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## INTERNATIONAL COMMERCIAL COURTS

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.

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# INTERNATIONAL COMMERCIAL COURTS

The Future of Transnational Adjudication

Edited by

STAVROS BREKOULAKIS

*Queen Mary University of London*

GEORGIOS DIMITROPOULOS

*Hamad Bin Khalifa University*



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## 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.

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## PREFACE

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.

The volume is the first comprehensive study of the new dispute resolution institution of International Commercial Courts. With a view to capturing all internal and external aspects of the organization and functions of International Commercial Courts, the volume is divided into five parts. Part I offers ‘A Contextual Perspective to International Commercial Courts’. While Part II discusses ‘Jurisdiction, Applicable Law and Enforcement of Judgments’, Part III deals with ‘Procedure, Function, Organization’. Part IV addresses ‘The Interplay between International Commercial Courts and Other Dispute Resolution Fora’. Part V concludes with a broader perspective on ‘International Commercial Courts and Global Governance’.

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.

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