

The Global Rise of International Commercial Courts: Typology and Power Dynamics

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Abstract

Over the past decade, there has been a proliferation of International Commercial Courts (ICCs) across the globe. ICCs are specialized tribunals within the domestic court hierarchy tailored for the adjudication of complicated cross-border commercial disputes. Most ICCs share similar features, such as a set of flexible procedural rules comparable to those in international arbitration, multilingual court proceedings, and the recruitment of overseas judges or foreign legal experts.

The global phenomenon calls for a systematic comparative study of the different generations of ICCs and their power dynamics. This Article will offer a unique typological framework to study the evolution of ICCs. In particular, emphasis will be placed on the power dynamics among the ICCs such as horizontal power dynamics among the ICCs inter se, and diagonal power dynamics between the ICCs and international arbitration. This Article argues that the most apt characterization of the two dimensions of power dynamics is “co-opetition,” a combination of “cooperation/collaboration/complementarity” and “competition.” While a race for cases and foreign litigants is inevitable, we argue that there is significant room for inter-regional cooperation and coordination to allow for and capitalize on different ICC niches and specialties.

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I. INTRODUCTION

Over the past decade, there has been a proliferation of International Commercial Courts (ICCs) across the globe.¹ ICCs are specialized tribunals within the domestic court hierarchy tailored for the adjudication of complicated cross-border commercial disputes. Most ICCs share similar features, including a set of flexible procedural rules comparable to those used in international arbitration, multilingual court proceedings, and the recruitment of overseas judges or foreign legal experts. As will be seen, the comparable features can be primarily explained by two reasons: (i) arbitralization of the judiciaries and (ii) the demand for competitive and user-friendly service offerings provided by these specialized courts. We shall delve into these two reasons in detail in the sections below.

The rapid global rise of ICCs is striking and stands as a game-changer in the arena of international dispute resolution institutions. It fundamentally reshapes the landscape of international legal adjudication by disrupting the traditional dichotomy between international litigation and arbitration as mutually exclusive dispute resolution service providers, and by challenging the conventional advantage of international arbitration in handling cross-border commercial disputes. According to the 2018 International Arbitration Survey, the major benefits of international arbitration are the enforceability of awards under the New York Convention, the ability to avoid national courts and local legal systems, and flexibility.² Most recently, ICCs have mushroomed in the regions alongside the Belt and Road Initiative (BRI) such as China and Kazakhstan, as well as in the post-Brexit European Continent.³ The top-down approach in the establishment of ICCs in the jurisdictions of these regions also reflects their geopolitical aspirations to rise as legal hubs and important international commercial law centers.

The global phenomenon calls for a systematic comparative study of the different types and features of ICCs and their power dynamics. In this respect, there has been a growing literature on the study of ICCs that focuses on their: (i)

¹ For statistics, please refer to Table 1 *infra*, which shows a surge in ICCs since 2015. *See also* Matthew S. Erie, *The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution*, 60 VA. J. INT'L L. 225 (2020); Janet Walker, *Specialized International Courts: Keeping Arbitration on Top of Its Game*, 85 ARB. 2 (2019); Gary Bell, *The New International Commercial Courts – Competing with Arbitration? The Example of the Singapore International Commercial Court*, 11 CONTEMP. ASIA ARB. J. 193 (2018); Xandra Kramer & John Sorabji, *International Business Courts in Europe and Beyond: A Global Competition for Justice?*, 12 ERASMUS L. REV. 1, 1–9 (2019); S.I. Strong, *International Commercial Courts and the United States: An Outlier by Choice and by Constitutional Design?*, in INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE (Xandra Kramer & John Sorabji eds., 2019).

² *See generally* Paul Friedland & Stavros Brekoulakis, *2018 International Arbitration Survey: The Evolution of International Arbitration*, QUEEN MARY U. LOND. AND WHITE & CASE (2018), <https://perma.cc/AN9P-8R4S>.

³ *See* Erie, *supra* note 1, at 227, 294.

socio-historical origins,⁴ (ii) international functions and utility,⁵ and (iii) establishment.⁶ However, there is a significant literature gap in the sense that the existing literature fails to take into account the dynamic interaction between ICCs and between ICCs and international arbitration. As a result of this gap, the literature underestimates the rising global proliferation and influence of ICCs and carries a presupposition of the dominant role of arbitration in international adjudication. In other words, ICCs—which form an indispensable part of international adjudication and global dispute resolution—are being underestimated by policy makers and legal scholars alike. This Article serves as a reality check and a timely reminder that ICCs, and their related governance and legitimacy issues, need to be attended to in order to depict a full picture of global adjudication in the twenty-first century.

In addition to building upon existing scholarship, this Article will offer a unique typological framework to study the global rise of ICCs. In particular, this Article will emphasize the power dynamics among the global ICCs, such as horizontal power dynamics among the ICCs *inter se* and diagonal power dynamics between the ICCs and international arbitration. This Article argues that the most apt characterization of the two dimensions of power dynamics is one of “co-opetition,” a combination of “cooperation/collaboration/complementarity” and “competition,” a notion borrowed from the study of International Financial Centres (IFCs) and New Legal Hubs (NLHs).⁷ While a race for cases and foreign litigants is inevitable, we argue that there is significant room for inter-regional cooperation and coordination to allow for and capitalize on different ICC niches and specialties.

This Article proceeds as follows. Section II studies the global rise of the ICCs and creates a new typology to classify different ICCs worldwide. In doing so, we propose a new typology that takes into account ICCs’ socio-historical origins, the process of their establishment, jurisdictional coverage, and, most importantly, the politico-economic incentives behind their establishment. This Article then groups them into three generations: ICCs 1.0, ICCs 2.0, and ICCs 3.0. Section III then conducts a systematic and in-depth comparative study of the three types/generations of the global ICCs. Section IV examines the power dynamics associated with the existing ICCs. The issue of “competition” or “cooperation/collaboration/complementarity” can be viewed both horizontally

⁴ *Id.*

⁵ See Pamela K. Bookman, *The Adjudication Business*, 45 YALE J. INT’L L. 227 (2020); Walker, *supra* note 1; Bell, *supra* note 1.

⁶ See Sheng Zhang, *China’s International Commercial Court: Background, Obstacles and the Road Ahead*, 11 J. INT’L DISP. SETTLEMENT 150 (2020).

⁷ See, e.g., Douglas W. Arner et al., *Assessing Hong Kong as an International Financial Centre* (Univ. H.K. Faculty of L. Rsch. Paper No. 2014/012, 2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427609.

and diagonally. The horizontal view concerns the power dynamics among the three generations of ICCs *inter se*. The diagonal view of the global rise of ICCs highlights the relationship between transnational litigation and international arbitration. Conventional discourse often refers to the two as opposite and competing service providers engaged in a “race to the top” in the adjudication business.⁸ Section V concludes that the “arbitralization” of judiciaries as a new trend of the transnational legal order has emerged and is evident in the ICC evolution. A majority of ICCs have incorporated elements of arbitration and Alternative Dispute Resolution (ADR) elements into their court procedures to attract adjudication business. Although it is difficult to estimate the precise impact of ICCs on the transnational legal order given that many have been established only recently, the issues of governance, legitimacy, and norm-creation by ICCs will have far-reaching impacts in international law.

II. TYPOLOGY

A. Global Picture

Typology is defined as the “ordering of entities into groups of classes on the basis of their similarity.”⁹ The approach is to “minimize within-group variance” such that each group internally is as “homogeneous as possible.”¹⁰

The typology of ICCs can be established in accordance with the following non-exhaustive list of independent variables: (i) establishment history, (ii) establishment region/jurisdiction, (iii) legal origin (common law/civil law), (iv) court infrastructure, (v) judge capacity-building and recruitment of foreign judicial/legal expertise, (vi) procedural design (including language of proceedings), (vii) governing law, and (viii) caseload.¹¹ We start by providing an overview of the global picture of the existing ICCs.

Currently, there are thirteen major or significant ICCs established around the world.¹² This number does not include the Brussels International Business Court (BIBC), which was proposed in 2020 but abandoned in 2021, as discussed in Section III. An overview of the geographical distribution and the year of establishment of the thirteen ICCs is illustrated in Table 1 below.

⁸ Bookman, *supra* note 5, at 231.

⁹ Cesare P.R. Romano, *A Taxonomy of International Rule of Law Institutions*, 2 J. INT'L DISP. SETTLEMENT 241, 243 (2011); KENNETH BAILEY, *TYPOLOGIES AND TAXONOMIES: AN INTRODUCTION TO CLASSIFICATION TECHNIQUES* 1 (1994).

¹⁰ Romano, *supra* note 9, at 243.

¹¹ See Zhang, *supra* note 6, at 150–74, 153.

¹² See Stephan Wilske, *International Commercial Courts and Arbitration — Alternatives, Substitutes or Trojan Horse?*, 11 CONTEMP. ASIA ARB. J. 153, 172 (2018).

TABLE 1: AN OVERVIEW OF THE MAJOR ICCs ACROSS THE GLOBE¹

Year of Establishment	ICCs	Jurisdiction / Region
1895	London Commercial Court (LCC)	U.K. / Europe
1995	Commercial Division of the New York State Supreme Court (NYCD)	U.S. / North America
2006	Dubai International Financial Centre Court (DIFC Court)	U.A.E. / Middle East
2010	Qatar International Court and Dispute Resolution Centre (QIC)	Qatar / Middle East
2015	Singapore International Commercial Court (SICC)	Singapore / Asia
	Abu Dhabi Global Market Court (ADGM)	U.A.E. / Middle East
2017	The Kazakhstan Astana International Financial Centre Court (AIFC)	Kazakhstan / Asia
2018	China International Commercial Court (CICC)	China / Asia
	The Chamber for International Commercial Disputes of the Frankfurt Regional Court (FRC)	Germany / Europe
	International and European Commercial Chamber of the Paris Court (ICCP)	France / Europe
2019	Netherlands Commercial Court (NCC)	Netherlands / Europe
2020	Brussels International Business Court (BIBC) (abandoned)	Belgium / Europe
	Stuttgart Commercial Court (SCC)	Germany / Europe
	Mannheim Commercial Court (MCC)	

¹ See generally INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE (Xandra Kramer & John Sorabji eds., 2019).

As shown in the table above, there has been a global emergence of ICCs over the past decade, with eleven new additions since 2010. Regarding their geographical distribution, ICCs are scattered across the globe, including in Europe, North America, the Middle East, and Asia.

The emergence of ICCs worldwide has prompted scholars to look into the relationship between ICCs and international arbitration.¹³ The orthodox account assumes a competition for forum selection clauses in commercial contracts, creating a race-to-the-top drive for optimizing procedural rules and efficiency.¹⁴ In 2015, a report published by the U.K. Ministry of Justice implied the competition view by noting the “increasing competition in the international dispute resolution market with other jurisdictions marketing themselves to attract disputes traditionally adjudicated in London.”¹⁵ The 2015 U.K. Ministry of Justice Report aims to understand what drives litigants to initiate commercial litigation and choose particular fora for their litigation.¹⁶

Upon closer examination, ICCs are region-centric niche courts equipped with optimized procedural rules with specific geopolitical focuses. Rather than treating ICCs and international arbitration as “competitors” or “substitutes” within a unified supply market,¹⁷ this Article argues that each ICC offers “complementary” services specifically catered for their target businesses in different markets. This “complementary view” will become apparent following our global survey of ICCs in Section II below.

B. Various Approaches

In order to systematically analyze the global rise of ICCs, this Article creates a new typology for categorizing them worldwide by building on existing scholarship in the field. In the following paragraphs, we present our original typology, which contributes to the scholarly understanding of the power dynamics of ICCs.

One school of scholarship has focused on the degree to which individual ICCs are affiliated with the English legal system and, hence, has categorized ICCs as (i) “traditional,” (ii) “transplant,” or (iii) “hybrid.”¹⁸ This categorization has focused on the extent to which an ICC incorporates the features of a traditional English court. In a way, this typology could be traced back to the legal origins theory proposed by Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei

¹³ See, e.g., Michael Hwang, *Commercial Courts and International Arbitration—Competitors or Partners?*, 31 *ARB. INT’L* 193 (2015); Bookman, *supra* note 5.

¹⁴ See Daniel Klerman & Greg Reilly, *Forum Selling*, 89 *S. CAL. L. REV.* 241, 243 (2016).

¹⁵ EVA LEIN ET AL., *FACTORS INFLUENCING INTERNATIONAL LITIGANTS’ DECISIONS TO BRING COMMERCIAL CLAIMS TO THE LONDON BASED COURTS* 3 (2015), <https://perma.cc/469B-23Z8>.

¹⁶ See *id.* at 1.

¹⁷ See Wilske, *supra* note 12, at 182.

¹⁸ Christopher Bisping, *International Commercial Courts and the Dominance of English Law*, Seminar at University of Hong Kong (Sept. 25, 2019) (unpublished presentation) (on file with author).

Shleifer (“LLS”) in the World Bank Doing Business initiative.¹⁸ In the LLS legal origins school, the central claim is that the English common law system is generally hospitable for advanced financial markets and is conducive to economic development.¹⁹ Similarly, there have been attempts to evaluate the new ICCs by benchmarking them against the London Commercial Court (LCC) in London and the English legal system, which has dominated the ICC market for a long period of time.²⁰ ICCs were essentially divided into either benchmark common law ICCs (the LCC in the U.K.), or various “runner-up” ICCs, including the Singapore International Commercial Court (SICC) in Singapore and the Dubai International Financial Centre Court (DIFC Court) and Qatar International Court and Dispute Resolution Centre (QIC) in the Middle East.²¹ Based on this school of thought, the “transplant” and “hybrid” ICCs naturally flow from the common law. As such, a “traditional” ICC would use the common law system and the English language in the ICC while maintaining the domestic legal system. A “transplant” ICC would introduce some common law features in ICC proceedings but with its own modifications, such as the use of its own language.²² A “hybrid” ICC, on the other hand, would include features of arbitration in addition to the traditional court rules. While this method of categorization can capture some features of different ICCs in the world, particularly their resemblance to the LCC, it fails to discern the deeper differences between ICCs. It follows that this categorization may become an Anglo-centric model for the purpose of comparison. For instance, the ICCs in the U.K. and Singapore both adopt the common law system and the English language directly and are thus “traditional” ICCs. However, there are significant differences between the two, as the subsequent analyses show. For example, the SICC uses International Judges, whereas the LCC consists solely of domestic English judges. Moreover, the LLS school excludes the Commercial Division of the New York State Supreme Court (NYCD) in the U.S. and the recently established China International Commercial Court (CICC) in China from its typology.

Another school of scholarship was coined by Pamela Bookman, under which ICCs are split into three categories: (i) “old-school international commercial courts” such as the LCC and the NYCD; (ii) “investment-minded courts” such as

¹⁸ See generally Rafael La Porta et al., *The Economic Consequences of Legal Origins*, 46 J. ECON. LIT. 285 (2008).

¹⁹ See John Ohnesorge, *Legal Origins and the Tasks of Corporate Law in Economic Development: A Preliminary Exploration*, 2009 BYU L. REV. 1619 (2009).

²⁰ See Erie, *supra* note 1; Walker, *supra* note 1; Bell, *supra* note 1.

²¹ See Wilske, *supra* note 12, at 160.

²² While Christopher Bisping, *supra* note 18, did not point out specific examples of “hybrid courts,” the ICCP in Paris and FRC in Germany may potentially qualify as candidates for this category, given their flexibility in opting for common law-based English law, while at the same time retaining their domestic judges (nationality requirement). See *infra* Table 4.

the QIC and the DIFC Court in the Middle East; and (iii) “aspiring legal hubs,” which are subdivided into the SICC and the European Courts.²³ Bookman’s typology is distinguished from the legal origins approach because it takes into account the economic and political motivations which underlie the establishment of ICCs. Under this categorization, the CICC established by China was separately discussed and was not included within any of the above categories. While this typology has the benefit of considering the underlying motivations of various ICCs, the scope of “legal hubs” (category (iii)) is vaguely defined. Arguably, the QIC and the DIFC Court can also be categorized as aspiring legal hubs, given their status as jurisdictional carve-outs in the U.A.E. This unique status surmounts the pre-existing legal restraints in the Middle East Islamic law that may not be favorable to trade and commerce (for example, the legal prohibition against *riba* (interest charged on loans)).²⁴ Moreover, such classification ultimately boils down to the question of what qualifies a legal hub, which is an elusive concept largely driven by the state’s marketing or image work.

Zhang adopted a different approach by classifying ICCs in accordance with the legislative arrangements that empowered their establishment.²⁵ The first category consists of the SICC and the Kazakhstan Astana International Financial Centre Court (AIFC Court), which were established via constitutional amendments.²⁶ The second category consists of ICCs in Germany, France, the Netherlands, and Belgium (the latter of which the proposed court has been abandoned, see Section III below), which were established via amendments to the host states’ domestic laws. These courts are situated within their respective domestic legal systems. The third category comprises the CICC, the DIFC Court, the QIC, and the Abu Dhabi Global Market (ADGM) Court. The third category is an intermediate category, as these courts have their own independent legal and regulatory framework (as in the second category) but were not established by constitutional amendment.

Drawing from the above literature, we distinguish this Article from the existing scholarship and propose a new typology for classifying different ICCs worldwide. First, as observed by Tom Ginsburg, the missing key word in the analysis of legal institutions in economic development is “politics.”²⁷ In his article,

²³ Bookman, *supra* note 5.

²⁴ See Hesham M. Sharawy, *Understanding the Islamic Prohibition of Interest: A Guide to Aid Economic Cooperation Between the Islamic and Western Worlds*, 29 GA. J. INT’L & COMP. L. 153, 161 (2000).

²⁵ See Zhang, *supra* note 6, at 153.

²⁶ See CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT) ACT NO. 39 OF 2014; CONSTITUTIONAL STATUTE OF THE REPUBLIC OF KAZAKHSTAN ON THE ASTANA INTERNATIONAL FINANCIAL CENTRE, Constitutional Statute No. 438-V ZRK of 7 Dec. 2015, amended 30 Dec. 2019.

²⁷ Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 L. & SOC’Y REV. 829, 842 (2000).

Ginsburg revisits the relationship between law and economics, observing the tension between the traditional assumption of the centrality of formal, rational law and the empirical evidence in Asia.²⁸ As observed in the Law and Development Movement, the causal relationship between law, development, and politics is multidirectional.²⁹ Max Weber and Douglass North proposed a neoclassical or “New Institutional Economics” (NIE) model of causation between law and development, concluding that a formal, rational legal system is a necessary condition for economic development.³⁰ Such a causal link is severely challenged, however. A close examination of the empirical experience in East Asian economies would reveal that a robust legal system may not be a necessary condition for economic growth.³¹ Expanding on Ginsburg’s conclusion, we submit that the underlying geopolitical and economic motivations behind the emergence of international legal infrastructure should be the primary focus of ICC typology.

Given the above premises, we propose that the new typology shall take into account three main factors: (i) the evolution (in other words, establishment history and geographical location) of ICCs; (ii) the politico-economic motives behind the establishment of ICCs; and (iii) the newer features of ICCs that make them as welcoming and effective as international arbitration. Inspired by Menkel-Meadow’s work on the evolution of dispute resolution,³² ICCs are classified into three generations: (i) ICCs 1.0, which includes ICCs in “established jurisdictions;” (ii) ICCs 2.0, which largely cover ICCs in “emerging jurisdictions;” and (iii) ICCs 3.0, which consist of those ICCs with geopolitical-economic motivations. This model of typology, which highlights the waves of ICC evolution, is based on scholarship by Janet Walker,³³ Gary Bell,³⁴ and Matthew Erie,³⁵ who approached ICCs by their socio-historical origins and legal origins. It also builds on the work of Pamela Bookman,³⁶ Stephan Wilske,³⁷ and Sheng Zhang,³⁸ who

²⁸ See *id.* at 830.

²⁹ See *id.* at 842.

³⁰ See Max Joite, *The China Problem and the England Problem: Counterexamples to Law and Development Theories of Douglass C North and Max Weber*, 11 H.K. J. L. STUD. 143 (2017).

³¹ See Ohnesorge, *supra* note 19; Harold J. Berman, *Some False Premises of Max Weber’s Sociology of Law*, 65 WASH. U. L. Q. 758, 759 (1987).

³² See generally Carrie Menkel-Meadow, *Mediation 3.0: Merging the Old and the New*, ASIAN J. MEDIATION 1 (2018). The author reviews the world history of mediation and classifies mediation into mediation 1.0, mediation 2.0, and mediation 3.0.

³³ See generally Walker, *supra* note 1.

³⁴ See generally Bell, *supra* note 1.

³⁵ See generally Erie, *supra* note 1.

³⁶ See generally Bookman, *supra* note 5.

³⁷ See generally Wilske, *supra* note 12.

³⁸ See generally Zhang, *supra* note 6.

examined ICCs by looking into the underlying motives driving their establishment to assess their specific geopolitical and economic considerations.

This Article presents a novel and unique typology, which clarifies and aids scholarly understanding of the power dynamics of ICCs—namely, a three-generation typology of ICCs.

The first generation of ICCs is grouped as ICCs 1.0, which refers to those traditional ICC giants in “established jurisdictions.” These jurisdictions are global dispute resolution fora seeking to maintain their dominance in the transnational litigation market. The LCC in London and NYCD in New York are long-established, well-recognized, and world-renowned ICCs with a high volume of international cases and high-quality judgments that are cited around the world.³⁹

ICCs 2.0 alludes to the second wave/generation of ICCs established in “emerging jurisdictions,” which aim to enter the adjudication business market, often with a specific geographical focus. Examples of the ICCs in this group include the SICC in Singapore; the DIFC Court, QIC, and ADGM Court in the Middle East; and the AIFC in Kazakhstan.

Third-generation ICCs, which are grouped as ICCs 3.0, are characterized by their strong politico-economic motivations. This category refers to specialized commercial courts triggered by specific politico-economic incidents and aims. They can be broadly sub-categorized into (i) post-Brexit European courts⁴⁰ and (ii) the Belt and Road Court—specifically, the CICC established by China.

Moreover, we observe that ICCs have all evolved to become more comparable to international arbitration. ICCs are increasingly “arbitralized” by allowing ICCs to assume jurisdiction over disputes without any link to the home country of the ICC (as is the case in the SICC).⁴¹ Many ICCs also allow judges with foreign and international law expertise to sit on the bench,⁴² which parallels the ability to pick arbitrators with specific expertise. The ICCs 2.0 and 3.0 have

³⁹ See generally Bell, *supra* note 1; Erie, *supra* note 1; Walker, *supra* note 1.

⁴⁰ Category (i) of ICCs 3.0 includes but is not limited to: the International and European Commercial Chamber of the Paris Court (ICCP), the Chamber for International Commercial Disputes of the Frankfurt Regional Court (FRC), the Netherlands Commercial Court (NCC), and the failed Brussels International Business Court (BIBC). See Bookman, *supra* note 5, at 231. Note that Bookman’s analysis rejected the proposition that competition is the sole driving force behind the creation of European ICCs. Instead, Bookman argued that the establishment of ICCs in Europe and beyond is also a result of particular domestic political economies and other forces. Some courts (e.g. Amsterdam) emerge as aspiring litigation hubs without an emphasis on arbitration and without an ambition to overtake London as the prime destination for holistic dispute resolution services. Others (Kazakhstan, Qatar, etc.) seek to attract foreign capital and investment, rather than seeking to establish themselves as legal hubs. Bookman emphasized the relationship between domestic and international driving forces, rather than the Brexit factor. *Id.* at 230.

⁴¹ See Man Yip, *The Resolution of Disputes Before the Singapore International Commercial Court*, 65 INT’L & COMP. L. Q. 439 (2016).

⁴² For a list, including the SICC, DIFC Court, QIC, ADGM Court, see *infra* Table 3.

significantly enhanced their competitive edge by setting themselves up to attract the widest range of disputes possible.

It is noteworthy that the Hong Kong Court of Final Appeal (HKCFA) has been classified as an ICC in work by Matthew Erie and Janet Walker.⁴³ This may be attributed to the fact that these articles classifying the HKCFA as an ICC focused on the “New Legal Hubs” (as in Erie’s analysis) or “specialized commercial courts” (as in Walker’s analysis) rather than ICCs per se.⁴⁴ While the HKCFA consists of an international bench with non-permanent judges from overseas common law jurisdictions, for present purposes, the HKCFA is not included as an ICC for two reasons. First, it is not a specialized court or division solely dedicated to the adjudication of commercial cases with an international nature. The HKCFA, apart from commercial cases, also hears criminal, constitutional, and administrative cases. This is distinguished from specialized ICCs such as the SICC in Singapore, which is a division of the Singapore High Court (subordinate to the Court of Appeal) and only hears international commercial cases.⁴⁵ Second, the HKCFA does not act as a court of first instance. As entrenched in Article 82 of the Basic Law of the Hong Kong Special Administrative Region (the Basic Law), the HKCFA is the final appellate court vested with the power of final adjudication.⁴⁶ This contrasts with the SICC, which takes on first-instance cases either from parties’ agreement, by virtue of their jurisdictional clause, or by case transfers from the Singapore High Court.⁴⁷ The key difference is that the HKCFA is not subject to further appeals. In contrast, a judgment from the SICC is subject to appeals to the Court of Appeal of the Singapore Supreme Court.

III. THREE GENERATIONS OF ICCS

Before delving into the analyses of the global ICCs 1.0 to 3.0, for purposes of the comparative study, we list various features of the ICC landscape that allow for a comparison of the efficacy of the various ICCs. These features include establishment history, region/jurisdiction, legal origin (common law/civil law), court infrastructure, judges (number, domestic, foreign), procedural design, governing law, and caseload distribution.

⁴³ See Walker, *supra* note 1, at 4. See also Erie, *supra* note 1.

⁴⁴ *Id.*

⁴⁵ For a clear illustration of the SICC and its associated hierarchy, see SING. INT’L COM. CT., *Overview of the SICC* (2021) <https://perma.cc/2MGB-UX5L>.

⁴⁶ Xianggang Jiben Fa, art. 82 (HK).

⁴⁷ See Man Yip, *Singapore International Commercial Court: A New Model for Transnational Commercial Litigation*, 32 CHINESE (TAIWAN) Y.B. INT’L. L. & AFF. 155, 165 (2015).

A. ICCs 1.0: Established Jurisdictions

Both the U.K. (London) and the U.S. (New York) are well-regarded as traditional and established common law jurisdictions. ICCs in both jurisdictions are, in fact, separate domestic courts or divisions within their ordinary judicial systems.

1. London Commercial Court (LCC)

The LCC was established in 1895 as a subdivision of the Queen’s Bench Division of the English Court, one of the three divisions of the English High Court, alongside the Chancery Division and the Family Division.⁴⁸ Within the Queen’s Bench Division, there are specialist courts, including the Administrative Court (which hears applications for judicial reviews), the Business and Property Court, and the Technology and Construction Court.⁴⁹ Since 2017, the LCC has been incorporated as part of the Business and Property Court, with a “Financial List” dedicated to high-value complex commercial cases.⁵⁰ The LCC, currently consisting of thirteen English judges who are empowered to sit for both the Admiralty Court and the Commercial Court, hears all commercial disputes and acts as a supervisory court for international arbitration.⁵¹ The LCC primarily accepts cases if the parties agree to submit to the jurisdiction of the English courts by a choice of forum clause.⁵² Other bases of jurisdiction include: (i) the defendant being domiciled in England; and (ii) for claims with multiple defendants, one defendant being an “anchor defendant” subject to English jurisdiction, through which the plaintiff obtains permission to sue any other “necessary or proper party” to that claim.⁵³ LCC’s internationality is highlighted by its party composition, with 77% of its cases in 2019 involving at least one foreign party and 43% solely involving foreign parties.⁵⁴ As recorded in the latest Portland’s Annual Commercial Courts Report, which analyzes judgments from the LCC to identify notable trends such as the nationality and background of the users of the

⁴⁸ See JUDICIARY OF ENG. AND WALES, THE QUEEN’S BENCH GUIDE 2021 12–13 (2021), <https://perma.cc/9SDQ-65MQ>.

⁴⁹ *Id.*

⁵⁰ See Bell, *supra* note 1, at 195; Pierre Berger & Michael Huertas, *The Belgian Solution to a Brexit Dispute Resolution Problem: Say Hello to the Brussels International Business Court*, 3 J. INT’L BANKING L. & REG. 25, 26 (2018).

⁵¹ See HM CTS. & TRIBUNALS SERV., *Admiralty and Commercial Court Judges* (2015), <https://www.gov.uk/guidance/admiralty-and-commercial-court-judges> (last visited Jan. 26, 2022).

⁵² This is one of the jurisdictional routes set out in the case of *Tugushev v. Orlov* [2019] EWHC 645 (Comm).

⁵³ *Id.* at 42.

⁵⁴ THECITYUK, LEGAL EXCELLENCE, INTERNATIONALLY RENOWNED: UK LEGAL SERVICES 2020 7 (2020), <https://perma.cc/EH2K-QDYA>; RICHARD FENTIMAN, INTERNATIONAL COMMERCIAL LITIGATION [1.19] (2d. ed. 2010).

court and the drivers behind the use of LCC, litigants in the LCC in 2021 came from over seventy-five countries.⁵⁵ The LCC has a remarkable caseload, with 1,476 hearings listed and 1,013 claims heard in 2020.⁵⁶

The reasons for the LCC's success are manifold.⁵⁷ First, the U.K.'s common law makes the LCC attractive to litigants. English law is regarded as the "go-to" legal framework for international commerce.⁵⁸ According to Walker, the LCC becomes an ICC not by optimizing its procedural rules, but by setting itself out as a model for transnational commercial litigation.⁵⁹ This is particularly true when transnational commercial parties do not have a satisfactory judicial system in their home jurisdictions.⁶⁰ Similarly, a survey by the European Parliament revealed that English law is the leader in Europe's litigation market.⁶¹ Second, the availability of international interlocutory remedies under the English common law, such as anti-suit injunctions and worldwide asset-freezing injunctions, provides extra protection to foreign litigants.⁶² Third, the LCC's use of English, a global *lingua franca*, in its court proceedings further consolidates its dominant position. Fourth, the LCC is a century old. Its first-mover status gives it another advantage over all other ICCs. The flip side of that coin, however, may be that the newer ICCs can be more flexible in creating unique and innovative court proceedings (for example, the introduction of foreign judges or use of UNCITRAL Model Law) to attract the market share from the LCC.

The strength of the LCC is not limited to its institutional excellence. Its primacy is also extended by its close proximity and historical connection with the London Court of International Arbitration (LCIA) and the London Maritime Arbitration Association (LMAA), over whose arbitral awards it exercises supervisory jurisdiction.⁶³ The availability of both quality litigation and arbitration for cross-border disputes in the same location creates an "agglomeration effect."

⁵⁵ PORTLAND, COMMERCIAL COURTS REPORT 2021 1, <https://portland-communications.com/publications/commercial-courts-report-2021/> (last visited Nov. 17, 2021).

⁵⁶ THECITYUK, *supra* note 54, at 27; JUDICIARY OF ENG. AND WALES, THE COMMERCIAL COURT REPORT 2017-2018 (INCLUDING THE ADMIRALTY COURT REPORT) 10 (2018), <https://perma.cc/23YY-SUUC>.

⁵⁷ *See generally* Christopher Bisping, Associate Professor of Law, International Commercial Courts and the Dominance of English Law (Feb. 25, 2019) (unpublished presentation) (on file with author).

⁵⁸ Zain Al Abdin Sharar & Mohammed Al Khyalaifi, *The Courts in Qatar Financial Centre and Dubai International Financial Centre: A Comparative Analysis*, 46 H.K. L.J. 529, 530 (2016).

⁵⁹ *See* Walker, *supra* note 1, at 3.

⁶⁰ *See* LEIN ET AL., *supra* note 15, at 15.

⁶¹ *See* Giesela Rühl, *Building Competence in Commercial Law in the Member States*, EUR. PARL. COMM. ON LEGAL AFFS. (2018), <https://perma.cc/Z9ZK-RXCX>.

⁶² *See generally* FENTIMAN, *supra* note 54.

⁶³ Walker, *supra* note 1, at 3.

The same effect is found in other prominent legal hubs, such as Singapore.⁶⁴ Such agglomeration minimizes transaction costs and facilitates efficient dispute resolution.⁶⁵

However, the LCC faces considerable challenges in the present-day. First, the LCC has increasingly fierce competition from other ICCs. In particular, the U.K. Ministry of Justice's report highlighted the ICCs of New York, Singapore, and the European Union as key competitors of the LCC.⁶⁶

Apart from that fierce competition, the LCC's leading position is further undermined by the uncertainty caused by Brexit. A 2018 report by the European Parliament suggested that, after Brexit, commercial parties might be forced to consider alternatives to the LCC.⁶⁷ Indeed, the Portland Commercial Courts Report 2021 confirms that prediction, showing that the proportion of LCC litigants from EU member states declined from 14.9% in 2016–17 to only 11.5% in 2020–21. Given that the U.K. will be precluded from relying on the Brussels Regime, a mutual judicial recognition and enforcement regime *inter se* the EU member states, the enforceability of judgments rendered by the English courts in EU member states will be in doubt going forward.⁶⁸ However, an English judgment with valid choice-of-court agreements may arguably be enforced in EU member states via the Convention of 30 June 2005 on Choice of Court Agreements (“Hague Convention”) given that the U.K. is still a signatory to the Hague Convention. In any event, the significant level of uncertainty as to the impact of Brexit on the LCC could possibly compromise its core values of predictability and legal certainty. Indeed, as will be explained in Section II.C below, the uncertainty surrounding Brexit has prompted the proliferation of ICCs on the European continent, including the establishment of the ICCP, the Netherlands Commercial Court (NCC), and the abandoned BIBC, all of which capitalized on this opportunity to compete with their London counterpart.⁶⁹

2. The Commercial Division of the New York Supreme Court (NYCD)

The New York Supreme Court established the Commercial Division, dedicated to adjudicating complex commercial disputes, in 1995, in reaction to its

⁶⁴ See Erie, *supra* note 4, at 15. See also MICHAEL STORPER, THE REGIONAL WORLD: TERRITORIAL DEVELOPMENT IN A GLOBAL ECONOMY 54 (1997). For example, Singapore is the home of the SICC, the Singapore International Arbitration Centre (SIAC), and the Singapore International Mediation Centre (SIMC).

⁶⁸ See Erie, *supra* note 1, at 13, 30.

⁶⁶ See LEIN ET AL., *supra* note 15, at 36.

⁶⁷ See Rühl, *supra* note 61, at 33.

⁶⁸ See Wilske, *supra* note 12, at 161.

⁶⁹ See *id.* at 182.

loss of “adjudication business” to international arbitration and to the Delaware courts.⁷⁰ The jurisdiction of the NYCD is limited to high-value commercial disputes, with a current monetary threshold of \$500,000 (exclusive of punitive damages, interests, costs, disbursements, and counsel fees).⁷¹ For foreign cases with little or no connection to New York, the only requirements to establish jurisdiction before the NYCD are showing that: (i) the value of the dispute exceeds \$1 million and (ii) there is a choice-of-forum clause whereby the parties agree to submit to the jurisdiction of the courts of the New York State.⁷²

The NYCD covers a wide range of commercial cases, including land and conveyances, professional negligence (to a certain extent), and insolvency cases.⁷³ It also aims to attract transnational commercial parties by producing high-quality judgments⁷⁴ with cultivating the perception of having lower litigation costs.⁷⁵ The NYCD also benefits from the economic power of the U.S. by attracting domestic parties and parties with assets in the U.S. At the same time, the NYCD has increasingly incorporated ADR elements within its conventional court procedures. For example, in 2019, it amended its Rule 3(a).⁷⁶ Under the new rule, the NYCD may “direct . . . the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation” if the presiding justice finds that “it would be in the interest of the [case’s] just and efficient processing.”⁷⁷ This mediation service is free of charge for the first three hours of the session.⁷⁸ Additionally, the NYCD’s “Mandatory Mediation Pilot Project,” introduced from 2014 to 2016, refers “every fifth Commercial Division case” to the ADR Program for mandatory mediation sessions. According to an Administrative Order from January 28, 2016, this pilot

⁷⁰ See Bookman, *supra* note 5, at 237.

⁷¹ See 22 NYCRR § 202.70(a).

⁷² See N.Y. Gen. Oblig. Law § 5-1402. See also Bookman, *supra* note 5, at 237.

⁷³ The range of commercial cases dealt with by the NYCD includes breach of contract or fiduciary duty, transactions involving commercial real property, legal malpractice arising out of representation in commercial matters, and dissolution of corporations.

⁷⁴ See Walker, *supra* note 1, at 5 n.13.

⁷⁵ See LEIN ET AL., *supra* note 15, at 27.

⁷⁶ See Administrative Order of the Chief Administrative Judge of the Courts on the Amendment of Rule 3(a) of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), AO/399/18 (Dec. 5, 2018), <https://perma.cc/X7X6-6VYA>.

⁷⁷ 22 NYCRR § 202.70.3(a); Rule 3 of the Rules and Procedures of the Alternative Dispute Resolution Program, Comm. Div. of the N.Y. County Sup. Ct., <https://perma.cc/4WG9-KAG5>.

⁷⁸ Rule 7 of the Rules and Procedures of the Alternative Dispute Resolution Program, Comm. Div. of the N.Y. County Sup. Ct., <https://perma.cc/4WG9-KAG5>.

program was positively received, showing the success of integrating ADR elements with traditional court procedures to form a “one-stop” legal hub.⁷⁹

3. Findings on ICCs 1.0

A comparative study of the LCC and the NYCD elucidates their differences. The NYCD focuses more on the domestic litigation market. As the leading forum of commercial dispute resolution within the U.S.,⁸⁰ the NYCD attracts a significant amount of litigation of all types, but most suits come from U.S. parties.⁸¹ Some have suggested that the NYCD has limited incentives to attract foreign parties because of New York State’s limited resources for subsidizing the judiciary.⁸² This observation may betray a deeper underlying difference between the LCC and the NYCD: while the LCC is a court established within its country’s domestic legal system, the NYCD does not benefit from internal referral routes that operate among different U.S. state courts within the U.S. legal system.

There are, however, some commonalities between the LCC and the NYCD. For one, they are both located in “go-to” common law jurisdictions, which have well-established legal systems and rule-of-law traditions. Not surprisingly, at an institutional level, the infrastructures of the LCC and NYCD are both largely similar to the domestic courts of their respective jurisdictions. Additionally, even though both the LCC and NYCD are governed by local laws on jurisdiction, a choice-of-forum clause would be sufficient to establish their jurisdiction in these disputes.

Currently, although both the LCC and NYCD have enjoyed a relatively strong reputation in the international dispute resolution market, they are also facing increasing competition and challenges from other ICCs. As a result, there is a need for the ICCs 1.0 to consolidate their comparative advantages by keeping their dominant market positions. On the other hand, there may be limited room for improvements of the ICCs 1.0. Their reputations may preclude change. Because these ICCs rely on the inherent renown of their respective domestic legal systems, it would be difficult to make major structural reforms to them. Moreover, change may be restricted by the administrative limitations of their respective countries’ domestic courts, such as rules against the use of foreign judges.⁸³

⁷⁹ Administrative Order of the Administrative Judge for Civil Matters, AO-ADR22016 (NY Sup. Ct. Jan. 28, 2016), <https://perma.cc/455N-Z4YR>.

⁸⁰ See Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 CORNELL L. REV. 1, 49 (2008).

⁸¹ See *id.* at 59.

⁸² See *id.*

⁸³ For the basic requirements of U.K. judges in the LCC, see Suzanne Rab, *Legal Systems in the UK (England and Wales): Overview*, PRACTICAL L. (Mar. 1, 2021), <https://perma.cc/J7KV-QPAQ>. See also *Becoming a Judge*, JUDICIARY OF ENG. AND WALES, <https://perma.cc/73DB-RMJR> (imposing strict

One further commonality among the ICCs 1.0 is their use of only domestic judges. Under the British judicial system, judicial appointments are only open to citizens of the U.K., the Republic of Ireland, or a Commonwealth country.⁸⁴ Similarly, the composition of the NYCD is subject to the U.S. citizenship requirement for appointing judicial officers under U.S. law.⁸⁵ The lack of foreign judges, however, does not seem to impede the development of these ICCs 1.0.⁸⁶ Both the LCC and the NYCD are embedded within their domestic judicial systems, and there is no standalone legislative framework governing the composition of judges and jurisdiction. These structural ties to the domestic judicial system would also imply that both the LCC and the NYCD are governed by their respective domestic jurisdictional limits.

This feature is in stark contrast with the substantial inclusion of foreign judges in ICCs 2.0 in emerging jurisdictions. The inclusion of foreign judges from well-established jurisdictions can boost the legitimacy and quality of the dispute resolution reputation of emerging jurisdictions. Table 2 below wraps up the important comparative features of the ICCs 1.0.

requirements on nationality: only citizens of the U.K., the Republic of Ireland or a Commonwealth country, including dual nationals, are eligible to be appointed as a British judge); Tom Dannenbaum, *Nationality and the International Judge: The Nationalist Presumption Governing the International Judiciary and Why It Must Be Reversed*, 45 CORNELL INT'L L.J. 77 (2012).

⁸⁴ See Rab, *supra* note 83.

⁸⁵ See *Citizenship Requirements for Employment in the Judiciary*, ADMIN. OFF. U.S. CTS., <https://perma.cc/AU5H-JJUQ>.

⁸⁶ See generally HE QISHENG (何其生), GUOJI SHANGSHI FAYUAN YANJIU (国际商事法院研究) [RESEARCH ON INTERNATIONAL COMMERCIAL COURTS] (2019).

TABLE 2: FEATURES OF ICCs 1.0 IN ESTABLISHED JURISDICTIONS

	London Commercial Court (LCC)	Commercial Division of the New York Supreme Court (NYCD)
Establishment Year	1895	1995
Jurisdiction	<ul style="list-style-type: none"> Any claim arising out of the transaction of trade and commerce Parties' agreement¹ 	<ul style="list-style-type: none"> Commercial cases exceeding U.S. \$500,000² Parties' agreement³
Judges	<ul style="list-style-type: none"> Up to 15 domestic judges (currently 13) <i>Foreign judges unavailable</i> 	<ul style="list-style-type: none"> 25 domestic judges Led by Chief Judge Janet DiFiore <i>Foreign judges unavailable</i>
Governing Law	<ul style="list-style-type: none"> English law 	<ul style="list-style-type: none"> New York State law
Caseload	<ul style="list-style-type: none"> 1,013 claims in 2020 77% involved at least one foreign party in 2019⁴ 43% purely international parties in 2019⁵ 	<ul style="list-style-type: none"> 452,414 case filings in 2019

¹ HM CTS. & TRIBUNALS SERV., THE COMMERCIAL COURT GUIDE 6 (10th ed. 2017), <https://perma.cc/5UJC-6B3F>.

² 22 NYCRR § 202.70(a).

³ 22 NYCRR § 202.70 Annex C.

⁴ THECITYUK, LEGAL EXCELLENCE, INTERNATIONALLY RENOWNED: UK LEGAL SERVICES 2020 7 (2020), <https://perma.cc/GZ9H-6PP8>.

⁵ *Id.*

B. ICCs 2.0: Emerging Jurisdictions

Since 2006, there has been a wave of creation of new ICCs in emerging jurisdictions in the Middle East and Asia. These ICCs are markedly different from the ICCs 1.0, notably as to their use of a combination of domestic and

international judges, their unique legal status within “jurisdictional carve-outs,” and their drastically different methods of and motives for attracting foreign investment.

1. The Middle East ICCs

There are three notable ICCs in the Middle East: the DIFC Court in Dubai (established in 2006), the QIC in Qatar (established in 2010), and the ADGMC in Abu Dhabi (established in 2015). Comparative studies show that these three Middle East ICCs share a number of similar features.

These three ICCs all adopt a common law approach.⁸⁷ In terms of jurisdiction, they all deal with civil and commercial cases involving their respective Middle East regions.⁸⁸

These courts all consist of a combination of domestic and foreign judges. The DIFC Court currently has thirteen judges: five domestic judges from the U.A.E., four judges from the U.K., three judges from Australia, and one judge from Malaysia.⁸⁹ The QIC, similarly, has two domestic Qatari judges and eleven foreign judges, from countries like the U.K., Singapore, New Zealand, South Africa, and Cyprus.⁹⁰ The ADGMC’s eight-judge bench is entirely composed of foreign judges from the U.K., Australia, and New Zealand.⁹¹ The chief judges of all three courts are currently foreign judges: the DIFC Court’s Chief Justice is former Chief Justice of Malaysia Zaki Azmi, the President of the QIC is former Chief Justice of England and Wales Lord Thomas, and the ADGMC’s Chief Justice is former Deputy President of the Supreme Court of the U.K. Lord Hope.

All of these courts are situated in “exceptional zones”: economic zones in the Middle East that have substantially different legal systems from the countries in which they are located and thus are treated as “jurisdictional carve-outs.” While Islamic law is practiced in the countries in which they are located, the special economic zones adopt a distinctly Western legal system. One difference between Islamic law and English common law is Islamic law’s prohibition against *riba*, a form of interest charged on loans, which may deter foreign investment as it is not on par with international commercial practice.⁹² For example, the ADGM has specific legislation, the Application of English Law Regulations 2015, that governs the region.⁹³ These Middle Eastern economic zones were set up, to promote trade

⁸⁷ See Eric, *supra* note 1, at 268.

⁸⁸ See Bookman, *supra* note 5, at 240–46.

⁸⁹ Judges, DIFC COURTS, <https://perma.cc/Q678-RL2Y>.

⁹⁰ *The Court Overview*, QATAR INT’L CT. & DISP. RES. CTR., <https://perma.cc/E7Y4-RJ6F>.

⁹¹ Judges, ABU DHABI GLOBAL MKT., <https://perma.cc/3GPH-BZJA>.

⁹² See Sharawy, *supra* note 24, at 161.

⁹³ See ADGM, APPLICATION OF ENGLISH LAW REGULATIONS 2015 (Mar. 3, 2015), <https://perma.cc/L6MC-XQ6C>. Bookman, *supra* note 5, at 240–46.

and attract foreign investment.⁹⁴ The predominant motive of the three ICCs is to serve their respective economic zones. As admitted by the Chief Executive and Registrar of the DIFC Court in a 2018 speech, “the driving force has not been competition between courts for cases, but rather competition between countries for investment.”⁹⁵ This is a fundamentally different motive when compared with ICCs 1.0, whose main aim is to consolidate and enlarge their share in the global litigation market. The Middle East ICCs, on the other hand, were established to boost the confidence of foreign investors, thus promoting business for their particular economic zones.

The phenomenon of establishing ICCs in “exceptional zones” or “jurisdictional carve-outs” is shared among various emerging economies. Matthew Erie observed that exceptional zones, including special economic zones (SEZs) (for example, Shenzhen in China), free trade zones (FTZs) (for example, Shanghai Free Trade Zone in China), often overlap with emerging legal hubs such as the DIFC in Dubai and CICC in Shenzhen. It was further suggested that the exceptional zones may potentially lead to “jurisdictional turf wars” with their host states given their fundamentally different legal origins and jurisprudential basis.⁹⁶ Erie further suggested that from a wider anthropological perspective, such conflict can possibly produce ideological dissonance. For example, it was observed that the domestic courts in Dubai voiced discontent over the idea of “conduit jurisdiction” of the DIFC Court, arguing that its jurisdiction was unduly expanded.⁹⁷ As a compromise, a Joint Tribunal consisting of both domestic judges and judges from the DIFC Court was established in 2016 to adjudicate on cases of jurisdictional conflicts. Similarly, the proposal for establishing the BIBC in the European Continent encountered fierce pushback from the local judiciary. For example, when the Belgian Federal Government submitted the BIBC Bill, the High Council of Justice issued an open letter criticizing the “English-speaking court project” (*le projet de tribunal anglophone*) with criticisms surrounding the BIBC’s impact on domestic courts, its impartiality, and source of funding.⁹⁸

The Middle East ICCs use common methods of and have similar motives in attracting investors. First, they are heavily built on the basis of the U.K. legal system. All three courts draw foreign judges predominantly from common law jurisdictions, and both the QIC and ADGMC are led by former senior justices of

⁹⁴ Erie, *supra* note 1, at 244.

⁹⁵ See Wilske, *supra* note 12, at 163.

⁹⁶ See Erie, *supra* note 1, at 231.

⁹⁷ *Id.* at 271.

⁹⁸ See Erik Peetermans & Philippe Lambrecht, *The Brussels International Business Court: Initial Overview and Analysis*, 12 ERASMUS L. REV. 42 (2019); Bookman, *supra* note 5, at 256. For a more detailed news coverage on the opposition from the local judiciary, see Georgia Antonopoulou & Xandra Kramer, *The International Business Courts Saga Continued: NCC First Judgment – BIBC Proposal Unplugged*, CONFLICTOFLAWS.NET (Mar. 27, 2019), <https://perma.cc/6HVF-GJQA>.

the British supreme court levels. In light of the popularity of the English common law in resolving transnational commercial disputes, it is clear that the Middle East ICCs hope to attract investors by introducing the common law system.⁹⁹ As Michael Hwang (former Chief Justice of the DIFC Court) vividly put, the DIFC Court is a “common law island in a civil law ocean,” given that the U.A.E. laws are primarily based upon the civil law tradition.¹⁰⁰ This is a particularly bold and innovative move, given that the domestic law systems of the countries in which the Middle East ICCs sit are significantly different from the English common law.

Second, both the DIFC Court and QIC incorporate substantial ADR elements into the formal court proceedings. The QIC provides that judges can be separately appointed as arbitrators and administer arbitrations if the QIC is chosen as an arbitral seat.¹⁰¹ The DIFC Court has gone even further, providing a mechanism for creditors to convert a monetary judgment rendered by the DIFC into an arbitral award via the DIFC’s collaboration with the London Court of International Arbitration (LCIA).¹⁰² In this way, the converted award will become an LCIA award that is globally enforceable under the New York Convention.¹⁰³ The process of converting a DIFC Court judgment to an LCIA award is as follows:

- (i) The parties submit to the jurisdiction of the DIFC Court by a jurisdiction agreement together with an arbitration agreement requiring the Referral Criteria to be satisfied.
- (ii) The Referral Criteria includes an enforcement dispute between a judgment creditor and judgment debtor with respect to money claimed as due under a judgment.
- (iii) A judgment creditor can refer the “enforcement dispute” to the DIFC-LCIA Arbitration Centre for obtaining a possible arbitral award.¹⁰⁴

This unusual feature of converting DIFC Court judgments into arbitral awards is presumably because the U.A.E. is not yet a signatory to the Hague Convention. The Hague Convention enables mobility of judgments from courts of nations that are signatories to the Convention, thus facilitating global movement of judgments. Nevertheless, the DIFC Court judgments are enforceable in the Gulf Region by virtue of the Gulf Cooperation Council

⁹⁹ See Al Abdin Sharar & Al Khulaifi, *supra* note 58, at 530.

¹⁰⁰ Jason Grant Allen, *A Common Law Archipelago*, BLACKSTONE CHAMBERS (Oct. 15, 2020), <https://perma.cc/LB73-ERZ9>.

¹⁰¹ See Bookman, *supra* note 5, at 242. See also Walker, *supra* note 1, at 4.

¹⁰² See Bookman, *supra* note 5, at 244.

¹⁰³ The New York Convention currently has 161 signatories throughout the world. *Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, U.N. COMM’N ON INT’L TRADE L., <https://perma.cc/8BTZ-DGDC>.

¹⁰⁴ See *Amended DIFC Courts Practice Direction No. 2 of 2015 – Referral of Judgement Payment Disputes to Arbitration*, DIFC COURTS (May 27, 2015), <https://perma.cc/5GUG-TLDE>.

Convention for the Execution of Judgments, Delegations and Judicial Notifications.¹⁰⁵

The DIFC Court has the highest volume of cases among the three ICCs in the Middle East. According to recent statistics, the DIFC Court had fifty-four first instance cases recorded in 2017, followed by QIC with sixteen cases and ADGMC with thirteen cases.¹⁰⁶ The success of the DIFC Court seems to derive both from the quality of its bench and decisions and the innovation of converting DIFC judgments into LCIA arbitral awards.

2. Astana International Financial Centre Court in Kazakhstan (AIFC)

While Astana (renamed as Nur-Sultan in 2019), Kazakhstan, is located in Central Asia, the AIFC is similar to the Middle East ICCs. Like the Middle East ICCs, the AIFC sits within a special economic zone and borrows heavily from the U.K. common law system.¹⁰⁷ In addition, the AIFC is guided by other common law jurisdictions, which makes the AIFC more connected with common law jurisprudence around the world.¹⁰⁸

Erie pointed out that the AIFC is not entirely a replica of the DIFC Court model. On the one hand, the AIFC does not serve as a conduit jurisdiction and hence avoids the encroachment of jurisdiction concern from the domestic courts as in Dubai's case.¹⁰⁹ As seen from the Dubai experience, the DIFC Court once positioned itself as a "conduit jurisdiction," under which litigants may seek to enforce a foreign judgment in the onshore Dubai courts via the DIFC conversion mechanism even if there is no connection between the foreign judgment and the DIFC Court.¹¹⁰ Such a "short-cut" enforcement path was the subject of criticism because it may bypass the local Dubai courts and may constitute an encroachment upon the jurisdiction of the onshore Dubai courts. This sentiment also led to pushback from the Joint Tribunal of the Dubai Courts and the DIFC, which ruled that the onshore Dubai courts shall have the prevailing jurisdiction over the DIFC on parallel proceedings.¹¹¹ By contrast, the AIFC adopted the "opt-in" model, a jurisdiction based on the free election of parties.¹¹² On the other hand, the AIFC

¹⁰⁵ See Hwang, *supra* note 13, at 193, 203.

¹⁰⁶ *DIFC Courts Annual Review 2017*, DUBAI INT'L FIN. CTR. CT., <https://perma.cc/C9FD-N2DA>.

¹⁰⁷ See Erie, *supra* note 1, at 276.

¹⁰⁸ AIFC Management Council, AIFC Court Regulations Resolution of the AIFC Management Council (5 Dec. 2017) [hereinafter AIFC Regulations] art. 29(2).

¹⁰⁹ See Erie, *supra* note 1, at 271.

¹¹⁰ Joseph Chedrawe, *Enforcing Foreign Judgments in the UAE: The Uncertain Future of the DIFC Courts as a Conduit Jurisdiction*, 11 DISP. RES. INT'L 133, 136 (2017).

¹¹¹ See *Gulf Navigation Holding P.S.C. v. Jinhai Heavy Indus. Co. Ltd.*, Ct. of First Instance, DIFC (Cassation No. 1/2017); Dubai Decree No. 19 of 2016 on the formation of the Joint Tribunal.

¹¹² Nicolás Zambrana-Tévar, *The Court of the Astana International Financial Center in the Wake of Its Predecessors*, 12 ERASMUS L. REV. 122, 122–135 (2019).

does not form part of the judicial system of Kazakhstan. It is an independent court within the AIFC economic zone.¹¹³

The AIFC also has arguably greater ambitions than do the Middle East ICCs. While the latter focus on parties from the Gulf region, the AIFC targets parties across the Eurasian region.¹¹⁴ This is a much larger geographical reach than the AIFC economic zone per se. One possible explanation for the AIFC's ambition may be the unique geographical location of Kazakhstan. Notably, the AIFC's target region is likely to overlap with China's BRI and may potentially compete with the CICC in the BRI litigation landscape. In fact, the Kazakhstan government has launched the "Nurly Zhol," a national infrastructure development initiative focused on transforming Kazakhstan into a major Eurasian hub by developing and modernizing roads, railways and ports in Kazakhstan.¹¹⁵ Given the significant geographical and political overlap, this would make the AIFC a potential competitor with the CICC.

With respect to jurisdiction, the AIFC accepts disputes that involve interpretation of the AIFC Acts, between AIFC participants, on operations within or regulated by the AIFC, and by parties' agreement.¹¹⁶ It currently has eleven judges who are all from the U.K., with former Deputy President of the Supreme Court of the U.K., Lord Mance, as its Chief Justice.¹¹⁷ The AIFC law is guided by common law principles, and parties may agree on applicable law so long as such law does not contradict the Kazakhstan public policy.¹¹⁸

3. Singapore International Commercial Court (SICC)

The SICC, established in Singapore in 2015, is arguably the most competitive among the ICC 2.0 group. It is considered a key competitor with the LCC, as identified by the U.K. Ministry of Justice in a 2015 report.¹¹⁹ This is a remarkable achievement, given that Singapore's legal history is much shorter compared to that of the U.K. and, likewise, the SICC vis-à-vis the LCC. As a common law jurisdiction in Asia, Singapore is also much smaller than the U.K. in terms of geographical size and population. Singapore is also less established in terms of its volume of cases and jurisprudential development.

¹¹³ See CONSTITUTIONAL STATUTE OF THE REPUBLIC OF KAZAKHSTAN ON THE ASTANA INTERNATIONAL FINANCIAL CENTRE, art. 13 (2018).

¹¹⁴ *Vision, Mission and Objectives*, ASTANA INT'L FIN. CTR., <https://perma.cc/72NY-UYB8>.

¹¹⁵ See Erie, *supra* note 1, at 276. See also Kazakhstan Industrial Development Fund, "Nurly Zhol 2020-2025": Support for domestic car manufacturers.

¹¹⁶ AIFC Regulations, art. 26(1).

¹¹⁷ *Justices – Who We Are*, ASTANA INT'L FIN. CTR., <https://perma.cc/5ZJY-6YBN>.

¹¹⁸ AIFC Regulations, art. 29.

¹¹⁹ See EVA LEIN ET AL., *supra* note 15, at 36.

An important distinguishing factor of the SICC lies in its wider target market. Unlike other ICC 2.0 group courts that focus on facilitating the development of a particular economic zone (for example, the DIFC, QIC, and AIFC) the SICC aims to promote the entire country of Singapore in terms of transnational dispute resolution services for international users.¹²⁰ One of the major aims of the SICC is to develop “a freestanding body of international commercial law” for the international audience.¹²¹ As such, while the majority of claims in the Middle East ICCs involve Middle Eastern clients, the SICC serves clients from around the world and focuses primarily on international disputes.¹²²

Another key feature is the strong support from the host state, as the SICC has strong government backing. The idea of establishing the SICC can be traced back to the Opening of Legal Year 2013 where Chief Justice of Singapore Sundaresh Menon shared his vision for the creation of an SICC that would expand the internationalization and export of Singaporean law.¹²³ Shortly after, the Chief Justice and the Minister of Law, K. Shanmugam, announced that an SICC Committee would be created to study the viability of the establishment of the SICC.¹²⁴ In the model of the SICC, there has been a close collaboration between government department/ministers and the judiciary in the policy-making of judicial capacity-building. This echoes Erie’s remarks that the government plays a central role in most of the NLHs by having controlling stakes in the “corporate entities” of the dispute resolution services.¹²⁵

It has been suggested that the SICC’s success can be attributed to its reputable and internationally diverse bench and its flexible procedural rules.¹²⁶ The procedural rules of the SICC are strongly influenced by the arbitration procedural model, triumphing party autonomy. A typical example is that the “open court” presumption can be overridden by parties’ agreement or by parties’ application to the court for a confidentiality order.¹²⁷ In other words, the SICC will take a more liberal approach in dealing with international commercial disputes than do the domestic courts.¹²⁸ These strengths can be summarized by the delicate balance

¹²⁰ See Man Yip, *supra* note 41, at 444; Bookman, *supra* note 5. See also SICC COMM., REPORT OF THE SINGAPORE INTERNATIONAL COMMERCIAL COURT COMMITTEE 9–11 (2013).

¹²¹ Andrew Godwin et al., *International Commercial Courts: The Singapore Experience*, 18 MELB. J. INT’L L. 219, 221 (2017).

¹²² See Denise H. Wong, *The Rise of International Commercial Court: What is It and Will It Work?*, 33 CIV. JUST. Q. 205, 209 (2014).

¹²³ See SICC COMM., *supra* note 120, at 3.

¹²⁴ See *id.* at 3–4.

¹²⁵ Erie, *supra* note 1, at 246.

¹²⁶ See Bookman, *supra* note 5, at 247.

¹²⁷ *Id.* at 278–79.

¹²⁸ See *id.* at 247.

between borrowing from the traditional English common law system and making innovations distinct from other ICCs. Moreover, Singapore's top-down ambition in constructing a suite of premium dispute resolution services has been shown in the agglomeration of the SICC, SIAC, and the SIMC (together, the SICC-SIAC-SIMC).¹²⁹ In 2010, the Maxwell Chambers was set up in Singapore to accommodate the SIAC and the SIMC, an arrangement which facilitates "one-stop-shop" dispute resolution services for international users and minimizes costs through cross-institutional cooperation.

Structurally, the SICC is a subdivision of the Singapore High Court, which is part of the Supreme Court of Singapore, and designed to deal with transnational commercial disputes.¹³⁰ In terms of its jurisdiction, the SICC has the power to hear cases if the dispute is of an international and commercial nature and parties have directly submitted to the SICC jurisdiction under a written jurisdiction agreement.¹³¹ There is no requirement that the case has an actual connection with Singapore. The choice of the SICC in the jurisdictional agreement as the only connecting factor would suffice.¹³² Moreover, the SICC has jurisdiction to hear cases transferred directly from the Singapore High Court, which means the SICC has a stable intake of cases in addition to the cases submitted via parties' jurisdiction agreements.¹³³ Hence, its caseload is guaranteed. The intake of cases from internal referral resembles the LCC, which is a division of the English High Court, whereas the case intake via the parties' jurisdiction clauses mirrors international arbitration. This "party opt-in" feature, without the need to establish any link to Singapore, makes the SICC a "hybrid" court offering complementary services between traditional court proceedings and international arbitration, which significantly enhances its competitiveness and is unparalleled among the ICC 2.0s.

Apart from guaranteed caseload, the cost of proceedings in the SICC is reasonable. The current daily rates for a single-judge-bench and a three-judge-bench for trial at the SICC are fixed at SG\$3,500 and \$10,500, respectively.¹³⁴ The clear rules for fees, charges, and the reasonable costs set out in the Singapore Rules of Court provide predictability for businesses to conduct

¹²⁹ See Man Yip, *The Singapore International Commercial Court: The Future of Litigation?*, 12 ERASMUS L. REV. 82, 83 (2019).

¹³⁰ See Bookman, *supra* note 5, at 247.

¹³¹ See Supreme Court of Judicature Act, Rules of Court, ch. 322, § 80, Order 110, Rule 7 (2014) (Sing.) [hereinafter SGJA Rule 7].

¹³² *Id.*

¹³³ See Bookman, *supra* note 5, at 248.

¹³⁴ See Supreme Court of Judicature Act, Rules of Court, ch. 322, § 80, Order 110, Rule 48 (2014) (Sing.).

proceedings in the SICC. This can be contrasted with the concern voiced over the cost and time spent in international arbitration.¹³⁵

There are currently sixteen International Judges sitting on the SICC bench in addition to the eighteen domestic Singapore High Court judges.¹³⁶ Different from other ICCs 2.0 courts, which draw overseas judges exclusively from common law jurisdictions (predominantly the U.K.), the SICC draws judges not just from a broader group of common law jurisdictions (the U.K., the U.S., Canada, Australia, New Zealand, and Hong Kong), but also leading civil law jurisdictions (such as France).¹³⁷ The SICC draws from a wide pool of judicial talents from both the East and the West.¹³⁸ Arguably, the judicial profile is more internationally diverse and boasts expertise across a broader range of legal systems and culture as compared to both the ICCs 1.0 and other ICCs 2.0 counterparts. As the latest statistics show, thirty cases were decided at the SICC in 2020.¹³⁹ The total decided caseload at the SICC has reached ninety-five since its establishment in 2015.¹⁴⁰ Notably, there has been an increase in the SICC caseload in 2020, which can be contrasted to the LCC (an example of an ICC 1.0) which saw a decrease in its usual case volume.¹⁴¹

4. Findings on ICCs 2.0

ICCs 2.0 are established to serve the economic interest of a particular country or an economic zone, with three salient features as follows. First, a common feature of these economic zones is their aim to increase parties' confidence and improve the quality of the court's decisions and to attract foreign investment and commercial parties by borrowing features from ICCs 1.0 (i.e., the common law system). Second, while ICCs 2.0 look to ICCs 1.0 for guidance, the former have more innovative features. For example, although the home countries for many ICCs 2.0 do not have common law legal systems, some of them have carved out areas of common law with constitutional amendments or regulatory changes. This is unparalleled among ICCs 1.0, which established themselves as domestic courts embedded within their own national legal systems. Third, a considerable number of foreign judges (especially from common law jurisdictions)

¹³⁵ Friedland & Brekoulakis, *supra* note 2. As shown in the 2018 Queen Mary Survey, 67% of the respondents indicated that "cost" is the "worst characteristic" of international arbitration. *Id.*

¹³⁶ See *About the SICC - Judges*, SING. INT'L COM. CT., <https://perma.cc/KKV7-Q8DG>.

¹³⁷ See *id.*

¹³⁸ See *id.*

¹³⁹ See *Hearings & Judgments: Judgments*, SING. INT'L COM. CT., <https://perma.cc/CK3A-LBJ7>.

¹⁴⁰ *Id.*

¹⁴¹ See *Case Summaries*, SING. INT'L COM. CT., <https://perma.cc/G8UE-RNK9>; *Hearings & Judgments: Judgments*, *supra* note 139. The number of SGHC(I) cases decided for 2016-20 are six, twelve, nine, fifteen, and twenty-seven respectively. See also Pamela K. Bookman & Matthew S. Erie, *Experimenting with International Commercial Dispute Resolution*, 115 AJIL UNBOUND 5, 9 (2021).

are introduced to the ICCs 2.0. In addition, the SICC in Singapore has stood out among the ICCs 2.0 as an unconventional, hybrid court model by offering complementary services between traditional court proceedings and international arbitration. The SICC is an integral part of the Singapore High Court—its mother court—and can hear cases directly transferred from its mother court. This intake of cases from internal referral has inspired the CICC in China to be affiliated with the Chinese Supreme People’s Court, which will be analyzed in the ICCs 3.0 group. Moreover, ICCs 2.0 have evolved in the direction of being comparable to international arbitration. This is particularly evident in the case study of the SICC. Singapore allows the SICC to assume jurisdiction over disputes without any link to Singapore and then relies on the Hague Convention to facilitate global judgment mobility to mirror what the New York Convention does for global enforcement of arbitral awards.¹⁴² In addition, Singapore allows for judges with foreign and international law expertise of both common law and civil law backgrounds, which parallels the ability to pick arbitrators with the most suitable expertise, an example of the evolution of ICCs 2.0 to become increasingly internationalized and competitive to attract the widest range of disputes possible. This evolutionary trend of amassing newer features of international arbitration and increasing comparability to international arbitration service providers is also evident in the wave of the ICCs 3.0.

Table 3 summarizes the comparative features of the ICCs 2.0.

¹⁴² Friedland & Brekoulakis, *supra* note 2.

TABLE 3: FEATURES OF ICCs 2.0 IN EMERGING JURISDICTIONS

Establishment Year	2015	2006	2010	2015	2018
	Singapore International Commercial Court (SICC)¹	Dubai International Financial Centre (DIFC) Court²	Qatar International Court and Dispute Resolution Centre (QIC)³	Abu Dhabi Global Market (ADGM) Court⁴	Astana International Financial Center (AIFC) Court, Kazakhstan⁵
Jurisdiction	<ul style="list-style-type: none"> International and commercial cases in nature Parties' agreement Singapore High Court's direct transfer 	<ul style="list-style-type: none"> Civil and commercial matters involving the DIFC Parties' agreement 	<ul style="list-style-type: none"> All civil disputes taking place in the Qatar Financial Centre (QFC) All civil disputes with parties from the QFC Parties' agreement 	<ul style="list-style-type: none"> Civil and commercial cases involving the ADGM Cases involving companies registered or operating in the ADGM Disputes relating to the ADGM 	<ul style="list-style-type: none"> Interpretation of AIFC acts Disputes between AIFC participants Operations within or regulated by the AIFC Parties' agreement
Judges	<ul style="list-style-type: none"> 16 International Judges, from both the common law system (U.K., U.S., New Zealand, Australia, Canada, Hong Kong), and civil law system (France, Japan) 25 domestic judges (Singapore High Court judges) 	<ul style="list-style-type: none"> 8 foreign judges, all from the common law system (U.K., Malaysia, Singapore, Australia) 5 domestic U.A.E. judges Led by Chief Justice Tun Zaki Bin Azmi from Malaysia 	<ul style="list-style-type: none"> 11 foreign judges, mostly from the common law system (U.K., Singapore, New Zealand) 2 Qatari judges 	<ul style="list-style-type: none"> 8 foreign judges, all from the common law system (U.K., Australia, and New Zealand) Led by Chief Justice Lord Hope from U.K. 	<ul style="list-style-type: none"> 10 foreign judges, all from U.K. Led by Lord Mance from U.K.

1 (2) Jurisdiction (parties' agreement): *See* Supreme Court of Judicature Act, Rules of Court, ch. 322, § 80, Order 110, Rule 7 (2014) (Sing.); (3) Judges: *See* Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 CORNELL L. REV. 1, 51 (2008); Janet Walker, *Specialized International Courts: Keeping Arbitration on Top of its Game*, 85 ARB. 2, 3 (2019).

2 (2) Jurisdiction (parties' agreement): Law No. 12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre Keeping Arbitration on Top of its Game, 85 ARB. 2, 3 (2019).

3 (2) Jurisdiction (parties' agreement): The Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules, § 9; (3) Judges: *The Court Overrides*, QATAR INTL. CT. & DISP. RESOLUTION CTB., <https://perma.cc/CBY8-QKPB> (last visited Oct. 10, 2021). (4) Governing law: The Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules, § 9.

4 (2) Jurisdiction: Abu Dhabi Global Market Courts, Divisions and Jurisdiction (Court of First Instance) Rules, § 16 (2015); Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market, art. 13(6) (2013); (3) Judges: *See* Walker, *supra* note 1, at 3. (4) Governing law: Abu Dhabi Global Market, Application of English Law Regulations, art. 1 (2015).

5 (2) Jurisdiction (parties' agreement): AIFC Regulations, art. 26(1); (3) Judges: *See* S.I. Strong, *International Commercial Courts and the United States: An Outline by Choice and by Constitutional Design*, in INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE (Kandra Kramer & John Sorabji eds., 2019); (4) Governing law: AIFC Regulations, art. 29.

TABLE 3: FEATURES OF ICCS 2.0 IN EMERGING JURISDICTIONS (CONTINUED)

	Singapore International Commercial Court (SICC) ¹	Dubai International Financial Centre (DIFC) Court ²	Qatar International Court and Dispute Resolution Centre (QIC) ³	Abu Dhabi Global Market (ADGM) Court ⁴	Astana International Financial Center (AIFC) Court, Kazakhstan ⁵
Governing Law	<ul style="list-style-type: none"> • Singaporean law 	<ul style="list-style-type: none"> • DIFC law applies by default • Parties may select other law 	<ul style="list-style-type: none"> • QFC law applies by default • Parties may agree on other applicable law, so long as the application does not contradict Qatar public policy 	<ul style="list-style-type: none"> • English law 	<ul style="list-style-type: none"> • AIFC law applies by default • Parties may agree on other applicable law, so long as the application does not contradict Kazakhstan public policy • Courts are guided by common law jurisdictions
Caseload	<ul style="list-style-type: none"> • 27 decided cases in 2020 	<ul style="list-style-type: none"> • 952 cases in 2019 (92 first instance cases) 	<ul style="list-style-type: none"> • 19 decided cases in 2020 	<ul style="list-style-type: none"> • 53 cases in 2020 	<ul style="list-style-type: none"> • 11 cases in 2020

1 (2) Jurisdiction (parties' agreement): *See* Supreme Court of Judicature Act, Rules of Court, ch. 322, § 80, Order 110, Rule 7 (2014) (Sing.); (3) Judges: *See* Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 CORNELL L. REV. 1, 51 (2008); Janet Walker, *Specialized International Courts: Keeping Arbitration on Top of its Game*, 85 ARB. 2, 3 (2019).

2 (2) Jurisdiction (parties' agreement): Law No. 12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre, art. 5 (2004); (4) Governing law: The Rules of the Dubai International Financial Centre Courts (2014); (5) Case load: DIFC Courts, Annual Report 22–23 (2019).

3 (2) Jurisdiction (parties' agreement): The Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules, § 9; (3) Judges: *The Court Overview*, QATAR INT'L CT. & DISP. RESOLUTION CTB., <https://perma.cc/CBY8-QKPB> (last visited Oct. 10, 2021). (4) Governing law: The Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules, § 9.

4 (2) Jurisdiction (parties' agreement): Abu Dhabi Global Market Courts, Divisions and Jurisdiction (Court of First Instance) Rules, § 16 (2015); Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market, art. 13(6) (2013); (3) Judges: *See* Walker, *supra* note 1, at 3. (4) Governing law: Abu Dhabi Global Market, Application of English Law Regulations, art. 1 (2015).

5 (2) Jurisdiction (parties' agreement): AIFC Regulations, art. 26(1); (3) Judges: *See* S.I. Strong, *International Commercial Courts and the United States: An Outlier by Choice and by Constitutional Design?*, in INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE (Sandan Kramer & John Sorabji eds., 2019); (4) Governing law: AIFC Regulations, art. 29.

C. ICCs 3.0: Regional and Geopolitical-Economic ICCs

Recent changes in the world's political and economic trends have prompted the proliferation of ICCs 3.0, with different underlying regional politico-economic motivations. The home states of these ICCs are neither traditional common law jurisdictions nor emerging niche jurisdiction carve-outs. In fact, the rise of ICCs 3.0 is in response to specific regional geopolitical-economic incidents: Brexit and the Belt and Road Initiative. In this respect, ICCs 2.0 and 3.0 may have a certain degree of overlap as they both aspire to boost the economic and/or legal development of their host states. One way to further distinguish ICCs 2.0 and 3.0 is that ICCs 2.0 show evident features of common law “transplant” in emerging jurisdictions such as Singapore and Abu Dhabi, with prominent English judges as judges for SICC and ADCC and common law as their default governing law. By contrast, ICCs 3.0 consist of jurisdictions that are rooted in civil law traditions, such as France, Germany, Belgium, and China, and are generally less receptive to the influence of foreign law. As such, ICCs 3.0 distinguish themselves from the “transplant” regimes of the ICCs 2.0 in locations such as Singapore, Qatar, Dubai, and Abu Dhabi which are heavily influenced by English common law.

1. European ICCs

France, Germany, the Netherlands, and Belgium all established their own ICCs soon after the U.K.'s decision to withdraw from the European Union, commonly known as Brexit. The proliferation of ICCs in the European Continent reflects the European states' ambition to draw dispute-resolution business from the LCC in London.¹⁴³ In fact, the European Parliament published a report in 2018 to consider how member states' dispute resolution mechanisms can be strengthened in light of Brexit.¹⁴⁴ One key finding is that the LCC would lose the advantage of judicial cooperation among EU courts—such as the reciprocal recognition and enforcement of monetary judgments—forcing commercial parties to consider alternatives to the LCC.¹⁴⁵

To compete with the LCC, these European ICCs incorporate several common law elements. The most notable feature is the use of English in court proceedings. For example, the NCC in Amsterdam adopts English as the language for court proceedings and final judgments.¹⁴⁶ The NCC also allows for the possibility of choice of foreign law, including English law.¹⁴⁷ These features specifically cater to English-speaking commercial parties, and the NCC prides

¹⁴³ See Bell, *supra* note 1, at 195.

¹⁴⁴ See Rühl, *supra* note 61, at 29.

¹⁴⁵ See *id.* at 7–8.

¹⁴⁶ See Wilske, *supra* note 12, at 171.

¹⁴⁷ *Id.*

itself as an “English-language environment within a civil law jurisdiction.”¹⁴⁸ However, these European ICCs are less willing to fully embrace the common law system and English language in their domestic jurisdictions than ICCs 2.0 are, given their deeply entrenched civil law tradition. For example, the general rule at the ICCP in Paris is that both the written submissions and court judgments must be made in French, although parties can produce oral submissions and expert evidence in English.¹⁴⁹ The FRC in Frankfurt likewise prescribes that German must be the language of the court proceeding due to restrictions under § 184 of the German Courts Constitution Acts (*Gerichtsverfassungsgesetz* or GVG).¹⁵⁰ This sheds light on the role of legal tradition and culture in the establishment of ICCs.

A comparative study of these continental European ICCs shows that the proposed but abandoned BIBC in Brussels would have been the most distinctive. While the German, French, and Dutch ICCs stand as specialist chambers within domestic court systems,¹⁵¹ the BIBC would have been a standalone court independent from its local judiciary. The BIBC aimed to bring litigation and arbitration closer together. For instance, its procedural rules would have mimicked the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL Model Law).¹⁵² Specifically, the BIBC planned to adopt Article 28 of the UNCITRAL Model Law, which essentially follows the “free choice model.”¹⁵³ Furthermore, the BIBC cases would have been heard by both professional judges and international business law specialists.¹⁵⁴

All these features are borrowed from arbitration. Despite its innovative institutional breakthrough, the draft bill faced fierce pushback from the Belgian domestic judiciary (High Counsel of Justice), which primarily questioned the feasibility of its “two-tiered justice,” the source of funding, and its impact on domestic courts.¹⁵⁵ Other controversial issues related to the BIBC proposal include the language of proceedings and the perceived over-reliance on procedural

¹⁴⁸ *Chamber for International Commercial Disputes*, ORDENTLICHE GERICHTSBARKEIT HESSEN, <https://perma.cc/2DK6-VLXB>. See also Bookman, *supra* note 5, at 251.

¹⁴⁹ See Bookman, *supra* note 5, at 254.

¹⁵⁰ See Bookman, *supra* note 5, at 255. See also *Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act]*, § 184 (2020) (Ger.) [hereinafter GVG].

¹⁵¹ See Bell, *supra* note 1, at 195–97.

¹⁵² See Peetermans & Lambrecht, *supra* note 98, at 52–53.

¹⁵³ Jane Y. Willems, *Party Autonomy and the Selection of Non-State Norms in International Commercial Contracts*, 48 H. K. L.J. 953, 953 (2018). Per Willems, the “free choice model [allows] parties the freedom to ignore the common rules of private international law on conflicts of law and even to allow parties to apply non-state norms to their contracts.” *Id.* at 953–54.

¹⁵⁴ See also Bell, *supra* note 1, at 197.

¹⁵⁵ Antonopoulou & Kramer, *supra* note 98.

law based on the UNCITRAL Model Law.¹⁵⁶ This, coupled with a changing political climate in Belgium, led Belgian Prime Minister Charles Michel to quietly withdraw the draft BIBC bill.¹⁵⁷ As of October 2021, Belgian scholar Stefaan Voet observes there is little appetite in the current Belgian government to resuscitate the bill.¹⁵⁸ However, despite the BIBC's failure, it still serves as an important inflection point for ICCs based on two grounds. First, the draft BIBC serves as a model for ICCs that can be replicated in some capacity in the future. BIBC's proposed design to adopt the UNCITRAL Model Law as the procedural framework reflects the most recent and forthcoming interface between ICCs and international arbitration. This wave of "arbitralization" of ICCs is highlighted in Section IV.C below.¹⁵⁹ Second, the demise of the BIBC proposal further entrenches the importance of having top-down government backing. One crucial factor behind the abandonment of the BIBC was the lack of government support, coupled with the pushback from its local judiciary.¹⁶⁰ For any future ICC developments, a key lesson from the BIBC case study is that having government backing is a necessary condition, if not a precondition. For example, such top-down support was well demonstrated in the success of the SICC.¹⁶¹

With respect to jurisdiction, the ICCP in Paris accepts transnational commercial disputes that are related to international commercial contracts, transportation, unfair competition, and other financial transactions.¹⁶² There is no requirement for a connection with the host state, France. As long as there is (i) parties' consent via a choice of court agreement electing the Paris Court of Appeal as the designated court and (ii) the case has an element of international business, the ICCP may have jurisdiction.¹⁶³ However, the parties cannot explicitly opt for ICCP as the forum because all cases need to first pass through the Placement Chamber, which is a special chamber within the Paris Court of Appeal responsible

¹⁵⁶ See John Sorabji & Xandra Kramer, *Introduction—The International Business of Courts to INTERNATIONAL BUSINESS COURTS: A EUROPEAN AND GLOBAL PERSPECTIVE* 1, 8 (Xandra Kramer & John Sorabji eds., 2019).

¹⁵⁷ See Charles Price, *Problems for the Brussels International Business Court*, LEXOLOGY (May 2, 2019), <https://perma.cc/BLT6-X2YY>.

¹⁵⁸ See British Institute of International and Comparative Law, *Taking Stock: International Commercial Courts in Europe and Asia Panel 1*, YOUTUBE (Oct. 18, 2021), <https://www.youtube.com/watch?v=CVFtxkS78fM> (Stefaan Voet at 31:32, 39:24).

¹⁵⁹ See Peetermans & Lambrecht, *supra* note 98, at 52–53.

¹⁶⁰ See British Institute of International and Comparative Law, *supra* note 158.

¹⁶¹ See *supra* Section III.B.3.

¹⁶² See Bookman, *supra* note 5, at 253.

¹⁶³ See Bell, *supra* note 1, at 196. See also Protocol Relating to the Procedure Before International Chamber of the Paris Commercial Court, art. 1.1–1.3 (Feb. 7, 2018).

for allocating disputes to different divisions of the same.¹⁶⁴ The Placement Chamber is similar to the role of a traffic controller.

In Germany, the FRC at Frankfurt hears disputes that satisfy the following requirements: (i) it is a “commercial matter” within the meaning of § 95 of the German Act on the Constitution of Courts (GVG); (ii) it is international; (iii) it does not fall under the special jurisdiction of another chamber of the Regional Court of Frankfurt; and (iv) the parties had a choice of court agreement and had declared that they wanted to plead in the oral proceedings in English and waived the right for an interpreter.¹⁶⁵ As to the NCC in Amsterdam, it does not require any connection to the Netherlands as long as parties agree to the NCC’s jurisdiction.¹⁶⁶ The approach taken by the FRC and NCC is similar to that of the SICC, in which the only connection required is the parties’ choice of court agreement.¹⁶⁷ In November 2020, the Stuttgart Commercial Court (SCC) and Mannheim Commercial Court (MCC) were established as specialist commercial divisions of the Regional Courts pursuant to § 95 of the GVG.¹⁶⁸ Both the SCC and MCC hear complex commercial disputes of at least €2 million at stake.¹⁶⁹ One key feature of the two courts is that parties are entitled to opt for an adjudication panel with one regular judge and two lay commercial judges who are experienced businessmen.¹⁷⁰ The participation of lay judges is intended to inject commercial expertise from the business sector into the judicial bench, thereby enhancing public confidence in the German court system.¹⁷¹ Similar to the ICCP, the SCC permits proceedings to be conducted in English, as all regular judges on the SCC bench possess English language proficiency.¹⁷² Parties may appeal to the Courts of Appeals of Stuttgart and Karlsruhe.¹⁷³

¹⁶⁴ See Protocol Relating to the Procedure Before International Chamber of the Paris Commercial Court, *supra* note 163, at 1.

¹⁶⁵ See Schedule of Responsibilities of the *Geschäftsverteilungsplan* (2018) (Ger.); *Chamber for International Commercial Disputes*, *supra* note 148. See also GVG, *supra* note 150, § 95 (describing the general position of German courts’ jurisdictions over commercial disputes).

¹⁶⁶ See Bookman, *supra* note 5, at 251.

¹⁶⁷ See Yip, *supra* note 41, at 450–51.

¹⁶⁸ See Patrick Melin, *The New Stuttgart Commercial Court – A Solution to the Challenge of Bringing International Commercial Disputes Before State Courts*, COMM. CT. OF STUTTGART & MANNHEIM (2020); Giesela Rühl, *The Resolution of International Commercial Disputes – What Role (If Any) for Continental Europe?*, 115 AJIL UNBOUND 11, 13 (2021).

¹⁶⁹ Melin, *supra* note 168, at 2.

¹⁷⁰ GVG, *supra* note 150, §§ 75, 105, 108.

¹⁷¹ See Gerhard Wagner & Arvid Arntz, *Commercial Courts in Germany*, in DISPUTE RESOLUTION IN CHINA, EUROPE AND WORLD 9 (Lei Chen & Andre Janssen eds., 2020).

¹⁷² See Melin, *supra* note 168, at 3.

¹⁷³ See Rühl, *supra* note 168, at 13.

The proposed BIBC in Belgium would have been the most “liberal regime,” and the jurisdiction of the BIBC would have gone further than all the aforementioned Continental European ICCs. As stipulated in Art. 576/1(2) of the Belgian Judicial Code,¹⁷⁴ the BIBC would have had jurisdiction via one of two routes: (i) through a choice of court agreement submitted to the BIBC; or (ii) through a referral by another Belgian, foreign, or international court or tribunal, including an arbitral tribunal, in which the parties’ consent to the referral is declared.¹⁷⁵ As such, in addition to the conventional first route where parties submit directly to the BIBC via a choice of court agreement, there would have been a second unconventional route of referrals from foreign courts, or even arbitral tribunals, so long as the parties consented to the referral order made by these external tribunals. It is the “referral” route that would have distinguished the BIBC from the NCC/FRC/SICC’s “choice of court agreement as a sole connection” feature. In other words, the “pre-concluded” choice of court agreement could be substituted with parties’ consent to the declaration of referral by a foreign court or an arbitral tribunal at a “post-commencement” stage.¹⁷⁶

This would have been by far the most liberal regime in terms of the jurisdiction of the existing ICCs. A post-commencement consent to the referral declaration by any foreign court or an arbitral tribunal would have also given rise to the BIBC’s jurisdiction. This feature is distinguishable from the regime under the FRC, the NCC, and the SICC on the grounds that the latter ICCs do not allow a referral route via external tribunals (judicial or arbitral). For example, the SICC only provides for an internal referral mechanism from the Singapore High Court to the SICC or by parties’ choice of court agreement.¹⁷⁷

As for governing law, all ICCs 3.0 use their own domestic law subject to parties’ intentions otherwise. For example, the ICCP and the NCC both allow parties to select foreign law.¹⁷⁸ As mentioned, the proposed BIBC would have been the most innovative court on the issue of governing law because of its plan to adopt the UNICTRAL Model Law on International Commercial Arbitration as its procedural rules.¹⁷⁹

European ICCs take varied approaches to the backgrounds they require of their judges. There is no foreign judge available in the NCC, though Dutch judges

¹⁷⁴ See Peetermans & Lambrecht, *supra* note 98, at 51 n.98.

¹⁷⁵ See *id.* at 51. The author also noted that the formulation of BIBC’s jurisdiction was parallel to UNCITRAL Model Law on International Commercial Arbitration Article 7. *Id.* at 51–52.

¹⁷⁶ *Id.* at 50–51.

¹⁷⁷ See Bookman, *supra* note 5, at 248.

¹⁷⁸ See *id.* at 254. For ICCP, the author noted that the parties must “select the Paris Commercial Court as their forum of choice and then the commercial court may refer the case to the special international commercial division.” *Id.*

¹⁷⁹ See Peetermans & Lambrecht, *supra* note 98, at 52.

are believed to have good command of English.¹⁸⁰ In Paris, the ICCP is staffed with French judges who can speak English and have English common law reasoning capabilities.¹⁸¹ The design of the FRC bench in Frankfurt is markedly different from those of the NCC and ICCP. Each FRC bench sits three domestic German judges: one professional judge and two lay business experts.¹⁸² Among the European ICCs, the BIBC panel composition would have been the most intriguing. It was to be composed of (i) a Chairman, who is a professional judge from the Brussels Court of Appeal Market Court, (ii) a Panel Chairman, who is also a Belgian professional judge with knowledge in international trade law, and (iii) BIBC Judges, who are lay judges chosen from a list of international trade law specialists from Belgium and beyond.¹⁸³ For (iii), there was no requirement that the judge be Belgian or a European citizen, nor was Dutch or French language proficiency needed. Thus, non-European judges could have been appointed to the list of eligible lay judges. However, since the list of lay judges would have been nominated by the Belgian business sector under Articles 202, 204, and 216 of the Belgian Judicial Code, it remains uncertain to what extent the BIBC judges would have featured non-European businessmen.¹⁸⁴

The intra-regional competition among the European ICCs may improve the competitiveness of each individual ICC, as each of them has sought to develop its own niche by creating user-friendly court features (for example, language or use of international judges) and delivering quality judgments.¹⁸⁵ Nonetheless, there may be conflict and overlap between these courts. As a result, their competitiveness against the LCC, a single court within a coordinated common law legal system, might be hindered. In light of this potential conflict, there have been calls for a combined and consolidated European Commercial Court (ECC).¹⁸⁶ It is believed that such an ECC would benefit from a truly neutral and international nature, which would give it more flexibility in terms of appointing international judges and allow it to compete directly with other regional ICCs.¹⁸⁷ However, there have not yet been any concrete plans taken by the European Union in this direction. It is possible that such plans will not emerge anytime soon, given the recency of the emergence of the European ICCs.

¹⁸⁰ See Bookman, *supra* note 5, at 252.

¹⁸¹ See *id.* at 254.

¹⁸² *Id.* at 255.

¹⁸³ See Peetermans & Lambrecht, *supra* note 98, at 46–49.

¹⁸⁴ See *id.* at 49–50.

¹⁸⁵ See *id.*

¹⁸⁶ Giesela Ruehl, *Towards a European Commercial Court?*, CONFLICTOFLAWS.NET (Aug. 11, 2018), <https://perma.cc/8TFS-4X4Z>; Wilske, *supra* note 12, at 173.

¹⁸⁷ See Ruehl, *supra* note 186.

2. China International Commercial Court (CICC)

While Europe has been occupied with Brexit and its aftermath, China has been rolling out its ambitious economic and diplomatic plan, the BRI. The BRI ambitiously aspires to expand regional markets and facilitate economic integration across Asia, Africa, and Europe.¹⁸⁸ It has been regarded as a game-changer in the landscape of dispute resolution and is expected to trigger a proliferation of adjudication business.¹⁸⁹

The CICC was established in 2018 to cater to China's leading role in the BRI, with the specific goal of facilitating dispute resolution among BRI countries.¹⁹⁰ The CICC is governed by the Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court (CICC Provisions).¹⁹¹ It consists of two courts: the First CICC in Shenzhen, Guangdong Province, for handling BRI-related international commercial disputes arising out of the sea-based Maritime Silk Road; and the Second CICC in Xi'an, Shaanxi Province, for handling BRI-related international commercial disputes arising out of the land-based Silk Road Economic Belt.¹⁹² Shenzhen was chosen for its traditional role as a test bed of new legal and economic policies and for being closer to the Guangdong-Hong Kong-Macau Great Bay Area. Xi'an was chosen in part for its historical position as the starting point of the ancient Silk Road.¹⁹³ Meanwhile, the Fourth Civil Division of China's Supreme People's Court (SPC) in Beijing, which specializes in trials of international commercial disputes in China, is responsible for coordinating and guiding the two CICCs.¹⁹⁴

¹⁸⁸ See *Visions and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road*, BELT & ROAD F. INT'L COOP. (Mar. 28, 2015), <https://perma.cc/UK5E-RT8X>.

¹⁸⁹ See Weixia Gu, *The Dynamics of International Dispute Resolution Business in the Belt and Road*, 113 AM. SOC'Y INT'L L. PROC. 370 (2019).

¹⁹⁰ See He Jingjing & Geng Zhenshan (何晶晶 & 耿振善), *Dazao Guoji Shangshi Fating Sifa Baozhang "Yidai Yilu" Jianshe* (打造國際商事法庭 司法保障 “一帶一路” 建設) [*Building the International Commercial Court: Judicial Protection of the “One Belt One Road” Development*], *Renmin Fazhi* (人民法治) 37-39 (Feb. 2018).

¹⁹¹ See *Zuigao Renmin Fayuan Guanyu Sheli Guoji Shangshi Fating Ruogan Wenti De Guiding* (最高人民法院關於設立國際商事法庭若干問題的規定) [Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court] (promulgated by the Sup. People's Ct., Jun. 25, 2018, effective Jul. 1, 2018), art. 1, <https://perma.cc/5ZXX-PLU2> (China).

¹⁹² See *id.*

¹⁹³ See Yu Xiao (于晓), *Weishenme Zai Shenzhen, Xi'an She Guoji Shangshi Fating? Zuigaofa Huiying* (为什么在深圳、西安设国际商事法庭? 最高法回应) [*Why Establish the China International Commercial Court (CICC) in Shenzhen and Xi'an? Response From the Supreme People's Court*], CHINA NEWS NETWORK (Jun. 28, 2018, 11:53 AM), <https://perma.cc/K9J2-DZQN>.

¹⁹⁴ See *A Brief Introduction of China International Commercial Court*, CHINA INT'L COM. CT., <https://perma.cc/73ZH-WN59>.

As of February 2021, all sixteen judges appointed to the CICC are mainland Chinese, selected from senior judges familiar with international laws and norms and proficient in English and Chinese; nine out of the sixteen judges either visited or studied at a university outside mainland China.¹⁹⁵ The introduction of foreign judges has been prohibited by Chinese law (for example, Art. 12 of China's Judges Law stipulates that a judge in China must be of Chinese nationality).¹⁹⁶ Faced with this obstacle, the CICC innovatively introduced international expertise through its niche product, the International Commercial Expert Committee (the ICE Committee).¹⁹⁷

There are three major provisions in the establishment of the ICE Committee: (i) the CICC Provisions, (ii) the Working Rules of the ICE Committee,¹⁹⁸ and (iii) Procedural Rules for the CICC of the Supreme People's Court (For Trial Implementation).¹⁹⁹ Article 11 of the CICC Provisions provides that an ICE Committee is established to create a "one-stop" international commercial dispute resolution mechanism at the CICC.²⁰⁰ As set out in Article 3 of the Working Rules of the ICE Committee of the SPC, members of the ICE Committee may have two key duties: (i) to preside over mediations and (ii) to provide expert opinions on findings of foreign law.²⁰¹ The mediation duty of the ICE Committee is an integral part of the CICC's ambition to set up a "One-Stop Multi-tier Dispute Resolution Platform," as prescribed by Article 11 of the CICC Provisions, "with the promotion of arb-med as one of its top priorities."²⁰² The most notable of the many ground-breaking features of the ICE Committee is that if a settlement agreement has been reached after the presiding of mediations by the ICE members, the CICC may issue a judgment based on the mediation settlement agreement.²⁰³ In this way, the foreign members of the ICE Committee

¹⁹⁵ See *Judges*, CHINA INT'L COM. CT., <https://perma.cc/QR6M-G7LA>.

¹⁹⁶ See Judges Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 23, 2019, effective Oct. 1, 2019) 2019 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 27 (China); Wei Cai & Andrew Godwin, *Challenges and Opportunities for the China International Commercial Court*, 68 INT'L & COMP. L.Q. 869, 900 (2019).

¹⁹⁷ See Wilske, *supra* note 12, at 176.

¹⁹⁸ *Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)*, CHINA INT'L COM. CT. (Nov. 21, 2018), <https://perma.cc/DF8D-BPRN>.

¹⁹⁹ *Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)*, CHINA INT'L COM. CT. (Dec. 5, 2018), <https://perma.cc/4G5F-N7F2>.

²⁰⁰ Zuiigao Renmin Fayuan Guanyu Sheli Guoji Shangshi Fating Ruogan Wenti De Guiding, *supra* note 191, art. 11.

²⁰¹ See *Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)*, *supra* note 198, art. 3.

²⁰² Weixia Gu, *Hybrid Dispute Resolution Beyond the Belt and Road: Toward a New Design of Chinese Arb-Med(-Arb) and Its Global Implications*, 29 WASH. INT'L L.J. 117, 120 (2019).

²⁰³ See Zhang, *supra* note 6, at 161.

are indirectly allowed to pass “judgments” via the mediation mechanism.²⁰⁴ This is by far the most liberal feature of the CICC in terms of internationalization and may potentially somewhat offset the international concerns about and scepticism of its lack of international elements (particularly on foreign judges).

Apart from encouraging parties to settle their disputes, the CICC also allows the ICE Committee to give advice on foreign law. Another statutory obstacle is Article 262 of the 2017 Chinese Civil Procedure Law, which stipulates that hearings of foreign-related cases must be in the language commonly used in China (for example, Chinese Putonghua).²⁰⁵ The extent of the CICC’s introduction of international elements stops at the ICE Committee. This may affect the CICC’s competitiveness when all other ICCs in Asia and along the BRI roadmap feature foreign judges (such as the SICC in Singapore, AIFC in Kazakhstan, and ICCs in the Middle East). With a limited degree of internationalization, the CICC may not attract as many international parties as its peers. In the long-term, it is proposed that judicial reforms would be carried out to introduce elements of internationality into both the CICC bench and legal representation by revising Article 9 of the Chinese Judges Law and Article 262 of the Chinese Civil Procedure Law.²⁰⁶

Despite the CICC’s potential limitations, the court could benefit from the BRI directly. Commercial parties in BRI-related contracts, influenced by China’s economic power, may specifically designate the CICC for dispute resolution. However, it is unclear whether this will be a commercially sound and sustainable practice for the CICC. On the other hand, mirroring the SICC’s placement as a subdivision of the Singapore High Court, the CICC was made a subdivision of the SPC in Beijing, a structure that guarantees a healthy flow of cases by transfers and referrals.²⁰⁷ Thus, the CICC, like the SICC, should have a stable intake of cases in addition to cases directly submitted by parties’ jurisdiction agreements.

There are three features of the CICC that deserve particular attention. First, the ICE Committee’s function as a mediator and a foreign law expert is no doubt a sign of internationalization by the CICC. The fact that the mediation settlement agreements can be converted into the CICC judgments is arguably in parallel with the DIFC Court’s innovation to convert judgments into arbitral awards.

Second, the CICC actively embraces the concept of a “one-stop” center for multi-tiered approaches to international commercial dispute resolution services,

²⁰⁴ *Id.*

²⁰⁵ See *Civil Procedure Law of the People’s Republic of China*, art. 262, CHINA INT’L COM. CT. (June 29, 2017), <https://perma.cc/A5J2-9YVH>.

²⁰⁶ See *id.*; Judges Law of the People’s Republic of China, *supra* note 195, art. 9.

²⁰⁷ See *Procedural Rules for the China International Commercial Court of the Supreme People’s Court (For Trial Implementation)*, *supra* note 199, art. 10, 11.

integrating litigation, arbitration, and mediation.²⁰⁸ The notion of a one-stop-shop echoes the multi-door courthouse envisioned by the late Harvard professor Frank Sander, who envisaged that future courts should provide a menu of options for dispute resolution back in the 1970s.²⁰⁹ A concrete example is that the CICC Procedural Rules provide for pre-trial mediation procedures upon the plaintiff's consent.²¹⁰

Last but not least, the CICC strives to achieve technological innovation. As stipulated in Article 4 of the CICC Procedural Rules, the Court supports an online process for case acceptance, payment, service of process, mediation, file inspection, evidence exchange, pre-trial preparation, and hearings.²¹¹ The case management and pre-trial conferences can be held via online video calls.²¹² The parties may also apply for an online video trial.²¹³ In a recent visit to the Singapore Maxwell Chambers, which houses the SIAC and the SIMC, Erie observed that the Chinese delegates actively asked questions regarding the role of technology in ADR proceedings when interacting with the Singaporean representatives.²¹⁴ To a large extent, this reflects the determination of China to achieve technological innovation while constructing its own legal hub.

3. Findings on ICCs 3.0

Established in response to a particular regional politico-economic incident or policy, ICCs 3.0 focus on attracting parties in response to that event or policy more than simply promoting the home jurisdiction's dispute resolution market in general. Thus, ICCs 3.0 often have specific economic, political, or diplomatic motivations and are regional in nature. Both the post-Brexit ICCs in continental Europe and the CICC in the Eurasian Belt and Road regions are examples of ICCs 3.0, reflecting the trend of ICC development in response to regional or geopolitical economic phenomena. The factors that motivate the development of these ICCs may on the one hand stimulate, or on the other hand hinder efforts to promote their competitiveness. The top-down, government-initiated approach could be more effective in achieving geopolitical aims due to the availability of

²⁰⁸ *Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions*, GEN. OFF. OF THE COMMUNIST PARTY CENT. COMM. AND THE GEN. OFF. OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, <https://perma.cc/WW33-QYGJ>.

²⁰⁹ See Frank E.A. Sander, *Varieties of Dispute Processing*, in *THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE* 65, 84 (Leo A. Levin & Russell R. Wheeler eds., 1979).

²¹⁰ See *Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)*, *supra* note 199, art. 12.

²¹¹ *Id.* art. 4.

²¹² *Id.* art. 18.

²¹³ *Id.* art. 27(13), 30.

²¹⁴ See Erie, *supra* note 1, at 267.

national resources like financing and strategic expertise.²¹⁵ However, the underlying politico-economic motivations could instead undermine the impartiality of the newly established courts, diminishing their attractiveness to foreign investors. Moreover, compared to ICCs 2.0, ICCs 3.0 are subject to more constraints from their home countries' domestic legal systems. As such, the success of ICCs 3.0 hinges on the extent of their home state's support. ICCs 3.0 with state support are typically more successful, but those that lose support or face competing local forces or institutions face more hardships, as in the example of the failed BIBC.

Although ICCs 3.0 are themselves comparatively less internationalized, the opportunities prompting their establishment boost their competitiveness. These ICCs are established in response to new opportunities arising from politico-economic developments. The European ICCs aim to attract post-Brexit litigation business, and the CICC hopes to benefit from the prospective volume of BRI-related litigations. It is possible that these ICCs could develop their reputations through these unique opportunities. Moreover, ICCs 3.0, following the evolutions of ICCs 2.0, have also largely incorporated newer features of international arbitration to make themselves as welcoming as international arbitration. Table 4 below summarizes the key comparative features of the ICCs 3.0.

²¹⁵ Compare this with Singapore's top-down, ICC 2.0 approach as an example of effective hub-building experience. *See* Erie, *supra* note 1, at 261–63.

TABLE 4: FEATURES OF ICCs 3.0: REGIONAL AND GEOPOLITICAL-ECONOMIC ICCs (CONTINENTAL EUROPE – BREXIT INCIDENT, CHINA – BELT AND ROAD INITIATIVE)

	Paris Court of Appeal International Trade Chamber (ICCP)	2018	International Chamber for Commercial Matters at Frankfurt Regional Court (FRC)	2018	Netherlands Commercial Court (NCC)	2019	Brussels International Business Court (BIBC)	2020 (abandoned)	2018	China International Commercial Court (CICC)
Establishment Year	2018		2018		2019		2020 (abandoned)		2018	
Jurisdiction	<ul style="list-style-type: none"> • Transnational commercial disputes • Parties' agreement 	<ul style="list-style-type: none"> • International commercial disputes • Parties' agreement 	<ul style="list-style-type: none"> • International commercial cases • Parties' agreement¹ 	<ul style="list-style-type: none"> • International dispute • Parties' agreement 	<ul style="list-style-type: none"> • First instance international commercial cases with disputed amount of at least RMB 300 million² • First instance international commercial cases transferred from China's Higher People's Court³ • First instance international cases having a nationwide significant impact⁴ 					
Judges	<ul style="list-style-type: none"> • English-speaking French judges 	<ul style="list-style-type: none"> • Cases heard by German state judges and lay judges • Foreign judges not available 	<ul style="list-style-type: none"> • Dutch judges • Foreign judges not available 	<ul style="list-style-type: none"> • Cases heard by presiding judge and lay judges • Foreign judges available 	<ul style="list-style-type: none"> • 16 Chinese domestic judges • ICE Committee empowered to issue mediation settlement agreements that could be converted to CICC judgments 					
Governing Law	<ul style="list-style-type: none"> • French law • Parties may select foreign law 	<ul style="list-style-type: none"> • German law 	<ul style="list-style-type: none"> • Dutch law and foreign law 	<ul style="list-style-type: none"> • By parties' agreement 	<ul style="list-style-type: none"> • Chinese law • Foreign law by parties' agreement⁵ 					
Caseload	<ul style="list-style-type: none"> • Not available 	<ul style="list-style-type: none"> • Not available 	<ul style="list-style-type: none"> • Not available 	<ul style="list-style-type: none"> • Not available 	<ul style="list-style-type: none"> • 1 judgment and 4 rulings in 2019⁶ 					

¹ Rules of Procedure for the International Commercial Chambers of the Amsterdam District Court (NCC District Court) and the Amsterdam Court of Appeal (NCC Court of Appeal), art. 1.2 (2018).

² See Protocol Relating to the Procedure Before International Chamber of the Paris Commercial Court, art. 2(1) (Feb. 7, 2018).

³ *Id.* art. 2(2).

⁴ *Id.* art. 2(3).

⁵ *Id.* pmbl.

⁶ See *Judgments, CHINA INT'L COM. CT.*, <https://perma.cc/74A7-FCN4>.

IV. POWER DYNAMICS

A. The Concept of “Co-Opetition”

The study of the ICCs throughout the globe resonates with that of the international financial centers. Douglas Arner identified six different types of financial centers in the world: (i) global, (ii) international, (iii) regional, (iv) niche, (v) domestic national, and (vi) domestic regional.²¹⁶ As discussed in Section III.A, ICCs 1.0 are courts in established jurisdictions (for example, the LCC and NYCD). In parallel, Arner categorized London and New York as “global” financial centers, while Hong Kong was identified as an “international” financial center.²¹⁷ Singapore, being a hub for the Association of the Southeast Asian Nations (ASEAN) and Southeast Asian market, is regarded as a “regional” center.²¹⁸ The concept of a regional hub mirrors the ICCs 2.0, which are emerging jurisdictions with a specific geographical focus. The Middle East ICCs, which include the DIFC Court, QIC, and ADGMC, may fit into the model of “regional” centers given that they mainly cater to specific Middle East regions (for example, the DIFC zone and the Qatar Financial Center area). In the meantime, they can fit into the model of “niche” centers because of their specialized provision of services (for example, the Islamic finance and Islamic commercial dispute resolution).

Arner’s work also analyzed the intricate relationship among the International Financial Centers (IFCs), which inspired this Article’s consideration of power dynamics among the ICCs. Interestingly, the notion of “co-opetition,” which derives from the two seemingly conflicting concepts “cooperation” and “competition,” was noted by Arner et al. as an alternative approach to the dynamics of IFCs.²¹⁹ In particular, a report on the assessment of Hong Kong as an IFC explored the issue of “co-opetition” between Hong Kong and Chinese financial centers such as Shanghai, Shenzhen, and Beijing.²²⁰ After comparing the various economic performance indicators of the four major financial cities in China (including the volume of traded shares, the number of listed companies, and the degree of domestic market capitalization), the report concluded that the question of whether Shenzhen, Shanghai, and Beijing would draw away equity investment from Hong Kong simply “misses the point.”²²¹ The true answer to the question, instead, is that each city will develop its own complementary niche. For

²¹⁶ Douglas Arner, *The Competition of International Financial Centres and the Role of Law*, in *ECONOMIC LAW AS AN ECONOMIC GOOD, ITS RULE FUNCTION AND ITS TOOL FUNCTION IN THE COMPETITION OF SYSTEMS* 193, 195 (K. Meessen ed. 2009).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Arner et al., *supra* note 7, at 70, 79.

²²⁰ *See id.*

²²¹ *See id.* at 76.

example, Hong Kong has a particular focus on equities, derivatives, and the Renminbi (RMB) market, whereas Shanghai focuses more on bonds and wealth management.²²² Besides, even though the four cities are often regarded as having overlapping strengths in the stock exchange market, the portfolio and variety of shares available on each stock exchange differ.²²³ Hence, a rational investor would optimally maintain a portfolio of shares in each of the stock exchanges to diversify their investment options.²²⁴ In other words, a division of labor and an element of “complementarity” emerged from the apparent “competition” of the four cities.

Erie has likewise noted that the interaction among the NLHs is one of “competition and collaboration.”²²⁵ Erie’s study of NLHs further explored the “interhub” and “intrahub” connections.²²⁶ While the “interhub connection” refers to the soft-law linkages between legal hubs along with the recognition and enforcement of their court judgments,²²⁷ the “intrahub connection” refers to the cross-institutional links between ICCs and arbitration institutions, such as the DIFC Court’s mechanism to convert its judgments into the LCIA arbitral awards.²²⁸

B. Horizontal Level

To advance the previous studies on IFCs and NLHs, this paper specifies the two levels or facets of the “co-opetition power dynamics” underlying the global rise of the ICCs as follows.

The first level is a “horizontal co-opetition” relationship among the ICCs such that each ICC develops its own complementary niche for the adjudication business. As demonstrated in the previous section on the three generations of the ICCs, while all of them deal with complex, high value, and cross-border commercial cases, they each continuously evolve to develop their own specializations and distinctive features. This is like the co-opetition development of the IFCs discussed above.

The evolution of legal infrastructure is especially apparent in the ICCs 2.0 and ICCs 3.0, in which there is either a geographical focus (such as the Middle East and the ASEAN region) or a geopolitical-economic motivation behind the establishment (such as the Brexit response and the BRI strategy). There are even some traces of “metamorphosis” for some ICCs, such as the NYCD’s launch of

²²² *See id.* at 78–79.

²²³ *See id.* at 76–78.

²²⁴ *See id.* at 78.

²²⁵ *See Erie, supra* note 1, at 233–43.

²²⁶ *Id.* at 292–97.

²²⁷ *Id.* at 292.

²²⁸ *Id.*

the mandatory pilot scheme or the BIBC's planned incorporation of features of both English common law and international soft law (such as the UNCITRAL Model Law on International Commercial Arbitration) into a traditional civil law jurisdiction.²²⁹ Even though their functions of adjudicating international commercial disputes overlap, they have their own niche areas and target user groups. Hence, they should be treated as service providers for different markets catering to various users such that there is an implicit division of labor among the ICCs.

Such a "horizontal co-opetition dynamic" among the ICCs may well become a new trend for the transnational legal order in the field of international commercial law. Indeed, there is certainly room for transnational coordination among states for the respective roles and specializations of ICCs via supranational or regional platforms, similar to the Conference of Ministers of Justice in the European Council and the ASEAN Law Ministers Meeting, which aim to deepen inter-regional coordination in areas such as international commercial law.²³⁰ A ministerial-level conference among the Ministers of Justice in the BRI region is one option for coordinating the ICCs along the BRI roadmap; that conference could include the CICC (in China), the AIFC Court (in Kazakhstan), the SICC (in Singapore), and the ICCs in the Middle East. Through regular meetings on both the judicial and ministerial levels, adjustments and fine-tuning could further differentiate the role of each individual ICC situated in its own geopolitical zone.

That said, the opportunities to differentiate ICCs in horizontal co-opetition may be limited to ICCs situated in a shared economic zone. As shown in the findings from a survey report on arbitration, users could be expected to opt for ICCs that are familiar with the regional business climate and have a mutual judicial recognition and enforcement arrangement in the region.²³¹ If that is the case, there would be less room for differentiation among ICCs that are in the same economic zone (for example, the European ICCs or the BRI ICCs). This is also the case for ICCs located in host states that have pre-existing mutual arrangements for judgment recognition and enforcement. For instance, the latitude for differentiation among European ICCs may be limited by the existence of the Brussels Convention on reciprocal recognition and enforcement of commercial judgments, which applies across the EU member states. The Hague Convention may provide an additional competitive advantage to its member states over other, non-member states within the shared economic zone. For example, although China joined the Hague Convention in 2017, the Chinese legislature has not yet

²²⁹ See Erie, *supra* note 1, at 256–57. See also *supra* Section III.C.

²³⁰ See, e.g., *Conference of Ministers of Justice: Digital Challenges to Justice in Europe*, COUNCIL EUROPE, <https://perma.cc/F9XP-H7ZQ>; *ASEAN Law Ministers Meeting (ALAWMM)*, ASS'N SE ASIAN NATIONS, <https://perma.cc/6GM4-V3M9>.

²³¹ Friedland & Brekoulakis, *supra* note 2, at 11.

ratified the Convention domestically.²³² Thus, the CICC judgments may not enjoy global mobility. Host states of the AIFC and ICCs in the Middle East have similarly not yet become parties to the Hague Convention.²³³ In contrast, Singapore both acceded to and ratified the Hague Convention in 2016.²³⁴ Thus, Singapore will be able to enforce SICC judgments thanks to the Hague Convention's facilitation of judgment mobility. The SICC is thus distinguished from other ICCs within the Asia Pacific Region or the BRI Region (such as the CICC, AIFC, and Middle East ICCs).

C. Diagonal Level

The second level of the ICC power dynamics is a “diagonal co-opetition” relationship between the ICCs and international arbitration such that there is both a trend of judicialization of arbitration and arbitralization of the ICCs.

Alec Stone Sweet and Florian Grisel have observed the “judicialization” of arbitration institutions, which boosted the legitimacy of international arbitration.²³⁵ Proponents of this theory argue that arbitrators are international norm-creators by pronouncing transnational arbitral awards. This forms a self-sustaining empire of “exercising, building, and legitimizing arbitral authority.”²³⁶ Putting the theories into the context of the ICCs, the reverse of “judicialization”—for example, the “arbitralization” of judiciaries—holds true in many aspects of the evolution of ICCs.²³⁷

Such arbitralization is seen most prominently in ICCs 2.0 and is also present in the ICCs 3.0. First, the NLHs allow ICCs to assume jurisdiction over disputes without any link to the host state of the ICC and rely on the Hague Convention for global judgment mobility to mirror the function of the New York Convention.²³⁸ Notably, the SICC can assume jurisdiction without any actual connection with Singapore, although it requires a written jurisdiction agreement as a connecting factor.²³⁹ As Singapore is an acceding party to the Hague

²³² HCCH, Convention of 30 June 2005 on Choice of Court Agreements, Status Table, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ ALEC STONE SWEET & FLORIAN GRISEL, THE EVOLUTION OF INTERNATIONAL ARBITRATION: JUDICIALIZATION, GOVERNANCE, LEGITIMACY 11–22, 35–55 (2017).

²³⁶ ALEC STONE SWEET & FLORIAN GRISEL, INTERNATIONAL ARBITRATION AND GLOBAL GOVERNANCE: CONTENDING THEORIES AND EVIDENCE 41 (Walter Mattli & Thomas Dietz eds., 2014).

²³⁷ Pamela K. Bookman, *Arbitral Courts*, 61 VA. J. INT'L L. 161, 164 (2021) (describing the “privatization of procedure” due to the rise of arbitral courts).

²³⁸ Friedland & Brekoulakis, *supra* note 2.

²³⁹ See SCJA Rule 7, *supra* note 131.

Convention, parties to the SICC are entitled to rely on the Hague Convention for global enforcement before the courts of the member states.²⁴⁰

Second, there has been a growing willingness for ICCs to allow for judges with foreign and international law expertise in both common and civil law, a feature that parallels the ability to select arbitrators with the requisite expertise for adjudicating disputes. This is particularly evident in ICCs 2.0 like the DIFC, the QIC, the AIFC Court, and the SICC. Thus, the evolution of ICCs shows a clear trend of arbitralization by reforming major areas like jurisdiction, enforcement, and judicial selection to simulate the conditions of international arbitration. The BIBC proposal was a more experimental development. It explicitly injected the international soft law on arbitration into a traditional civil law proceeding.²⁴¹

This Article argues that, despite the seemingly overlapping functions between the ICCs and international arbitration, there is a complementarity within the competition. It is a relationship of complementary competition—“co-opetition.” This element of complementarity is present from both the “demand” side and the “supply” side of the adjudication market.

A typical example of the design of the “diagonal co-opetition dynamic” lies in the city of London, where a flagship of dispute resolution services is available to cater to specific clientele. The combination of the LCC; the LCIA, which specializes in arbitration; and the Center for Effective Dispute Resolution (CEDR), which specializes in mediation; forms an agglomerate one-stop legal hub with differentiated services and functions.²⁴² Likewise, as discussed above in Section III.B.3, the agglomeration trinity of the SICC-SIAC-SIMC in Singapore also reflects the trend of converged legal infrastructure with diverged functions. The state-led, top-down nature of the agglomeration trinity in Singapore, as well as the fact that the dispute resolution services (SICC courts, SIAC arbitration, SIMC mediation) are all located in the same jurisdiction maximizes the diagonal synergy between the various dispute resolution services. The agglomeration arrangement thereby neutralizes what would otherwise be a primary advantage of any international dispute resolution institutions and allows for more internal cooperation. Moreover, the diversified dispute resolution options would ultimately benefit the Singaporean government’s state-led synergy as the “controlling stakeholder” of all three institutions (SICC-SIAC-SIMC), because it unleashes this synergy of “one-stop-shop” to prospective disputants.²⁴³ As Michael Hwang, a Singapore senior counsel who served as the former Chief Justice of the DIFC Court, argued with respect to the SICC, parties seeking to

²⁴⁰ *Singapore Ratifies Hague Convention on Choice of Court Agreements*, MINISTRY L. SINGAPORE (June 2, 2016), <https://perma.cc/9LLY-46TB>.

²⁴¹ See Peetermans & Lambrecht, *supra* note 98, at 52.

²⁴² See Eric, *supra* note 1, at 245.

²⁴³ Yip, *supra* note 129 at 83.

resolve disputes in the ICCs are usually users who are dissatisfied with either international arbitration or the national courts.²⁴⁴ In other words, disputants may belong to different client pools with various preferences over different desirable dispute resolution fora.

However, diagonal synergy is limited when dispute resolution institutions do not share an expressive controlling stakeholder in the same jurisdiction. There may be an inherent conflict of interest without “centralized” interests, stunting diagonal synergy.

Considering the adjudication industry holistically, the successful establishment of a one-stop legal hub can grow the “pie” of the dispute resolution service market, exemplifying beneficial competition.²⁴⁵ Moreover, a number of the ICCs have their caseload guaranteed by the case referral paths of host state domestic courts; examples include the SICC and the CICC, which receive guaranteed cases from the Singapore High Court and the SPC of China, respectively.²⁴⁶ This flow of cases is independent from the parties’ choice of court agreements and is not in direct competition with international arbitration.

In addition, the classic trading center model proposed by Charles Kindleberger can also shed light on the power dynamics of the ICCs.²⁴⁷ A key takeaway from the Kindleberger model is that, apart from the established trading centers such as London and New York, certain centers “emerged essentially as centres of stability in the context of instability in neighbouring major economies.”²⁴⁸ Examples include Singapore in Southeast Asia and Dubai in the Middle East.²⁴⁹ This echoes an observation by Erie, who argues that the ICCs often emerge where there is a lack of rule of law or where foreign investors doubt judicial independence.²⁵⁰ Borrowing from this line of argument, the SICC and the DIFC may be viewed as reliable “stability out of instability” jurisdictional carve-outs for dispute resolution for the ASEAN economies and the Middle East region. This is because of the expertise in international law of their benches and their use of the common law and the English language.

²⁴⁴ Hwang, *supra* note 13, at 196.

²⁴⁵ Bookman, *supra* note 5, at 265.

²⁴⁶ *See id.* at 248; *Procedural Rules for the China International Commercial Court of the Supreme People’s Court (For Trial Implementation)*, *supra* note 199, art. 10, 11.

²⁴⁷ Arner, *supra* note 216, at 195 (citing CHARLES KINDLEBERGER, *A FINANCIAL HISTORY OF WESTERN EUROPE* 73 (3d ed. 1993)).

²⁴⁸ *Id.* at 195–96.

²⁴⁹ *See id.* at 196.

²⁵⁰ *See Erie, supra* note 1, at 246–47, where the author noted that the new legal hubs are designed to lift the parties out of the host states, which are usually “plagued by corruption, local protectionism, political favoritism, lack of judicial expertise, and underfunding.”

The phenomenon of arbitralization of the ICCs, which echoes the convergence of litigation and international arbitration, further reflects the need for domestic judiciaries to amplify the effect of norm creation by delivering quality judgments for complex, high-value, cross-border commercial disputes in the global arena. Indeed, we have seen traces of jurisprudence exporting and transnational legal order emerging from ICCs themselves. For instance, the SICC has explicitly pronounced that one of its missions is to “[lay] the groundwork for a freestanding body of supporting commercial law,” thereby exporting a transnational commercial law jurisprudence based on its judgments.²⁵¹ The legitimacy of the transnational legal order generated by the ICCs may arguably transcend the legitimacy of international arbitration, given that a substantial portion of the ICCs are established within the formal domestic judicial hierarchy, such as the SICC. The legitimacy boosted by the formal legal structure may allow the jurisprudence of the same to develop into a modern *lex mercatoria*, leading to harmonized legal norms.²⁵² Given that most of the ICCs were established very recently, it might be too early to judge their impact as an instrument of transnational legal order. However, it cannot be denied that ICCs 3.0, like the CICC and the Brexit-induced European ICCs, are politically ambitious because they have positioned themselves as future legal hubs of governance in specific geopolitical and geo-economic zones. As such, the issues of governance, legitimacy, and norm creation alongside the evolution of ICCs will be new recurrent themes.

V. CONCLUSION

The emergence of ICCs brings opportunities and challenges to the adjudication market. This Article has presented a novel and unique typological framework to study the global ICC power dynamics. It classifies the global ICCs into three major types: ICCs 1.0 include traditional ICCs in established jurisdictions (the LCC and the NYCD); ICCs 2.0 cover ICCs in emerging jurisdictions (the Middle East ICCs, the SICC, and the AIFC Court); and ICCs 3.0 for politico-economically motivated ICCs (the Brexit-led European ICCs and the BRI-led CICC). This model of typology is built upon scholarship that analyzes ICCs, not only on the basis of their geographical locations and establishment history, but also by looking into the politico-economic motives underlying their establishment.

²⁵¹ Chief Justice Sundaresh Menon, Response by Chief Justice Sundaresh Menon: Opening of the Legal Year 2015, ¶ 20(a) (Jan. 5, 2015), <https://perma.cc/XF9Q-PLGF>. See also Sundaresh Menon, *Origins and Aspirations: Developing an International Construction Court*, 31 INT’L CONSTRUCTION L. REV. 341, 344–45 (2014).

²⁵² See Sweet & Grisel, *supra* 235, at 35.

On power dynamics, from a “horizontal” level (ICCs *inter se*), the global comparative study of ICCs reveals that, although most of them are entrusted with the power to similarly adjudicate complex commercial cases with a cross-border element, each ICC has developed its own niche and evolved to cater for different clientele. On a “diagonal” level (between ICCs and international arbitration), the global rise of ICCs reflects the convergence between litigation and arbitration, especially in light of the emergence of “one-stop” integrated dispute resolution services with ICCs, blending features of arbitration and mediation. With each ICC providing its own niche service with specialized target markets and users, both the horizontal and diagonal levels of the power dynamics are characterized by collaboration, complementarity, or “co-opetition” (an intricate combination between competition and cooperation). This dynamic is present from both the supply and demand sides of the adjudication market. In the meantime, coordination among the ICCs is called for via judicial- or ministerial-level conferences or international organizations in the geopolitical zone. There is room for division of labor and specialization to avoid unhealthy competition.

Lastly, in the diagonal level of power dynamics, the “arbitralization” of judiciaries as a new trend of the transnational legal order has been seen in the evolution of ICCs. Most ICCs have incorporated elements of arbitration and ADR into their court procedures to attract adjudication business. The potential for “co-opetition” between ICCs and international arbitration as a future trend of the transnational legal order is tremendous. Various ICCs are expected to exert soft power influence over their regions, reflecting a need to deliver quality ICC judgments as *lex mercatoria* in the targeted geopolitical and geo-economic regions. Although it is difficult to estimate the impact of ICCs on the transnational legal order given that many of them have only recently been established, the issues of governance, legitimacy, and norm creation through ICCs will have far-reaching impacts on international law.