The book offers a comprehensive analysis of the role, importance and place of international commercial courts in the field of international adjudication from a comparative perspective. In a time where scholarly and academic debates revolve around the issues of the role of law in the post-globalization era, the new international commercial courts seem to be in the position to bridge concerns regarding diminished sovereignty, on the one hand, and the necessity of globalizing dispute resolution, on the other. International commercial courts thus present themselves as the paradigm for the future of adjudication.

Stavros Brekoulakis is Professor in International Arbitration at Queen Mary University of London.

Georgios Dimitropoulos is Associate Professor of Law and Associate Dean for Academic Affairs, Hamad Bin Khalifa University College of Law.
Studies on International Courts and Tribunals contains theoretical and interdisciplinary scholarship on legal aspects as well as the legitimacy and effectiveness of international courts and tribunals.

Other books in the series:

- Mads Andenas and Eirik Bjorge (eds.) A Farewell to Fragmentation: Reassertion and Convergence in International Law
- Cecilia M. Bailliet and Nobuo Hayashi (eds.) The Legitimacy of International Criminal Tribunals
- Amrei Müller with Hege Elisabeth Kjos (eds.) Judicial Dialogue and Human Rights
- Nienke Grossman, Harlan Grant Cohen, Andreas Føllesdal and Geir Ulfstein (eds.) Legitimacy and International Courts
- Theresa Squatrito, Oran R. Young, Andreas Føllesdal and Geir Ulfstein (eds.) The Performance of International Courts and Tribunals
- Robert Howse, Hélène Ruiz-Fabri, Geir Ulfstein and Michelle Q. Zang (eds.) The Legitimacy of International Trade Courts and Tribunals
- Marlene Wind (ed.) International Courts and Domestic Politics
- Christina Voigt (ed.) International Judicial Practice on the Environment: Questions of Legitimacy
- Martin Scheinin (ed.) Human Rights Norms in ‘Other’ International Courts
- Freya Baetens (ed.) Legitimacy of Unseen Actors in International Adjudication
- Shai Dothan International Judicial Review: When Should International Courts Intervene?
- Silje Langvatn, Mattias Kumm and Wojciech Sadurski (eds.) Public Reason and Courts
- Daniel Behn, Szilárd Gáspár-Szilágyi and Malcolm Langford (eds.) Adjudicating Trade and Investment Disputes: Convergence or Divergence?
- Sondre Torp Helmersen The Application of Teachings by the International Court of Justice
- Daniel Behn, Ole Kristian Fauchald and Malcolm Langford (eds.) The Legitimacy of Investment Arbitration: Empirical Perspectives
Eric De Brabandere *International Procedure in Interstate Litigation and Arbitration: A Comparative Approach*

Chiara Giorgetti and Mark Pollack (eds.) *Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition among International Courts and Tribunals*
INTERNATIONAL COMMERCIAL COURTS

The Future of Transnational Adjudication

Edited by

STAVROS BREKOUЛАКИS
Queen Mary University of London

GEОRGIOС DИMITROPOULОS
Hamad Bin Khalifa University
CONTENTS

List of Contributors  page xi
Foreword  xvii
   LORD THOMAS OF CWMGIEDD, FORMER LORD CHIEF JUSTICE OF
   ENGLAND AND WALES, PRESIDENT, QATAR INTERNATIONAL
   COURT AND DISPUTE RESOLUTION CENTRE
Preface  xxi

International Commercial Courts: The Future of
Transnational Adjudication – An Introduction  1
GEORGIOS DIMITROPOULOS AND STAVROS BREKOULAKIS

PART I  A Contextual Perspective to International
Commercial Courts  27
1 The Role of International Commercial Courts in
Commercial Dispute Resolution  29
CHRISTOPHER GROUT AND SIR WILLIAM BLAIR

2 International Commercial Courts: Possible Problematic
Social Externalities of a Dispute Resolution Product with
Good Market Potential  52
THOMAS SCHULTZ AND CLÉMENT BACHMANN

3 Transnational Adjudication and the Court of Justice of the
European Union  73
CHRISTOPHER VAJDA

4 International Commercial Courts: Lessons from
International Criminal Tribunals  89
ILIAS BANTEKAS
PART II  Jurisdiction, Applicable Law and Enforcement of Judgments 113

5  A Comparative Perspective on International Commercial Courts: Jurisdiction, Applicable Law and Enforcement of Judgments 115
   JANET WALKER

6  Jurisdiction and Choice of Court Clauses in Favour of International Commercial Courts 158
   EVA LEIN

7  The Battle for Jurisdiction through Jurisdictional Requirements: Comparing the Commercial Court of England and Wales, the Singapore International Commercial Court and the Chinese International Commercial Court 176
   MAN YIP

8  Harmonization of Commercial Law Based on Common Law: The Role of International Commercial Courts 201
   MATEJA DUROVIC AND FRANCISZEK LECH

9  Applicable Laws in the International Commercial Courts of the Gulf 228
   FARIS ELIAS NASRALLAH

PART III  Procedure, Function, Organization 249

10 The Design of International Commercial Courts: From Organizational Hybridity to Functional Interoperability 251
    GEORGIOS DIMITROPOULOS

11 Internationalizing Domestic Courts in Europe: A Comparative Analysis on Procedure, Function, Organization 278
    MARIEKE WITKAMP

12 The Legitimacy and Ethics of International Commercial Court Judges 299
    CATHERINE A. ROGERS
CONTENTS ix

13 Counsel Ethics in Transnational Lawyering: The Case of International Commercial Courts 315
ZACHARY R. CALO

14 The Use of Technology at International Commercial Courts 335
PIETRO ORTOLANI

PART IV The Interplay between International Commercial Courts and Other Dispute Resolution Fora 361
15 The Interplay between International Commercial Courts and Ordinary Courts 363
JULIAN BAILEY

16 Private Autonomy in International Commercial Dispute Resolution: International Commercial Arbitration and International Commercial Courts 388
MICHAEL PATCHETT-JOYCE

17 Procedure before International Commercial Courts and Ordinary Courts: A Comparative Perspective 421
GEORGIA ANTONOPOULOU

PART V International Commercial Courts and Global Governance 445
18 Hybridity in International Adjudication: How International Are International Commercial Courts? 447
SALVATORE CASERTA AND MIKAEL RASK MADSEN

19 China International Commercial Court: Architecture, Pitfalls and Promises 468
JULIEN CHAISSE AND XU QIAN

20 The Emergence of International Commercial Courts and Dispute Resolution Centres in Frontier Markets: A Perspective from Kazakhstan 489
THE RT. HON. THE LORD WOOLF CH AND CHRISTOPHER CAMPBELL-HOLT

21 Brexit and the Competition of Dispute Resolution Fora in Europe: Whither the Rush to English Courts Post Withdrawal? 501
GEERT VAN CALSTER
CONTENTS

22 International Commercial Courts, Dispute Resolution and the Rule of Law 515

SUSAN L. KARAMANIAN

Index 536
CONTRIBUTORS

Georgina Antonopoulou is Lecturer in International Commercial Dispute Resolution at Birmingham Law School and a PhD candidate at Erasmus School of Law, Rotterdam.

Ilias Bantekas is Professor of Transnational Law at Hamad Bin Khalifa University and Adjunct Professor at Georgetown University. He has published International Human Rights Law and Practice (3rd ed. Cambridge University Press 2020, with L. Oette), Introduction to International Arbitration (Cambridge University Press 2015) and Islamic Contract Law (Oxford University Press 2022, with J. Ercanbrack et al.).

Clément Bachmann is a postdoctoral researcher at the Geneva Centre for International Dispute Settlement (CIDS). He holds a PhD from the University of Geneva (where he wrote a thesis on the legitimation of international arbitration) and is admitted to practise law in Switzerland.

Julian Bailey is a solicitor and partner at White & Case LLP, London. He is a visiting fellow at the Dickson Poon School of Law, King’s College London and is Adjunct Professor of Law at Hamad Bin Khalifa University, Doha.

Sir William Blair is Chairman of the QFC Regulatory Tribunal and Judge of the Qatar International Court. He is also Chair of the Bank of England’s Enforcement Decision Making Committee and Professor of Financial Law and Ethics at Queen Mary University of London.

Stavros Brekoulakis is a professor in international arbitration. His academic work includes the leading publications on Third Parties in...
xii

LIST OF CONTRIBUTORS

International Arbitration, Arbitrability, ICCA-Queen Mary Report on Third Party Funding and numerous publications in leading legal journals and reviews. He is the editor-in-chief of CIarb’s International Journal of Arbitration, Mediation and Dispute Management, general editor of Journal of International Dispute Settlement and co-editor of Kluwer’s International Arbitration Law Library series.

ZACHARY R. CALO is Professor of Law at Hamad Bin Khalifa University and Professor of Law (Adj.) at the University of Notre Dame Australia. A member of McNair Chambers in Doha, Calo also serves on multiple international sports arbitration tribunals and on the Ethics Committee of the International Mediation Institute.

CHRISTOPHER CAMPBELL-HOLT is the registrar and chief executive of the AIFC Court and IAC in the Republic of Kazakhstan.

SALVATORE CASERTA is an Assistant professor of sociology of law and international law at iCourts, the Centre of Excellence for International Courts of the Faculty of Law of the University of Copenhagen.

JULIEN CHAISSE is Professor of Law at the School of Law, City University of Hong Kong, and President, Asia Pacific FDI Network.

GEORGIOS DIMITROPOULOS is Associate Professor of Law and Associate Dean for Academic Affairs at Hamad Bin Khalifa University College of Law.

MATEJA DUROVIC (LLM CANTAB., LLM AND PHD EUI) is a Reader in contract and commercial law and co-director of the Centre for Technology, Ethics, Law and Society at Dickson Poon School of Law, King’s College London, UK.

CHRISTOPHER GROUT is Registrar of the Qatar International Court and Dispute Resolution Centre. He is a barrister and deputy district judge in England and Wales as well as a fellow of the Centre for Law and Religion at Cardiff University.

SUSAN L. KARAMANIAN is Dean of the College of Law, Hamad Bin Khalifa University.
LIST OF CONTRIBUTORS

FRANCISZEK LECH is a BCL candidate at St Catherine’s College, University of Oxford. He holds an LLB from King’s College London, where he graduated as a Dickson Poon Scholar for Excellence in Studies. He was previously a research Assistant and a KURF fellow at King’s College London.

EVA LEIN is a professor of comparative and private international law at the University of Lausanne and the director of the Comparative Law Centre at the British Institute of International and Comparative Law in London.

MIKAEL RASK MADSEN is a professor of law and the director of iCourts, Centre of Excellence for International Courts, University of Copenhagen.

FARIS ELIASS NASRALLAH is a solicitor of the Senior Courts of England & Wales and specializes in international arbitration with expert knowledge of Middle Eastern laws. He studied at SOAS and the University of Cambridge and in 2019 founded the International Arbitration Working Group within the Max Planck Law network.

PIETRO ORTOLANI is a full professor of digital conflict resolution at Radboud University, the Netherlands.

MICHAEL PATCHETT-JOYCE FCIARB is a barrister, arbitrator and mediator. He practices at 36 Commercial, Grays Inn, London, and will become Head of 36 Commercial in 2022.

XU QIAN is an Associate professor and ‘Hundred Talents Program Fellow’ at Zhejiang University, Guanghua Law School.

CATHERINE ROGERS is a professor of law at Bocconi University in Milan, with a joint appointment at Queen Mary, University of London. Her teaching and scholarship focus on the intersection of international arbitration, legal ethics and markets for professional services. Catherine was a reporter for the American Law Institute’s Restatement of the U.S. Law of International Commercial and Investor-State Arbitration, and a co-chair of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration (with William W. Park and...
Stavros Brekoulakis). Catherine is the founder of Arbitrator Intelligence, a legal tech startup that seeks to revolutionalize arbitrator selection while promoting transparency, accountability and diversity in arbitrator appointments.

**Thomas Schultz** is a professor of law at King’s College London, a professor of international arbitration at the University of Geneva, a visiting professor of international law at the Graduate Institute of International and Development Studies, and the editor-in-chief of the *Journal of International Dispute Settlement*. He is the (co-)author of five books.

**Lord Thomas of Cwmgiedd** was Judge of the Commercial Court and subsequently Lord Chief Justice of England and Wales. He is President, Qatar International Court, Chairman of the Steering Group of the Standing International Forum of Commercial Courts, an international arbitrator, Chancellor of Aberystwyth University and an Honorary Fellow of HBKU College of Law.

**Christopher Vajda QC** was the British judge at the Court of Justice of the European Union between 2012 and 2020 (until Brexit). He has now returned to Monckton Chambers, London, to act as arbitrator and to give advice in international disputes. He is a visiting professor of law at King’s College, London.

**Geert Van Calster** is a member of the Belgian Bar, focussing on international litigation, and a full professor at KU Leuven. His blog at www.gavclaw.com is a well-known portal for developments in European and United Kingdom conflict of laws.

**Janet Walker (CD, BA (Hons), MA, JD, DPhil (Oxon), FCIArb)** is Distinguished Research Professor and past Associate Dean at Osgoode Hall Law School, and a chartered arbitrator. She authors *Canadian Conflict of Laws*, the most cited private law work in Canadian courts; and she is the author and general editor of works on civil litigation, complex litigation, comparative procedure and arbitration. She is the chair of the ICC Canada arbitration committee and a member of the scientific advisory board of the Max Planck Institute Luxembourg.
LIST OF CONTRIBUTORS XV

MARIJKE WITKAMP serves as a commercial judge at the court of Rotterdam in the Netherlands. She is qualified in Dutch and Texas law and has more than fifteen years of international legal experience in the Netherlands, Qatar and the United States.

THE RT. HON. THE LORD WOOLF CH is former Lord Chief Justice of England and Wales and former Chief Justice of the AIFC Court in the Republic of Kazakhstan.

MAN YIP is an Associate professor and the director of the Centre for Commercial Law in Asia at Singapore Management University, Yong Pung How School of Law.
FOREWORD

LORD THOMAS OF CWMGIEDD, FORMER LORD CHIEF JUSTICE OF ENGLAND AND WALES, PRESIDENT, QATAR
INTERNATIONAL COURT AND DISPUTE RESOLUTION CENTRE

Merchants, financiers and other commercial people have always understood the need for the rule of law exemplified by courts or tribunals that adjudicate fairly and impartially disputes that arise in international trade, finance and investment. Sometimes the ordinary courts can provide this as they did in England under Lord Mansfield when he laid the foundations of modern commercial law. At the end of the nineteenth century, however, discontent with the ordinary courts in the UK, as reflected in the novels of Charles Dickens, occasioned serious consideration of following the continental European model of a Tribunal de Commerce. What found favour, however, was the London Commercial Court established as a specialist court by the judiciary. The judges of that court provided speedy and effective justice, worked in harmony with arbitration and continued the development of modern commercial law. Over the following century it became a model others have sought to emulate, though many preferred to resolve their disputes through arbitration and other forms of alternative dispute resolution.

The close of the twentieth century and the first two decades of this century have seen the rapid evolution of international commercial courts in each continent. Governments, urged on by the World Bank, caught up with businesses and finance and realized that without impartial and swift adjudication, it would be difficult to attract investment. The result has been the establishment of courts which provide a cost-effective and speedy means of dispute resolution before a specialist judge with an understanding of trade, finance and commerce. Not only does this provide fair and just decisions, but at the same time it continues the transparent development of the law through open hearings and judgments widely accessible on the Internet.

Although international commercial courts have begun to work closely together and share good practice, particularly since the establishment of the Standing International Forum of Commercial Courts in 2017, what was needed was a work that provided not only a clear description of the developments, but also an analysis of the courts. This book has the aim of
explaining why these courts have developed and of providing a clear and systematic analysis of the courts.

That objective is most successfully achieved, in large part because of this book’s very wide scope and comprehensive scholarship. Its detailed consideration of courts from those established in Special Economic Zones (largely in the Gulf) to the international commercial courts in China, Singapore, Kazakhstan, France, Germany and the Netherlands is characterized by deep and careful analysis. The willingness to tackle fundamental issues is very welcome. For example, important questions that can arise in the relationship between international commercial courts and the municipal courts of a state are studied and answered. The contribution the courts make to upholding the rule of law is carefully scrutinized. The way in which the courts can harmonize and develop the law is explored, thus addressing a significant lacuna occasioned by the widespread use of arbitration and the consequent need to respect the confidentiality of the decisions made. Another valuable topic is the study of how the courts can give effect to balancing the requirements of public interest in the resolution of international commercial disputes whilst affording protection against the effects of the over-privatization of justice in such disputes. Valuable lessons from the experience of criminal courts are brought together in an insightful chapter as in another chapter is the jurisprudence of the Court of Justice of the European Union’s attitude to transnational adjudication.

Practitioners concerned with the day-to-day issues of litigation will find a clear and useful explanation of the issues of jurisdiction, choice of law and enforcement. These important topics are considered in relation to each of the main international commercial courts together with a clear exposition of the procedural rules. It is commendable that a chapter is devoted to the ethics of advocates, for as Chief Justice Sundaresh Menon of Singapore set out in his seminal James P. White lecture in November 2018, this is a central issue for transnational litigation. The use of technology is thoroughly examined; it was the leadership shown by international commercial courts in deploying technology during the pandemic which began in early 2020 that demonstrated how courts could be operated effectively and valuable lessons learnt for the future provision of access to justice.
In short, we should all be grateful to the editors for bringing together so many valuable contributions. These make the book indispensable not only to those who practise in international commercial litigation, but also to those who wish to understand the role of the courts in strengthening the rule of law in international commerce, trade and finance and the contribution the courts can make to a fairer and more prosperous world order.
This edited volume arose out of a joint research initiative of the editors and the organization of a major conference on 'The Promise of Hybrid Dispute Resolution Fora' which was held at Hamad Bin Khalifa University in November 2018. We are grateful to the speakers at our conference many of whom have also contributed to this volume.


We are also thankful to a number of institutions, including our home academic institutions, which supported the original conference through grants and otherwise. We are particularly grateful to the Qatar National Research Fund (QNRF) Conference and Workshop Sponsorship Program (CWSP) for the generous financial support. Almas Lokhandwala enthusiastically and tirelessly supported our conference and book project from its first day until almost its completion. Finally, we are indebted to the whole editorial team of Cambridge University Press for their continuous support and for bringing our book to a timely completion.

Stavros Brekoulakis,
London, UK
Georgios Dimitropoulos
Doha, Qatar
December 2021

xxi