***SICC SYMPOSIUM 2021***

***WITH THE INFLUX OF INTERNATIONAL CROSS-BORDER DISPUTES AND THE FRAMEWORK FOR THE ENFORCEMENT OF COURT JUDGMENTS, ARE INTERNATIONAL COMMERCIAL COURTS MERELY THE LATEST TREND OR ARE THEY THE NEXT FRONTIER IN INTERNATIONAL DISPUTE RESOLUTION?***

1. It is a pleasure and privilege to participate in this Singapore International Commercial Court (“SICC”) Symposium – and a delight that it has been reinstated after the unavoidable Covid-19 adjournment. Spectacularly successful though Zoom is, I very much hope we will be meeting in person before too long.
2. The United Kingdom and Singapore have much to share. Both are island trading nations. Our jurisdictions (England and Wales and Singapore) enjoy a proud common law heritage. Singapore has made huge strides, if I may say so, as a secure regional hub for legal services and dispute resolution, embracing both Courts and arbitration and is plainly amongst the leaders internationally in this area – so adding legal services and dispute resolution to Singapore’s longstanding role as a trading hub and cultural crossroads.[[1]](#footnote-1)
3. Commercial Courts in their modern manifestation developed because of the need for expertise in resolving commercial disputes - graphically illustrated in England, following the disastrous experience in *Rose v Bank of Australasia,* a complex General Average dispute heard before a Judge manifestly out of his depth. The upshot was pressure to establish the Commercial Court, which duly happened 3 years later.[[2]](#footnote-2)
4. A very brief word on the Commercial Court in London.[[3]](#footnote-3) In 2019, 1,056 cases were issued in the Admiralty and Commercial Court. The international flavour is readily apparent: in 2019, 77% of cases in the Commercial Court were international in nature.[[4]](#footnote-4)
5. Commercial Courts are not a new phenomenon. Some date back centuries.[[5]](#footnote-5) This is unsurprising. It is difficult to conceive of international trade without law – and law requires mechanisms for dispute resolution. In Peter Frankopan’s *magnum opus, The Silk Roads*, there is a striking reference to the encouragement of commerce between Europe and the East in the 14th century, through what is described as the fierce protection of the rule of law in commercial matters.[[6]](#footnote-6)
6. Nonetheless the modern expansion of commercial courts internationally is noteworthy[[7]](#footnote-7), reflecting the role of commercial courts in supporting global trade. The DIFC Courts, currently showing strong growth, present an important illustrative example; the first common law court carved out of a civil law nation; the early adoption of technology and its innovative work, synthesising litigation and arbitration.
7. Against this background, my answer to the question posed is “neither”. International commercial courts - by which I understand commercial courts dealing with international business – are neither the latest trend nor are they the next frontier. Instead, they are a central part of the international dispute resolution architecture.
8. Various hallmarks of Commercial Courts may helpfully be highlighted:[[8]](#footnote-8):
9. Impartiality and independence;
10. Purpose and ethos;
11. Expertise;
12. Advancing the Rule of Law;
13. Judicial innovation;
14. Co-existence with other forms of dispute resolution;
15. Cooperation with other commercial courts internationally, notably under the SIFoCC[[9]](#footnote-9) umbrella.
16. *(I) Impartiality and independence:* Transcending all other requirements and reputationally crucial, is the perception and reality that the Judiciary is impartial and independent; litigants from all corners of the globe are to be welcomed; there can be no home ground advantage.[[10]](#footnote-10)
17. *(II) Purpose and ethos:* The purpose of commercial law is to facilitate commerce. Within the Court system, specialist commercial courts are best placed to foster a supportive ethos focused on the needs of users. Thus, in practice, the English Commercial Court engaged in case management long before the term became fashionable more generally, so assisting in efficient, expeditious and effective dispute resolution, thereby promoting and protecting international trade and investment. It is no accident that SIFoCC has focused on case management and the essential accompanying mindset of problem-solving – not process.
18. *(III) Expertise:* Judicial expertise is indispensable to the mix – and best concentrated in commercial courts. International commerce makes two particular demands of the law, both features of our fortunate joint common law legacy: first, certainty, so that transactions can be entered into with confidence in the relevant legal framework; secondly, flexibility – so that the law adapts to changing commercial needs. But to strike the right balance between *certainty* and *flexibility*, calls for judicial expertise of a high order. The concentration of such expertise in commercial courts is an obvious reason for their popularity internationally.
19. *(IV) Advancing the Rule of Law:* A commercial court which deals justly with foreign investors and traders on the one hand, and a local governmental authority on the other, makes a striking contribution to the Rule of Law internationally. It is no coincidence that international agencies place importance on the existence of commercial courts in recipient countries as a condition of advancing loans.
20. *(V) Judicial innovation:*  As specialist courts with a focus on user needs, commercial courts are well-placed to lead in the area of judicial innovation. Two examples; one from London; one more general. London yields a recent Covid-responsive example under the Financial List Test Case Scheme, designed to help resolve market issues to which immediately relevant English law guidance is needed, without the need for a cause of action between the parties. The case in question related to the estimated 370,000 policyholders who suffered significant losses during the pandemic and whose insurance policies included a business interruption clause relating to disease and denial of access as a result of public authority closures or restrictions. The test case was brought by the FCA against a group of insurers[[11]](#footnote-11). The matter was fast tracked and has already been decided by the Supreme Court.[[12]](#footnote-12)
21. The second, more general, example relates to Commercial Courts embracing technology. Justice in commercial cases has not gone on hold during the pandemic. Commercial Court have readily adapted to “remote” or “virtual” hearings, using Zoom, Teams or whatever technology is available. This is a striking achievement, seamlessly adopted.
22. *(VI) Co-existence with other forms of dispute resolution:* As I have long argued[[13]](#footnote-13), this is not a zero-sum game. Commercial courts and arbitration are complementary; sensibly considered, they are not in competition. Thus, the existence of the Commercial Court in London – providing light touch supervision (maximum support minimum interference) boosts London arbitration; conversely, the dynamic London arbitration sector, emphasises the importance of the Commercial Court. So too in Singapore; SICC is itself based (as I understand it) on just such co-existence[[14]](#footnote-14). And what is true of arbitration is likewise true of mediation.
23. *(VII) Cooperation between commercial courts internationally:* Inevitably, the expansion of commercial courts will result in competition between them. Such competition need not, however, prove destructive. Instead, the SIFoCC umbrella seeks to encourage such competition to stimulate innovation, permits the sharing of best practice and the promotion of the Rule of Law. As is the case of co-existence with arbitration, this is a win-win situation.

*Conclusion:*

1. To my mind, such is their role and value, it is difficult to imagine the international dispute resolution system for commercial disputes without thriving commercial courts. They are of cardinal importance to international trade and investment, together with serving to promote the Rule of Law. Commercial courts and other forms of dispute resolution are complementary and commercial courts work best when cooperating with one another, notably under the SIFoCC umbrella.

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1. Dating back to the time of Joseph Conrad – see Maya Jasanoff, *The Dawn Watch* (2017), esp. at p.120. [↑](#footnote-ref-1)
2. The hapless Judge’s contribution was such that Lord Justice Scrutton described him as the “Only Begetter of the Commercial Court”. See, the memorable and succinct note by Lord Justice MacKinnon, *The Origin of the Commercial Court*, (1944) 60 LQR 324. There is an irony; the Judge’s decision – there were no reasons to speak of – was restored in the House of Lords. [↑](#footnote-ref-2)
3. The Commercial Court deals with cases coming within the broad definition of “commercial claim”, to which must be added the work of the closely related Admiralty Court: see, *The Commercial Court Guide, para. B1.1*. This definition encompasses “any claim arising out of the transaction of trade and commerce” and includes: business documents or contracts; export of import of goods; carriage of goods; oil and gas; insurance and re-insurance; banking and financial services; markets and exchanges; commodities; the construction of ships; business agency and arbitration. [↑](#footnote-ref-3)
4. See: *The City UK: Legal Excellence, Internationally Renowned; UK Legal Services 2020,* at p.29. [↑](#footnote-ref-4)
5. Kramer and Sorabji (Eds), *International Business Courts: A European and Global Perspective* (2019), at p.1. [↑](#footnote-ref-5)
6. Peter Frankopan, *The Silk Roads* (2015), at p.184. [↑](#footnote-ref-6)
7. See, *International Business Courts (op cit)*, at pp.2 -3. [↑](#footnote-ref-7)
8. In some I use the English Commercial Court as my example, as the Court with which I am most familiar. [↑](#footnote-ref-8)
9. I.e., the Standing International Forum of Commercial Courts [↑](#footnote-ref-9)
10. See *Bank Mellat v HMT* [2019] EWCA Civ 449, at [1] [↑](#footnote-ref-10)
11. *The City UK: Legal Excellence* (*op cit*), at p.30. 3 [↑](#footnote-ref-11)
12. *Financial Conduct Authority v Arch Insurance and others* [2021] UKSC 1; [2021] 2 WLR 123 [↑](#footnote-ref-12)
13. For example, *Courts and Arbitration,* 2nd Jonathan Hirst QC Commercial Law Lecture (1 May 2018), [2018] LMCLQ 497 [↑](#footnote-ref-13)
14. See, John Sorabji and Xandra Kramer, *Introduction – The International Business of Courts,* at pp.6-7, and Man Yip, *The Singapore International Commercial Court: The Future of Litigation*, at pp. 129-130 and pp. 141 and following, both in *International Business Courts (op cit)*. So too (see above), the DIFC Courts. [↑](#footnote-ref-14)