration is a method, 'where the same neutral person acts, first, as the mediator, and then as the arbitrator if mediation fails'. Rajah, *supra* n. 4, at 17, 32. For more on 'med-arb' as a method for resolving disputes, *see* Brian A. Pappas, *Med-Arb and the Legalization of Alternative Dispute Resolution*, 20 Harv. Negot. L. Rev. 157, 204 (2015). *See also* Emilia Onyema, *The Use of Med-Arb in International Commercial Dispute Resolution*, 12(3–4) Am. Rev. Int'l Arb. 411, 423 (2001).

[9] *See* Rajah, *supra* n. 4, at 17, 19–31.

[10] The First Court sits in Shenzhen, Guangdong, and the Second one sits in Xi'an, Shaanxi. *See* Wei Sun, *International Commercial Court in China: Innovations, Misunderstandings and Clarifications*, dated 4 July 2018, http://arbitrationblog.kluwerarbitration.com/2018/07/04/international-commercial-court-china-innovations-misunderstandings-clarifications/ (accessed 8 Oct. 2018).

[11] Ik Wei Chong, *China Establishes International Commercial Courts to Resolve International Commercial Disputes*, dated 24 Aug. 2018, https://www.clydeco.com/insight/article/china-establishes-international-commercial-courts (accessed 8 Oct. 2018).

This trend has been quickly replicated in the European Union: France created the International Chamber within the Paris Court of Appeal (PICC of Appeals), and issued a protocol to harmonize the procedure applicable to the International Chamber that already existed within the Tribunal of Commerce (PICC).[12] In Germany, the specialized chamber for commercial matters is the Frankfurt High Court (GICC). In the Netherlands, the Netherlands Commercial Court (NCC) was launched on 1 January 2019.[13] And Belgium is currently discussing the creation of the Brussels International Business Court.[14]

The international commercial courts, with the exception of the ECC, were created by the states in response to the devastating decrease in the amount of transnational commercial disputes submitted to national courts.[15] With the creation of such courts, states intend to remain as important players in the resolution of cross-borders commercial disputes.[16] To achieve this objective, the international commercial courts deviated from domestic litigation and some of them emulated characteristics usually found in international commercial arbitration: a panel of judges from foreign jurisdictions; more flexible rules of procedure, a declared aim to adjudicate commercial disputes involving foreign litigants and cross-border disputes; greater audience rights, and more direct contact between the judiciary and the litigants.[17]

However, international commercial courts are created by states. Therefore, it is the creator who decides in which way such forum will review the cases the parties bring before it. In this context, this article examines whether the courts have enough similarities to comprise a single avenue for the resolution of transnational business controversies, or if each one of them is a unique forum.

2 Disparities

2.1 Confidentiality of the Proceedings

V.K. Rajah wrote that the international commercial courts advertise to emulate the confidentiality of the proceedings from international commercial arbitration.[18] Prima facie, this seems to be reasonable as, according to Gary Born, confidentiality is one of the reasons why parties choose arbitration as a method of resolving commercial conflicts.[19] In this vein, 'transnational corporations believe that business secrets and confidential information will be better protected in ICA [International Commercial Arbitration] than in international litigation'.[20] Confidentiality has also been stated to promote 'the time and cost efficient conduct of arbitral proceedings'.[21]

In spite of the fact that not all arbitration proceedings are completely confidential, as it depends ultimately on the seat's jurisdiction, 'arbitration proceedings are at least private (in the sense of not taking place in a public forum) and can usually be made more confidential by party agreement'.[22] Confidentiality – or at least privacy – of the proceedings entails an advantage when the dispute involves sensitive commercial information.[23]

But, how real is confidentiality – or privacy – before the international commercial courts? As to the ECC, for instance, 'Court hearings are heard in public, unless there is a good reason for them to be heard in private, (…) [and] [j]udgments and orders made at public hearings are available to non-parties to the proceedings'.[24] Before the ADGM, '[t]he decision as to whether to hold a hearing in private must be made by the Judge conducting the hearing having regard to any representations which may have been made to him'.[25] It seems reasonable for the ADGM to apply the same criterion as the ECC, since 'by virtue of the enactment of the Application of English Law Regulations 2015, English common law was made directly applicable in the ADGM'.[26]

For the QICDRC and the DIFC, confidentiality is treated in the same way: for the former, 'Court hearings will be in public unless the Court orders otherwise',[27] and for the latter, 'hearings in public cases are open to the public and the media'.[28] In Paris, the situation is no different: before the PICC, '[t]rials are public

[12] *See* Emmanuel Gaillard, Yas Banifatemi & Chloe Vialard, *The International Chambers of the Paris Courts and Their Innovative Rules of Procedure*, dated 23 Apr. 2018, https://www.shearman.com/perspectives/2018/04/paris-courts-and-their-innovative-rules-of-procedure (accessed 8 Oct. 2018).

[13] *See* Netherlands Commercial Court website, *Who Are We?*, available at https://www.rechtspraak.nl/English/NCC/Pages/default.aspx.

[14] Quentin Declève, *Belgium: Parliament Amends Bill Establishing Brussels International Business Court*, dated 11 Mar. 2019, http://www.mondaq.com/x/786776/Arbitration+Dispute+Resolution/Parliament+Amends+Bill+Establishing+Brussels+International+Business+Court (accessed 4 Apr. 2019).

[15] Rajah, *supra* n. 4, at 17, 26 (2017). Even more, out of these Courts, only the ECC developed its international status gradually over time, whilst the others have been deliberately created with the aim of serving foreign private parties in transnational commercial disputes. *See ibid*.

[16] Rajah, *supra* n. 4, at 17, 26 (2017).

[17] *See* Andrew Godwin, Ian Ramsay & Miranda Webster, *International Commercial Courts: The Singapore Experience*, 18 Melb. J. Int'l L. 219, 219 (2017). *See also* Rajah, *supra* n. 4, at 17, 27 (2017).

[18] Rajah, *supra* n. 4, at 17, 27 (2017).

[19] Gary B. Born, *International Commercial Arbitration* 2780 (2014); Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 124 (2015). *Also see* Francisco Blavi, *A Case in Favour of Publicly Available Awards in International Commercial Arbitration: Transparency v. Confidentiality*, Int'l Bus. L.J. 83 (2016).

[20] Sherlin Hsie-lien Tung & Brian Lin, *More Transparency in International Commercial Arbitration: To Have or Not to Have*, 11 Contemp. Asia Arb. J. 21, 24 (2018).

[21] *Ibid*., at 21, 26.

[22] Nigel Rawding & Elizabeth Snodgrass, *Arbitration World: International Series* 3 (2015).

[23] *Ibid*.

[24] Oliver Cain & Danielle Carr, *Litigation and Enforcement in the UK (England and Wales): Overview*, dated 1 Oct. 2018, https://uk.practicallaw.thomsonreuters.com/7-502-0631?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1 (accessed 8 Oct. 2018).

[25] 2016 ADGM Court Procedure Rules, Rule 173(2), http://adgm.complinet.com/net_file_store/new_rulebooks/a/d/ADGM_Court_Procedure_Rules_2016_Amended_200618.pdf (accessed 29 Oct. 2018). In the same vein, Rule 173(3) states: 'The Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness'.

[26] Henry Quinlan, Adam Bradshaw & Charlotte Leith, *Abu Dhabi Global Market Courts: Framework, Procedures and First Judgment Summary*, dated 1 Mar. 2018, https://uk.practicallaw.thomsonreuters.com/w-013-7809?transitionType=Default&contextData=(sc.Default) (accessed 29 Oct. 2018).

[27] Rules of Procedure for the International Commercial Chambers of the Amsterdam District Court (Netherlands Commercial Court) and the Amsterdam Court of Appeal (Netherlands Commercial Court of Appeal) (The NCC Rules). Art. 9(2).

[28] Dubai International Financial Centre website, *Frequently Asked Questions*, https://www.difccourts.ae/faq/ (accessed 29 Oct. 2018).

unless the court decides that they will take place in the Council Chamber (Chambre du Conseil), pursuant to article 435 of the French Code of Civil Procedure'[29]; and the same applies for the PICC of Appeals.[30] Finally, the NCC's rules state that the hearings are public,[31] and in the same way, '[t]he judgment is given in public'.[32] Similarly, the BICC's proceedings are not intended to be confidential.[33]

The case is somewhat different for the SICC, in which the treatment of an action as an 'offshore case'[34] creates a greater possibility for the case to be confidential.[35] For the SICC, confidentiality means: '(a) that the case be heard in camera; and (b) that no person must reveal or publish any information or document relating to the case'.[36] However, according to the Court's Rules, 'the Court must direct that a judgment made by the Court may be published in law reports and professional publications if the Court considers the judgment to be of major legal interest'.[37] However, 'for confidential cases the necessary redaction and confidentiality safeguards will be taken'.[38]

As regards to the confidentiality of the proceedings, no court is providing it the way international commercial arbitration does, at least as to the privacy of the proceedings.[39] However, this may not be a negative issue entirely, according to current trends. The 2018 Queen Mary University of London White & Case International Arbitration Survey states that, '[c]onfidentiality remains a matter of some degree of importance for many, if not most, in-house counsel. However, confidentiality is not of itself the single biggest driver behind the choice of arbitration'.[40] It is possible that the courts have chosen correctly in giving greater importance to the publicity of the judgments – and thus to the importance that this entails for the legal systems in which they exist and operate[41] – than to the relevance private parties give to the confidentiality of the proceedings. In common law systems, with the judgments being public, 'the international commercial courts are able to hand down binding precedents in order to harmonize and advance commercial law and practice'.[42] Also, public judgments, albeit not binding *erga omnes* in civil law systems, are persuasive precedents for resolving other cases.[43]

2.2 The Issue of Foreign Judges

Judges sitting in the ECC are the United Kingdom's citizens, and citizens of the Republic of Ireland or a Commonwealth country.[44] The Paris ICC[45] 'has ten judges, with its President, who are all Anglophones,'[46] but not foreigners. In the Netherlands, 'Judges are selected from all courts in the Netherlands based on their outstanding knowledge of business law, experience in international dispute resolution and proficiency in English'.[47] This rule for no-foreign judges is replicated in China,[48] with a – not minor – difference: the Expert Committee has been stated to be as follows:

[29] Protocol Relating to the Procedure Before the International Chamber of the Paris Court of Appeal, Rule 6(1). *Also* Art. 435 of the Revised French Code of Civil Procedure states: 'The judge may decide that the hearings will take place or shall continue in the judge's council chamber where their publicity might adversely affect individual privacy or, if all the parties so request, or if disturbances arise that may disrupt the atmosphere of the proceeding'.

[30] Protocol Relating to the Procedure Before the International Chamber of the Paris Court of Appeal. Rule 6(1).

[31] *See* NCC Rules of Procedure, Art. 7(5). Note that the court may order a hearing to be private 'if necessary in the interest of public policy, good morals or national security, or to protect the interests of minors or the parties' privacy, or to prevent a substantial adverse impact on the sound administration of justice'.

[32] NCC Rules of Procedure, Art. 9(4).

[33] *See* Guillaume Croisant, *The Belgian Government Unveils Its Plan for the Brussels International Business Court (BIBC)*, dated 25 June 2018, http://arbitrationblog.kluwerarbitration.com/2018/06/25/the-belgian-government-unveils-its-plan-for-the-brussels-international-business-court-bibc/ (accessed 5 Nov. 2018).

[34] An '"offshore case" is an action that has "no substantial connection with Singapore"'. Godwin, Ramsay & Webster, *supra* n. 17, at 219, 252.

[35] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 252.

[36] *Ibid*., at 219, 239.

[37] Rules of Court, Ord. 110 r 31(1).

[38] Chief Justice Sundaresh Menon, *International Commercial Courts: Towards a Transnational System of Dispute Resolution* (Speech delivered at the Dubai International Financial Centre ('DIFC') Courts Lecture Series 2015, DIFC Conference Centre, Dubai, 19 Jan. 2015) [17] ('International Commercial Courts').

[39] Despite the fact that confidentiality in arbitration is not entirely a sure thing, it provides much more security than the international commercial courts analysed here, especially when there is an agreement by the parties on such regard. As to the current state of confidentiality in international commercial arbitration: 'Most arbitration statutes do not include provisions establishing confidentiality requirements, nor do most rules of commercial arbitration. Provisions often require arbitrators and administrators to keep the information provided during arbitration confidential, but this does not bind the parties themselves. Absent a confidentiality agreement between parties, there should be no presumption of confidentiality with respect to witness statements, pleadings, transcripts, awards and reasons'. Daniel R. Bennett & Madeleine A. Hodgson, *Confidentiality in Arbitration: A Principled Approach*, 3 McGill J. Disp. Resol. 98, 111 (2016–2017).

[40] Queen Mary University of London & White & Case, *International Arbitration Survey: The Evolution of International Arbitration* 28 (2018).

[41] In this spirit, V. K. Rajah wrote: 'If the flight of cases to arbitration has resulted in a freezing of the common law, the international commercial courts may prove to be the spark that thaws the ice'. Rajah, *supra* n. 4, at 17, 27 (2017).

[42] Rajah, *supra* n. 4, at 17, 27 (2017).

[43] *See* Vincy Fon & Francesco Parisi, *Judicial Precedents in Civil Law Systems: A Dynamic Analysis*, Int'l Rev. L. Econ., Forthcoming; George Mason Law & Economics Research Paper No. 04-15; Minnesota Legal Studies Research Paper No. 07-19, at 2. SSRN: https://ssrn.com/abstract=534504 or http://dx.doi.org/10.2139/ssrn.534504. *Also* it has been stated that 'in both civil and common law, dispute resolution is or has become the major perspective of legal education and legal scholarship, at least in private law'. Dalhuisen, *supra* n. 1, at 261.

[44] 'Judicial appointments are open only to citizens (including those holding dual nationality) of the United Kingdom, the Republic of Ireland or a Commonwealth country'. Courts and Tribunals Judiciary, *Becoming a judge*, https://www.judiciary.uk/about-the-judiciary/judges-career-paths/becoming-a-judge/ (accessed 6 Nov. 2018).

[45] Which, 'was created at the Paris Commercial Court in 1995; it merged in 2015 with the Chamber of European Union law, itself established in 1997'. Protocol Relating to the Procedure Before the International Chamber of the Paris Commercial Court. Preamble.

[46] Protocol Relating to the Procedure Before the International Chamber of the Paris Commercial Court. Preamble.

[47] Arnold Croiset van Uchelen, *The Netherlands Commercial Court, a New Forum of Choice?*, dated 17 May 2018, https://www.jdsupra.com/legalnews/the-netherlands-commercial-court-a-new-49446/ (accessed 6 Nov. 2018).

[48] 'According to Article 9 of the PRC Law on Judges, judges of Chinese courts must be Chinese nationals, so it is impossible for foreign nationals to be judges of the Courts'. Wei Sun, *International Commercial Court in China:*

> *The [Expert] Committee is composed of Chinese and foreign experts invited by the Supreme People's Court. The members may mediate cases entrusted by the International Commercial Court to resolve international commercial disputes for litigant parties, provide advisory opinions on specific legal issues in international commercial dispute cases for the people's courts, and give advice and suggestions on relevant judicial interpretations and judicial policies formulated by the Supreme People's Court.*[49]

The Expert Committee, 'is established so that foreign experts can play an active role, despite the restriction on becoming judges. The number of experts sitting in the Expert Committee might be around 30 so as to balance efficiency and diversity'.[50]

To the other courts, foreign judges seem to be the rule rather than the exception. For instance, 'ADGM Courts are anchored by a judiciary of highly experienced and eminent judges from the world's leading common law jurisdictions'.[51] For the QICDRC, '[t]he judges hail from a variety of jurisdictions including Qatar, the United Kingdom, Germany, New Zealand and India, making the Court a truly international one'.[52] In Belgium, 'the cases will be heard by ad hoc chambers of three judges, one professional and two lay judges (appointed by the president of the BIBC on the basis of a panel of Belgian and *international experts* in international business law)'.[53] Likewise, the SICC's judges, 'includes eminent jurists from various foreign jurisdictions'.[54]

Having international judges is not a golden rule for the so-called international commercial courts. Although all the courts advertise that their judges are experts in transnational commercial cases, they remain to be, for the most part, not international. It is still early to know if those international judges will bear the fruit expected of them. But so far, despite the efforts of some courts – such as the SICC – to appoint foreign judges, in essence they remain domestic courts, with, in some cases, international shades.

Undoubtedly, domestic courts and foreign judges comprise a striking mix. It remains to be seen whether the foreignness of the judges is an asset or a liability. An eclectic solution that could bear many fruits is the one adopted by China with the Experts Committee. In this way, the judges continue to be nationals, but in international cases they have the support and advice of former judges and arbitrators who are experts on the subject matter.

2.3 *The Issue of Foreign Attorney Representation*

Currently, it is a somewhat generalized rule that lawyers who are not qualified to practise law in a state cannot appear before the courts of such state.[55] Following this general rule, before the ECC, '[r]egistered European lawyers are granted rights of audience when they are admitted or registered in England and Wales. However, they cannot appear in the High Court, Court of Appeal or Supreme Court unless they have obtained higher rights of audience'.[56] Similarly, in the Netherlands (where the NCC sits) there is a rule according to which only lawyers qualified to appear before a court in the Netherlands are permitted to do so, which is exclusively restricted to those who are admitted to the bar and consequently hold the title of lawyer; but a lawyer from a Member State of the European Union or the European Economic Area is permitted to practice his/her profession as a lawyer in the Netherlands under the designated title of the Members State of origin and provide legal representation in court in pursuance of the freedom of establishment of the European Union and the subsequent European Directive 77/249/EEC.[57]

Despite the above, the already-launched international commercial courts do not follow this rule. In this vein, the non-European courts are different from the ECC. For example, before the SICC, foreign lawyers may represent parties when the action is an 'offshore case'.[58] To date, this has had concrete consequences, as '[i]n March 2017, the SICC website listed 77 foreign lawyers as having been granted registration. Most of these lawyers were from England and Wales (33), Australia (13) and Hong Kong (7), with some from the USA (6), Japan (5), India (4) and Malaysia (2), and one from each of the jurisdictions of Indonesia, Philippines, New Zealand, Switzerland, South Korea, Canada and the DIFC'.[59] Of course, no lawyer can represent a party before the SICC, since '[f]oreign lawyers must satisfy various requirements in order to be granted registration, including being sufficiently proficient in the English language and agreeing to abide by a code of ethics. A lawyer must also have at least five years' experience in advocacy in order to be granted full registration'.[60] Similarly, for the DIFC Court the application to be a registered practitioner with rights of audience, must comply with 'a minimum of five years' or a minimum of two years' oral advocacy experience immediately preceding the date of application; and the applicant possesses

Innovations, Misunderstandings and Clarifications, dated 4 July 2018, http://arbitrationblog.kluwerarbitration.com/2018/07/04/international-commercial-court-china-innovations-misunderstandings-clarifications/ (accessed 8 Oct. 2018).

[49] China International Commercial Court, *The Decision on the Establishment of International Commercial Expert Committee of the Supreme People's Court*, dated 24 Aug. 2018, http://cicc.court.gov.cn/html/1/219/235/243/index.html (accessed 5 Nov. 2018).

[50] Wei Sun, *International Commercial Court in China: Innovations, Misunderstandings and Clarifications*, dated 4 July 2018, http://arbitrationblog.kluwerarbitration.com/2018/07/04/international-commercial-court-china-innovations-misunderstandings-clarifications/ (accessed 8 Oct. 2018).

[51] Abu Dhabi Global Market Courts website, *Abu Dhabi Global Market Courts Appoint UK's First Female Commercial Court Judge*, dated 26 Sept. 2018, https://www.adgm.com/mediacentre/press-releases/abu-dhabi-global-market-courts-appoint-uk-s-first-female-commercial-court-judge/ (accessed 22 Oct. 2018).

[52] Qatar International Court and Dispute Resolution Centre website, *About Us*, https://www.qicdrc.com.qa/about-us (accessed 8 Oct. 2018).

[53] Guillaume Croisant, *The Belgian Government Unveils Its Plan for the Brussels International Business Court (BIBC)*, dated 25 June 2018, http://arbitrationblog.kluwerarbitration.com/2018/06/25/the-belgian-government-unveils-its-plan-for-the-brussels-international-business-court-bibc/ (accessed 8 Oct. 2018).

[54] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 223. In the SICC there are '22 current Supreme Court judges (…) and 12 "International Judges"'. *Ibid*.

[55] In this vein, it has been stated: 'The general principle is that foreign lawyers do not have a right of audience in the courts of other jurisdictions'. Godwin, Ramsay & Webster, *supra* n. 17, at 219, 235.

[56] Cain & Carr, *supra* n. 24.

[57] *Advocatenwet* (The Netherlands's Legal Profession Act), Art. 16(B) and 16(D)(1).

[58] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 252.

[59] Singapore International Commercial Court website, *Register of Foreign Lawyers*, dated 9 Mar. 2017, http://www.sicc.gov.sg/ForeignLawyer.aspx?id=102 (accessed 20 Oct. 2018).

[60] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 236.

the right to conduct litigation and/or a right of audience before the superior courts of the jurisdiction in which he practices, and has sufficient command of the English language in order to conduct proceedings before the Courts'.[61] The case is more extreme for the ADGM Courts, in which there is no need to register as a pre-requisite for a right of audience.[62]

According to the Protocol relating to the Procedure before the PICC, '[p]arties appearing before the judge, witnesses, and any technical witnesses, including experts, *as well as parties' counsel, when they are foreign and authorized to plead before the Paris Commercial Court*, are authorized to express themselves in English, if they wish to do so'.[63] The same rule applies for the PICC of Appeals.[64]

Regarding the issue of foreign representation, it is possible to note a fundamental difference between the ECC and the newer international commercial courts, because the latter approach the issue at hand in a fashion that is more similar to international commercial arbitration, and away from the treatment that is commonly seen in the regular domestic courts.

2.4 The Issue of the Existence of an Appeal Mechanism

The existence of an appeal mechanism in international arbitration has been stated to be 'an accepted practice and a forbidden system'.[65] And therefore, 'most parties to international commercial and investor-state arbitration have no opportunity to appeal arbitral awards'.[66]

The international commercial courts have different approaches towards the existence of an appeal mechanism. On the one side, some courts allow the parties to appeal the judgments. For example, '[t]he London Commercial Court [which] has its own court procedures under pt. 58 of the Civil Procedure Rules 1998 (UK) and appeals from the Commercial Court go to the Court of Appeal (Civil division) of England and Wales'.[67] Likewise, the 'ADGM Courts are made up of a Court of First instance and a Court of Appeal that handle civil and commercial disputes'.[68] Similarly, in SICC proceedings, 'parties have a right to appeal to the Court of Appeal against any judgment or order of the SICC. However, the right of appeal may be excluded, limited or varied by a written agreement between the parties'.[69] In Paris, the PICC of Appeals, whose protocol states: 'this Chamber's jurisdiction concerns appeals made against decisions rendered in disputes of an economic and commercial nature with an international dimension, and actions made against decisions rendered in the field of international arbitration'.[70] In the Netherlands, 'NCC decisions can be appealed to the Netherlands Commercial Court of Appeal (NCCA), a special chamber of the Amsterdam Court of Appeal'.[71]

On the other side, before the prospect Brussels International Business Court, 'no appeal will be open against the BIBC's decision (with the exception of an *opposition/tierce opposition* before the BIBC for absent parties/interested third parties, and a *pourvoi en cassation* on points of law before the Supreme Court)'.[72] The same approach is followed in China, where '[t]he CICC practices the "First Instance being Final." The judgments and rulings made by the CICC are final and binding on the parties and with legal effect'.[73]

As in the previous section, here it is possible to note a fundamental difference in the treatment of the existence of an appeal mechanism to the judgments of the courts. What is most striking is the position the SICC adopted – allowing an appeal mechanism. However, the said court safeguards the agreement of the parties to the contrary.

3 Similarities

3.1 The International Commercial Courts Are Not International Courts

The ECC is a court that reviews both domestic and international commercial disputes.[74] There is an emphasis on international trade, banking, insurance and commodities. Also, it has been stated that '[alongside] its work nationally, the great preponderance of the work of the Commercial Court is international'.[75]

The reasons for the creation of the ECC (1895) have been stated as follows:

> *the business community [demanded] a tribunal or court manned by judges with knowledge and experience of commercial disputes which could determine such disputes expeditiously and economically, thereby avoiding tediously long and*

[61] Dubai International Financial Centre, *DRA Order No. 1 of 2016 in Respect of Rights of Audience and Registration in Part II of the Academy of Law's Register of Practitioners*, dated 20 Sept. 2016, https://www.difc-courts.ae/2016/09/20/dra-order-no-1-2016-respect-rights-audience-registration-part-ii-academy-laws-register-practitioners/ (accessed 20 Oct. 2018).

[62] ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. s. 219.

[63] Protocol Relating to the Procedure Before the International Chamber of the Paris Commercial Court. Art. 2(5).

[64] Protocol Relating to the Procedure Before the International Chamber of the Paris Court of Appeal. Art. 2(4).

[65] Erin E. Gleason, *International Arbitral Appeals: What Are We So Afraid Of*, 7 Pepp. Disp. Resol. L.J. 269, 270 (2007).

[66] *Ibid*.

[67] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 221.

[68] Abu Dhabi Global Market Courts website, *Abu Dhabi Global Market Courts Appoint UK's First Female Commercial Court Judge*, dated 26 Sept. 2018, https://www.adgm.com/mediacentre/press-releases/abu-dhabi-global-market-courts-appoint-uk-s-first-female-commercial-court-judge/ (accessed 22 Oct. 2018).

[69] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 241.

[70] Protocol Relating to the Procedure Before the International Chamber of the Paris Court of Appeal, Art. 1(1).

[71] Arnold Croiset van Uchelen, *The Netherlands Commercial Court, a New Forum of Choice?,* dated 16 May 2018, https://www.lexology.com/library/detail.aspx?g=b220389e-2bf9-4a7a-8b89-ecf47d5a06d2 (accessed 8 Oct. 2018).

[72] Guillaume Croisant, *The Belgian Government Unveils Its plan for the Brussels International Business Court (BIBC)*, dated 25 June 2018, http://arbitrationblog.kluwerarbitration.com/2018/06/25/the-belgian-government-unveils-its-plan-for-the-brussels-international-business-court-bibc/ (accessed 5 Nov. 2018).

[73] China International Commercial Court website, *About the CICC*, http://cicc.court.gov.cn/html/1/219/193/195/index.html (accessed 24 Oct. 2018).

[74] *In Conversation with the Hon Mrs Justice Gloster*, DBE, 5 Law & Fin. Mkt. Rev. 256, 256 (2011).

[75] Great Britain, The Commercial Court Guide: (incorporating The Admiralty Court Guide) with The Financial List Guide and The Circuit Commercial (Mercantile) Court Guide (10th edition 2018), at 6. Abingdon, Oxon [UK]: Informa Law from Routledge. Retrieved from https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,shib&db=edsebk&AN=1885627&site=eds-live.

expensive trials with verdicts given by judges or juries unfamiliar with business practices.[76]

Nowadays, the ECC, 'continues to be a destination of choice for litigants from around the world, with 69 countries represented over the past year'.[77] In such regard, the ECC's international character is refrained by the data regarding the nationality of the litigants before the Court since 2016 and until 2018.

English parties are the most common parties in the cases the Court reviews (267).[78] However, there is a significant number of foreign parties: Kazakhstan (31), Russia (20), the United States (20), Germany (18), among others.[79] The international presence tinges the Court with an undeniable international dimension. In the words of Hon. Mrs Justice Gloster: '[the ECC] has a very significant international user base. Over 80% of the claims issued involve at least one non-UK party and often the cases involve both, or indeed all, the parties being non-UK domiciled'.[80]

However, the presence of international parties is not enough to make the ECC an *international* court, because it was not created by an international instrument, like a treaty. In spite of the fact that 'statistical analysis shows that over 80% of cases before the English Commercial Court involve at least one foreign party,'[81] it is not accurate to treat this Court as truly international, as international courts or international arbitration tribunals are.

The international courts that exist today have been created by more than one sovereign, or by an international organization. That is the case, for example, for the International Court of Justice (ICJ). For the ICJ, '[t]he UN Charter provides (Article 92) that the International Court is "the principal judicial organ *of the United Nations*"; all UN members are *ipso facto* parties to the Statute of the Court (Article 93)'.[82] Likewise, the International Tribunal for the Law of the Sea (ITLOS) 'is a permanent international tribunal *established by UNCLOS* Article 287, Part XV and Annex VI (ITLOS Statute)'.[83] Also established by the UN was the International Criminal Tribunal for the former Yugoslavia.[84] The International Criminal Court was created by the Rome Statute.[85] The Court of Justice of the European Union, 'the highest court in the European Union in matters of European Union law,'[86] since its creation has existed because of a treaty.[87] These courts are international in nature because they were created – directly or indirectly – by supranational conventions,[88] which allow them to be above any national legal system and therefore not rooted in any state, as domestic courts are.

An international court does not have an international nature due to the purpose for which it was created and the nationality of the parties in the cases it adjudicates. Rather, the international nature depends on the presence of more than one sovereign in the court's creation. Also, if there is more than one creator, there shall be an international mechanism to create the court, like a treaty or an act of an international organization, which is created as well by a treaty (for instance for the UN, the UN Charter).[89]

In this context, the ADGM is '*[a]s an integral member of Abu Dhabi's judicial system*'.[90] Similarly, the QICDRC states: 'Although the Court is international in nature, it is a court of the State of Qatar'.[91] By the same token, Chief Justice Sundaresh Menon stated that both the SICC and the DIFCC 'are fully constituted *municipal courts* that have an international dimension'.[92] Moreover, he stressed that '[w]hen viewed through the lenses of the accepted legal taxonomy, they might not be regarded as international courts at all'.[93]

[76] Commercial Court of the Queen's Bench Division, *About Us*, https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/commercial-court/about-us/ (accessed 12 Oct. 2018).

[77] 2018 Portland's Annual Commercial Courts Report, https://portland-communications.com/pdf/Portland-commercial-courts-report-2018.pdf (accessed 24 Oct. 2018).

[78] *Ibid*.

[79] *Ibid*.

[80] *In Conversation with the Hon Mrs Justice Gloster*, DBE, 5 Law & Fin. Mkt. Rev. 256, 256 (2011).

[81] Commercial Bar Association, *Brexit Conflict of Laws Jurisdiction Report* (2017), at 7, https://app.pelorous.com/media_manager/public/260/COMBAR%20Brexit%20Conflict%20of%20Laws%20%20Jurisdiction%20Report%20as%20sent%20to%20MoJ%2011.1.17%20(002).pdf.

[82] James Crawford, *Brownlie's Principles of Public International Law* 722 (2012).

[83] *Ibid*., at 734–35 (2012).

[84] International Criminal Tribunal for the former Yugoslavia, http://www.icty.org/ (accessed 5 Nov. 2018).

[85] *See* Muhammed Tawfiq Ladan, *An Overview of the Rome Statute of the International Criminal Court: Jurisdiction and Complementarity Principle and Issues in Domestic Implementation in Nigeria*, 1 J. Sustainable Dev. L. & Pol'y 37, 38 (2013).

[86] Lady Justice Arden, *The Judicial System of England and Wales: A Visitor's Guide*, Judicial Office International Team (2016), at 26, https://www.judiciary.gov.uk/wp-content/uploads/2016/05/internationalvisitors-guide-12.pdf (accessed 6 Nov. 2018).

[87] The 'Treaty of Lisbon, signed on 13 Dec. 2009 entered into force on 1 Dec. 2011 amending the Treaty on European Union and the Treaty establishing the European Community, called Operation Treaty of the European Union (2007)'. Ioana Nely Militaru & Adriana Motatu, *Specialized Courts of the European Union*, 2(1) Persps. Bus. L.J. 161, 164 (2013).

[88] Denise H. Wong, *The Rise of the International Commercial Court: What Is It and Will It Work?*, 33(2) Civil Justice Q. 205, 217 (2014).

[89] In this vein, it has been incorrectly stated that, 'one of the features that makes the SICC unique is that it was *specifically created as an international commercial court* and only hears claims that are "of an international and commercial nature."' Godwin, Ramsay & Webster, *supra* n. 17, at 219, 221. Emphasis added.

[90] Abu Dhabi Global Market Courts, A*bu Dhabi Global Market Courts Appoint UK's First Female Commercial Court Judge*, https://www.adgm.com/mediacentre/press-releases/abu-dhabi-global-market-courts-appoint-uk-s-first-female-commercial-court-judge/ (accessed 22 Oct. 2018).

[91] Qatar International Court and Dispute Resolutions Centre website, https://www.qicdrc.com.qa/faq-main#t31n686 (accessed 22 Oct. 2018).

[92] Chief Justice Sundaresh Menon, *International Commercial Courts: Towards a Transnational System of Dispute Resolution* (speech delivered at the Dubai International Financial Centre ('DIFC') Courts Lecture Series 2015, DIFC Conference Centre, Dubai, 19 Jan. 2015) [11] ('International Commercial Courts').

[93] Chief Justice Sundaresh Menon, *International Commercial Courts: Towards a Transnational System of Dispute Resolution* (speech delivered at the Dubai International Financial Centre ('DIFC') Courts Lecture Series 2015, DIFC Conference Centre, Dubai, 19 Jan. 2015) [11] ('International Commercial Courts').

To support his position, Chief Justice Sundaresh Menon stated: 'the SICC and the DIFCC may only fulfil four of the seven criteria for international judicial bodies; the remaining three, which they fail to

Currently, '[t]here is no International Commercial Court created by multilateral treaty and equivalent to the International Criminal Court'.[94] Again, the creation and operation of such an international commercial court would require treaty status.[95] If such a Court were created by a treaty, of course, it would be truly international, and therefore 'its findings should be accepted as final and be directly enforceable in all Contracting States, therefore in all states participating in this approach'.[96] But, indisputably all the so-called international commercial courts are domestic courts in nature, perhaps with a more transnational façade, but it seems that the adjective 'international' attached to the name given to them is more connected to a marketing issue than to the legal precision of the word.

3.2 *The Enforcement of the International Commercial Courts' Judgments*

As the Commercial Bar Association Brexit Report (2017) states, 'International business seeking to conclude commercial contracts in the EU expects that the contracts entered into and related subsequent judgments will be enforced in an efficient and cost-effective manner. Equally, business rightly expects that choice of court agreements will be respected and enforced'.[97] In the same way, the 2018 Queen Mary University of London Survey shows that the 'Enforceability of awards' continues to be perceived as arbitration's most valuable characteristic'.[98] Not a surprise, since thanks to the New York Convention, the arbitral award 'is duly recognized and enforced as the equivalent of a final judgment of a national court in practically all jurisdictions'.[99]

Besides the fact that the courts hereby analysed intend to attract private parties from all over the world, it is undeniable that these courts operate on the basis of regional territories. For the sake of illustration, the English Commercial Court, for the period 2017–2018, reviewed 423 cases with litigants from the European Union, in contrast to 141 from Asia; 56 from the Americas; 34 from Asia; and 2 from Oceania. Up to 2017, the SICC had 'heard cases involving parties from a broad range of jurisdictions (…), [and] it appears that two thirds of the cases have had a Singapore connection in terms of the parties involved or the governing law'.[100] It is too soon to recollect data from China's ICCs, but 'is intended particularly to deal with disputes arising out of projects under the BRI'[101] (China's Belt & Road Initiative). Regarding Europe, Portland's 2018 Commercial Court Report states, '[i]f following a so-called "hard-Brexit" the Recast Brussels I Regulation is not kept, rulings made in the London Commercial Courts will no longer be enforceable in the European Union. (…) [and] [i]t is notable that five European cities – Paris, Dublin, Amsterdam, Brussels and Frankfurt – have announced the potential launch of, or increased funding for, English-speaking courts with common law features'.[102] It is not coincidental that these English-speaking European Commercial Courts are to be launched following the *Brexit* momentum: these states are aiming towards adjudicating the cases that the ECC reviews: mostly European cases. Even more, the COMBAR Brexit Report states in such regard:

> The jurisdiction of the English courts, including English choice of court and choice of law agreements, would no doubt be seen much less favourably by the international commercial community if there was a question mark over the enforcement of English choice of court agreements and if judgments of the English courts could not be enforced readily across the EU.[103]

The reason for such regional approach is not difficult to understand: enforcement of the commercial courts' judgments – as national judgments – are more feasible in states of the same region, mostly because these regions commonly have treaties in such regard. Europe has the Brussels I Regulation and the Lugano Convention. Asia has the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act. Similarly, 'DIFC Courts' judgments are enforceable within the Gulf Co-operation Council (GCC) under the GCC Convention (1996) and throughout the Arab World under the Riyadh Convention (1983);'[104] and therefore its 'judgments are fully enforceable throughout the Gulf region'.[105]

Such rationale is further enhanced with the following argument, fostering the appeal of the international commercial courts of Paris: 'Now that the two Protocols have entered into force, the two International Chambers are expected to start operating soon. This reform should offer parties a new and secure venue for the resolution of their disputes *within the boundaries of the European Union, and thus with the benefit of the EU's system of mutual recognition of judgments*'.[106]

> The NCC, as a way of promoting itself, states:
> *Dutch court judgments are amongst the most widely enforceable judgments worldwide. Thanks to instruments such as the Brussels*

satisfy, are: (a) Establishment by an international legal instrument; (b) the dispute must involve at least one sovereign state; and (c) having resort to international law (in international commercial courts, the laws to which the court will refer are ultimately still rooted in national jurisdictions, and the applicability of the rules of private international law will determine the most appropriate law)'. *Ibid*.

[94] Jerome Squires, *Do International Commercial Courts Represent a Real Challenge to International Arbitration*, at 3 (2015), https://www.ciarb.net.au/wp-content/uploads/2015/12/Essay-Jerome-Squires.pdf (accessed 22 Oct. 2018).

[95] Dalhuisen, *supra* n. 1, at 83.

[96] *Ibid*.

[97] Commercial Bar Association, *Brexit Conflict of Laws Jurisdiction Report* (2017), at 6, https://app.pelorous.com/media_manager/public/260/COMBAR%20Brexit%20Conflict%20of%20Laws%20%20Jurisdiction%20Report%20as%20sent%20to%20MoJ%2011.1.17%20(002).pdf.

[98] *Queen Mary University of London & White & Case*, 2018 International Arbitration Survey: The Evolution Of International Arbitration 2 (2018).

[99] Emilia Onyema, International Commercial Arbitration and The Arbitrator's Contract 69 (2010).

[100] Godwin, Ramsay & Webster, *supra* n. 17, at 219, 245.

[101] Ik Wei Chong, *China establishes International Commercial Courts to resolve International Commercial Disputes*, dated 24 Aug. 2018, https://www.clydeco.com/insight/article/china-establishes-international-commercial-courts (accessed 8 Oct. 2018).

[102] 2018 Portland's Annual Commercial Courts Report, https://portland-communications.com/pdf/Portland-commercial-courts-report-2018.pdf (accessed 24 Oct. 2018).

[103] Commercial Bar Association, *Brexit Conflict of Laws Jurisdiction Report* (2017), at 9, https://app.pelorous.com/media_manager/public/260/COMBAR%20Brexit%20Conflict%20of%20Laws%20%20Jurisdiction%20Report%20as%20sent%20to%20MoJ%2011.1.17%20(002).pdf.

[104] Dubai International Financial Centre website, *Frequently Asked Questions*, https://www.difccourts.ae/faq/ (accessed 29 Oct. 2018).

[105] Michael Hwang, *Commercial Courts and International Arbitration – Competitors or Partners?*, 31(2) Arb. Int'l 193, 203 (2015).

[106] Gaillard, Banifatemi & Vialard, *supra* n. 12.

> *Regulation, the Lugano Convention and the Hague Convention on the recognition and enforcement of foreign judgments in civil and commercial matters, Dutch court judgments are easily enforceable in over 30 other jurisdictions, including 5 outside the European Union. In addition to this, Dutch decisions are generally also enforceable in the United States (most states), Canada, Singapore, Hong Kong, Australia and New Zealand. This makes a Dutch judgment enforceable and valuable well beyond the borders of The Netherlands.*[107]

In spite of the fact that judgments are enforceable in states outside of the European Union, the number of jurisdictions is not high, which confirms the regional approach the international commercial courts have.

Of course, this scenario can change completely if there is a broader adherence to both the 2005 Convention on Choice of Court Agreements ('2005 Hague Convention on Choice of Court Agreements')[108] and to the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('2019 Hague Convention on Foreign Judgments').

The 2005 Hague Convention on Choice of Court Agreements has been signed and ratified so far by Mexico, Singapore, the European Union (Denmark included[109]), and Montenegro, and has been signed but not yet ratified by the United States, China and Ukraine. In the case of a broader adherence, this treaty's importance on the present debate would be immense, because it binds its Member States regarding the power of the parties to choose the competent court to adjudicate their commercial disputes,[110] *and the recognition of judicial decisions issued by the judges elected for said conflicts*.[111] In short, it 'seeks to do for litigation what the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 did for international arbitration. It promotes a scheme for the mutual enforcement of choice of court agreements across the Convention's signatories, ensuring the reciprocal recognition and enforcement of judgments handed down by the chosen courts'.[112] But, in spite of the laudable effort it entails, the treaty has failed to create a New York Convention equivalent for the cross-border recognition and enforcement of foreign judgments.[113]

However, the recently adopted 2019 Hague Convention on Foreign Judgments would enhance even more the cross-border recognition of foreign civil and commercial judgments. In fact, Article 4(1) of this treaty states: 'A judgment given by a court of a Contracting State (State of origin) shall be recognized and enforced in another Contracting State (requested State)'.[114] It was stated in this regard that '[t]he Convention will increase certainty and predictability, promote the better management of transaction and litigation risks, *and shorten timeframes for the recognition and enforcement of a judgment in other jurisdictions*, providing better, more effective, and cheaper justice for individuals and businesses alike'.[115]

The 2019 Hague Convention on Foreign Judgments is, of course, a game-changer. In this vein, it will be interesting to observe its development over time and the effect it might have on the so-called International Commercial Courts.

4 Conclusions

International commercial courts do not exist. There are courts that have been created by leading jurisdictions that aim to resolve cross-border commercial controversies. As these courts have been created – in all cases – by one state, they remain domestic in nature, with all the perks and disadvantages that being rooted in a state entails.

Undoubtedly, all the international commercial courts share the same strong desire to adjudicate international commercial cases (except the ECC, which already has a solid number of such cases). However, they differ amongst each other in fundamental aspects, such as the possibility of having foreign judges, foreign representation, and the existence of an appeal mechanism.

However, the courts share a common approach towards discouraging the confidentiality – or privacy – of the proceedings (apart from the SICC), moving away from international commercial arbitration but closer to each other. Similarly, they all remain domestic courts. Domestic courts in common law legal systems create a binding precedent, which is essential for the development of transnational commercial law. In civil law systems, judgments are still highly relevant in the creation of the law as they are strongly persuasive.[116]

Currently, the international commercial courts are far too different from each other for them to comprise a single avenue for resolving transnational commercial disputes. Nonetheless, it will be interesting to see the evolution of each of these courts, and out of them, which will succeed the most.[117] It will be possible to identify the reasons behind the parties' choosing one particular court. The courts have to remain vigilant on such reasons, in order to keep improving as a proper method for resolving transnational commercial disputes.

[107] The Netherlands Commercial Court website, https://netherlands-commercial-court.com/# (accessed 8 Oct. 2018).

[108] The treaty entered into force in the European Union on 10 Oct. 2015; ten years after its signature.

[109] Denmark signed and ratified separately.

[110] Convention on Choice of Court Agreements, Art. 5.

[111] Convention on Choice of Court Agreements, Art. 8.

[112] Wei Yao & Kenny Chng, *The Impact of the Singapore International Commercial Court and Hague Convention on Choice of Court Agreements on Singapore's Private International Law*, 37 Civil Just. Q. 1, 2 (2018). Research Collection School of Law, https://ink.library.smu.edu.sg/sol_research/2737 (accessed 14 Oct. 2018).

[113] *See* Alexander Shchavelev, *New Convention to Help Businesses Enforce Foreign Judgments*, dated 8 July 2019, https://www.pinsentmasons.com/out-law/analysis/new-convention-to-help-businesses-enforce-foreign-judgments ('The Choice of Court Convention of 2005 failed to achieve the desired change. To date, beyond the member states of the EU, it is only in effect in Mexico, Montenegro and Singapore.').

[114] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, Art. 4(1).

[115] The Hague Conference on Private International Law, *It's done: the 2019 HCCH Judgments Convention has been adopted!*, dated 8 July 2019, https://www.hcch.net/en/news-archive/details/?varevent=687 (accessed 3 Aug. 2019).

[116] In this vein, 'most jurisdictions, including those where there is no official stare decisis rule, recognize that past judgments have some type of authority. Whether judges are obliged or simply encouraged to follow previous decisions, precedent is useful for helping people exercise their liberty because it often enables them to predict how the courts may decide on a particular issue. Surely all rational legal systems require that similar cases should be treated alike'. Francisco Blavi, *The Role of Arbitral Precedent in International Commercial Arbitration: Present and Future Developments*, 6(1) Resolved: J. Alternative Disp. Resol. 1 (2015).

[117] Similarly, it will be interesting to observe if the 2019 Hague Convention on Foreign Judgments is able to obtain a considerable adherence, and the effect this will have over these courts' appeal to the parties.