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The European and Singapore International Commercial Courts: Several Movements, a Single Symphony

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A 2018 study commissioned by the European Parliament's Committee on Legal Affairs concluded that the EU should seek to establish a "European Commercial Court" at the level of the EU¹⁾ to provide commercial parties with an alternative to both the courts of the Member States and international commercial arbitration. This recommendation echoes the global competition that has arisen in the past years for the resolution of international disputes. A number of jurisdictions across the world launched initiatives to position themselves as new hubs for the resolution of international commercial disputes by establishing specialized English-speaking courts with specific, more flexible procedural rules. This post provides a short overview of the projects to create international commercial courts ("ICCs") that currently exist in Europe.

ICCs are a rather recent phenomenon. To the exception of the historical London Commercial Court ("LCC") set up in 1895, all the other ICCs were established in the last four years: the Singapore International Commercial Court ("SICC") on 5 January 2015, the Chamber for International Commercial Disputes of the District Court of Frankfurt/Main ("**Frankfurt ICC**") on 1 January 2018, the International Chamber of the Paris Court of Appeal ("**CICAP**")²⁾ on 7 February 2018, and the Netherlands Commercial Court ("**NCC**")³⁾ on 1 January 2019. The Brussels International Business Court ("**BIBC**") should become operational by 2020.

Unlike commercial arbitration which operates as a private form of dispute resolution, the ICCs have systematically been incorporated within the national judicial order, save for the BIBC. The LCC is a sub-division of the Queen's Bench Division of the High Court of Justice, one of the superior courts of England and Wales. The SICC operates as a division of the Singapore High Court, the lower section of the Supreme Court of Singapore. The Frankfurt ICC was established as a specialized chamber of the Frankfurt High Court (*Landgericht Frankfurt am Main*).

The French and Dutch courts, for their part, offer access to an ICC, both in the first instance and at the appeal level. Decisions rendered by the International Chamber of the Paris Commercial Court and the NCC District Court can thus be appealed directly in front of the CICAP and the NCC Court of Appeal, whose judgments can ultimately be challenged before the French Court of Cassation and the Dutch Supreme Court, respectively.

Finally, the BIBC will not be integrated into the national judicial system, following the Belgian Government's intent to have it serve as a semi-permanent jurisdiction, acting on an *ad hoc* basis,

and hear and decide cases at first and last instance, with no appeal possible (but for very limited exceptions).

- Jurisdiction

ICCs have a rather wide jurisdiction, which does not come as a surprise considering that their purpose is to attract as many disputes as possible in relation with international actors and businesses. The jurisdiction of the LCC thus extends “*to any claim relating to the transaction of trade and commerce*”⁴⁾ and that of the Paris international chambers to any “*transnational commercial disputes*”⁵⁾. The jurisdiction of the Singaporean, German, Dutch and Belgian ICCs are, in contrast, subject to cumulative conditions, which all include at least the two following criteria: (i) the international *and* commercial nature of the dispute, and (ii) the parties’ express agreement on the jurisdiction of the specialized chamber. Further, under the rules applicable to both the Frankfurt ICC and the NCC, the dispute must not fall under the special jurisdiction of another chamber or court, and the parties must have agreed for the proceedings to be in English.

It shall be noted that the SICC and the NCC also have jurisdiction to adjudicate annulment actions brought against international arbitration awards. Although this jurisdiction is mentioned in the CICAP Protocol, the CICAP does not deal with this type of actions at this stage.

Parties’ agreement on the jurisdiction of the relevant ICC is thus a key element to have a dispute adjudicated before it. Some ICCs even provide standard jurisdiction clauses.⁶⁾ However, if the jurisdiction of the Paris international chambers “may” result from a contractual clause it can also, in the first instance, be the consequence of a formal distribution of the dispute by the Enrollment Chamber.

- Judges

Once a dispute has been referred to an ICC, the case will usually be submitted to a panel of three judges, except when provisions allow for the possibility to have a sole judge (as is the case, for instance, before the SICC and the International Chamber of the Paris Commercial Court). As an exception, the LCC sits with eight judges. Not all ICCs require the same qualifications and experience from their judges and, when applicable, draw a distinction between judges sitting in first instance and those sitting on appeal.

Indeed, first instance ICCs are usually composed of lay judges. As such, the International Chamber of the Paris Commercial Court is only composed of non-professional judges appointed by their peers, who are experienced in international business practice and who are used to the practice of the English language.

By contrast, at the appeal level, the LCC, the SICC, the CICAP and the NCC are exclusively composed of professional judges. Interestingly, the Singaporean court may even comprise international judges from both civil law and common law traditions (such as Lord Neuberger of Abbotsbury and Dominique T. Hascher).

Finally, cases brought before the Frankfurt ICC and the BIBC will, for their part, be submitted to a mixed panel, composed of one professional judge and two lay judges, knowledgeable about business affairs and business law.⁷⁾

- English language

Amidst all these characteristics, one of the important innovations brought by the ICCs is, undoubtedly, to allow the use of the English language during proceedings. But for England and Wales and Singapore, such feature is an exceptional departure from the rule of having proceedings held in the jurisdiction's official language.

The use of the English language, however, varies from jurisdiction to another. Thus, before the Frankfurt ICC, the use of English is possible if the parties have expressly agreed whereas, before the NCC, English is the official language of the proceedings unless the parties unanimously request the tribunal to allow the use of the Dutch language for one party or for the entire proceedings. Accordingly, in the abovementioned circumstances, before the Frankfurt ICC and the NCC, the entire proceedings – including oral hearings, written submissions, evidence, as well as the final judgment – may be conducted in English.

In France, procedures before the Paris ICCs can be conducted in English save for the procedural acts (written submissions, judgments) which must be drafted in French (the judgment can be delivered together with a sworn translation in English). Experts, witnesses and parties may be heard in their language with a simultaneous translation provided at the requesting party's expense.

- Procedure

Although ICCs such as London, Singapore and Frankfurt are subject to rules of procedure commonly applicable in their respective legal orders⁸⁾, the French and Dutch ICCs adopted a specific set of procedural rules.

Indeed, in an effort to provide international actors with features of common law and international arbitration proceedings, the Paris ICCs and the NCC have established bespoke procedures that are deliberately flexible, while remaining within their national procedural framework. As such, at the outset of procedures before the Paris international chambers, a mandatory procedural timetable will be established. Before the CICAP, further conferences will even be held at various stages of the proceedings between the judges and the parties to confirm the parties' agreement on various procedural issues. In addition, a large place is given to testimonial evidence, allowing for witnesses and experts cross-examination as well as questions by the judges. As recently announced by François Ancel, president of the CICAP, the provisions of the Protocols will soon be supplemented by a detailed procedural guide for the use of parties. Among other things, parties should be provided with the opportunity to prepare a joint memorandum listing the agreed points and those that remain contentious, as well as a joint file of documents and exhibits.

Likewise, the NCC has aligned its dedicated rules of procedure with elements from international arbitration proceedings, such as the IBA Rules on the Taking of Evidence in International Arbitration, and allows the conduct of hearings to be tailored to the parties' interests and preferences. As noted by the Explanatory note to the NCC Rules of Procedure, parties may make agreements regarding an evidentiary hearing for the examination of witnesses or experts, which the court will consider in its case management decisions.⁹⁾

Applicable rules may also result from a deliberate choice. Procedures before the BIBC, for instance, will be based on the UNCITRAL Model Law on International Commercial Arbitration, thus offering many features traditionally associated with arbitration.

- Costs

As regards the costs of proceedings before the ICCs, in some jurisdictions, costs are the same as before ordinary tribunals and courts (which is notably the case in France and in Germany), while other jurisdictions have introduced higher costs before such specialized chambers. Thus, registration fees amount to £10,000 (approx. €11,400) before the LCC, S\$8,000 (approx. €5,200) before the SICC, €15,000 before the NCC District Court and €20,000 before the NCC Court of Appeal. By contrast, costs in France remain exactly the same, namely, €74.50 for a summons before the International Chamber of the Paris Commercial Court and €225 per party before the CICAP.

- Legal representation by a foreign counsel

In France and in the Netherlands, foreign lawyers will be able to represent their client before the ICCs only after concluding a cooperation agreement with a lawyer registered at the respective national bar. Before the SICC, foreign lawyers who have obtained a full registration can act directly and represent their client throughout the proceedings (partial registration only gives the right of representation on foreign law matters).

If competition was existing so far between the various jurisdictions as seats of arbitration, this rivalry will now also be a reality for national courts that have established ICCs. These specialized chambers present common characteristics but also specific features that allow international parties to choose the best option for the settlement of each of their disputes. Each jurisdiction is thus creating its own movement within the symphony of international dispute resolution – let’s take our seats, listen to the concert, and hope that the sound is right!

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References

- Study for the European Parliament's Committee on Legal Affairs (JURI Committee), Building
- ?1 Competence in Commercial Law in the Member States, authored by Prof. Dr. Giesela Rühl, published on 14 September 2018 and available [here](#).
- ?2 The Protocols on Procedural Rules Applicable to the International Chambers of the Paris Commercial Court and of the Court of Appeals of Paris (available [here](#)).
- ?3 The Rules of Procedure for the International Chamber of the Amsterdam District Court and the Amsterdam Court of Appeal (available [here](#)).
- ?4 Rule 58.1(2) of the Civil Procedure Rules.
- Article 1 of the Protocol on Procedural Rules Applicable to the International Chamber of the Paris
- ?5 Commercial Court and of the Protocol on Procedural Rules Applicable to the International Chamber of the Paris Court of Appeal.
- ?6 Standard jurisdiction clauses notably exist for the [SICC](#), the [Paris international chambers](#), and the [NCC](#).
- In the case of the BIBC, the professional judge will be a judge from the Court of Appeal of
- ?7 Brussels while the two lay judges will be selected from a list of Belgian and foreign specialists in international commercial law, and will be nominated after selection by an independent committee.
- ?8 Respectively, the England & Wales Civil Procedure Rules, the Singapore Supreme Court of Judicature Act, and the German Code of Civil Procedure.
- ?9 Rules of Procedure for the International Chamber of the Amsterdam District Court and the Amsterdam Court of Appeal, Annex I, Article 8.5.

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