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THE BIRTH AND RISE OF THE INTERNATIONAL COMMERCIAL COURTS IN PARIS - BOOSTING LITIGATION OR ALTERNATIVE TO ARBITRATION-

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Abstract

The process of the withdrawal of the United Kingdom from the European Union is becoming more and more complicated. However, the consequences are closer than ever. With UK on the doorstep of leaving the EU, the decisions issued by its courts would no longer benefit from the recognition system provided in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. As a result of this, it is expected that London would no longer be seen as a primary destination for international litigants. In the aftermath from the Brexit, other cities and member state countries of the EU have started the race to position themselves as the next “legal hub”. While other member states have been vocal about offering alternative courts, so far France has been at the forefront of this initiative. In this text the authors will give an overview of the new the New International Chambers of the Paris Courts. Furthermore, special attention will be given to the comparison of the international commercial courts and arbitration.

I. INTRODUCTION

The expression ‘international commercial courts’ refers to national judicial bodies set up in the last fifteen years in several jurisdictions throughout the world to suit the specific demands of international commercial litigation. The courts and the proceedings before them share unique features often imported from the common law tradition and the arbitration world, with a view to

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providing for a dispute resolution mechanism tailored to the subject-matter.¹ Such International commercial courts are a rather recent phenomenon. To the exception of the historical London Commercial Court (“LCC”) set up in 1895, all the other ICCs were established in the last four years: the Singapore International Commercial Court (“SICC”) on 5 January 2015, the Chamber for International Commercial Disputes of the District Court of Frankfurt/Main (“Frankfurt ICC”) on 1 January 2018, the International Chamber of the Paris Court of Appeal (“CICAP”) on 7 February 2018, and the Netherlands Commercial Court (“NCC”) on 1 January 2019. The Brussels International Business Court (“BIBC”) should become operational by 2020.²

This development is part of an emerging trend seen in several EU jurisdictions. In particular, some of the Member States are seeking to help their courts to better adjudicate international commercial disputes. Having in mind that the most of the international commercial contracts are drafted in English, with English law as applicable law, it is particularly important to have a new hub for litigation outside London. In a situation where the EU and UK do not sign up to a successor regime to the Brussels Regulation, this could lead parties to look elsewhere outside UK to resolve their disputes. With the first protocol amendments were made to the already existing International Chamber within the Paris Commercial Court, whereas with the second Protocol a new International Chamber has been created within the Paris Court of Appeal. The aim of the creation of these international divisions within the Paris Court is to create an attractive jurisdictional system which would meet the expectations of the economic actors. Paris has already been one of the most important world centers for dispute resolution as a result of the work of the International Chamber of Commerce and its work in the field of Alternative Dispute Resolution (ADR). However, with this initiative Paris has an opportunity to further strengthen its attractiveness.

II. FROM LONDON TO PARIS – Legislative background

For many years, London has been the one of the most significant places for commercial dispute resolution. Without undermining the significance of London in the field of international commercial arbitration, undoubtedly its largest success is in the field of commercial litigation. In 2016 in the UK the market of commercial litigation services amounted to a total of 16 billion euros.³ There are number of reasons why London has been considered as a first choice of international litigants: historical importance in maritime and commodity trade, presence of important trade institutions such as the Grain and Feed Trade Association (GAFTA) and the International Steel Trade Association (ISTA) among others.

However, probably the most significant factors why London has enjoyed such status for cross-border disputes compared with other major cities within the EU is the use of English in the proceedings as default language, and the fact that the judicial awards enjoy the benefits for mutual recognition within the EU. Nowadays most international commercial contracts are

¹ Marta Requejo Isidro, ‘International Commercial Courts in the Litigation Market’ (2019) MPILux Research Paper Series 2019 (2), [www.mpi.lu], p. 3.

² Ioana Knoll-Tudor (Jeantet), The European and Singapore International Commercial Courts: Several Movements, a Single Symphony, available at: <http://arbitrationblog.kluwerarbitration.com/2019/03/06/the-european-and-singapore-international-commercial-courts-several-movements-a-single-symphony/>

³ Knoll-Tudor, I. (2018). Specialised Chambers for International Commercial Disputes: Paris in the Spotlight - Kluwer Arbitration Blog. Retrieved from <http://arbitrationblog.kluwerarbitration.com/2018/02/14/specialised-chambers-international-commercial-disputes-paris-spotlight/>.

drafted in English, and the English language dominates in the business world. Consequently it is more logical and cost efficient for the parties to submit their dispute to an English speaking forum, than to have to submit it in state court where everything would have to be translated in the language of the court. According to statistics the Commercial Court of London has roughly 1.000 procedures per year, out of which in 80% at least one party is foreign, and in at least 50% of the cases both parties are foreign.⁴ But, with the prospect of Brexit, the UK decisions will no longer be able to benefit from the recognition system provided in the Brussels I Regulation (recast). At this stage of free movement, the system of mutual recognition of awards is of extreme importance since most of the companies are international and conduct their business in several countries, but even more important – they have assets in all countries in which they operate. The fact that litigants would no longer enjoy the simplified procedure within the EU and would be obliged to go through the process of recognition and enforcement is a factor which might deter them to submit their future dispute to a UK based court. This would make the process of enforcement of awards not only lengthier but also more expensive, which leaves the possibility that international litigants would seek other options in order to be able to freely enforce the decisions within the EU.

This has prompted a race among member- states to optimize their judicial systems to be able to handle international commercial cases. While such initiatives have been undertaken in several cities such as Amsterdam, Frankfurt and Brussels, so far Paris has been at the forefront of the imitative taking concrete steps. On 7 March 2017 the French minister of Justice requested from a special committee – Haut comité juridique de la place financière de Paris (hereafter HCJP) to propose suggestions for establishment of a special court which would attract commercial parties to submit their disputes and would promote Paris as favorable destination for international litigants. On 3 May 2017 the HJCP issued a report which contained 41 suggestions for reforms within the existing courts.⁵

Based on the suggestions from the HCJP, on 7 February 2018 two new Protocols were signed by the French Minister of Justice, the President of the Paris Bar, and the presidents of the Paris Court of Appeal and the Paris Commercial Court. With the Protocol relating to the procedure before the International Chamber of the Paris Commercial Court ⁶ (hereafter Protocol 1) amendments were made to the already existing International Chamber within the Paris Commercial Court, whereas with the Protocol relating to the procedure before the International Chamber of the Paris Court of Appeal⁷ (hereafter Protocol 2) a new International Chamber has

⁴ Weller, M. (2018). The Justice Initiative Frankfurt am Main 2017. Retrieved from <http://conflictflaws.net/2017/the-justice-initiative-frankfurt-am-main-2017-law-made-in-frankfurt/>.

⁵ The complete text of the Report is available in French at: http://www.justice.gouv.fr/publication/Rapport_chambres_internationales.pdf.

⁶ Protocol relating to the procedure before the International Chamber of the Paris Commercial Court, Original - Protocole relatif à la procédure devant la chambre internationale du tribunal du commerce de Paris, available at: http://www.avocatparis.org/system/files/editos/protocoles_signes_creation_jurisdiction_commerciale_internationale_2.pdf, English (unofficial) translation available at : https://www.shearman.com/-/media/Files/Perspectives/2018/04/Protocol_relating_to_the_procedure_before_the_International_Chamber_of_the_Paris_Commercial_Court.pdf?la=en&hash=BEE7E9D9833EC33B9DADCFA576972DE8791EA49E.

⁷ Protocol relating to the procedure before the International Chamber of the Paris Court of Appeal, Original - Protocole relatif à la procédure devant la Chambre Internationale de la cour d'appel de Paris, available at: http://www.avocatparis.org/system/files/editos/protocoles_signes_creation_jurisdiction_commerciale_internationale_1.pdf, English (unofficial) translation available at : <https://www.shearman.com/->

been created within the Paris Court of Appeal. The date of entry into force for both Protocols is 1 March 2018. These protocols specify the conditions under which the International Chamber of the Paris Commercial Court, established in 1995, and the newly created International Chamber of the Paris Court of Appeals (“CICAP”), will examine and rule on the cases brought before them. The protocols apply to all proceedings initiated as of March 1, 2018.⁸

III. INTERNATIONAL COMMERCIAL COURTS IN PARIS – PROTOCOL 1 AND 2 AT FIRST GLANCE

Protocol 1 alters the already existing International Chamber within the Paris Commercial Court (hereafter ICAP). Initially, this Chamber was created in 1995, however the applicable procedural rules did not attract a satisfactory number of litigants. In 2015, this chamber merged with the Chamber of European Union Law which was established in 1997.⁹ With the amendments, the International Chamber is composed of 10 judges all of which possess working knowledge in English. The Chamber is specialized in the resolving of economic and commercial disputes with international character, and beside French law, the judges have the power to apply any other rules of foreign law to the merits of the case.¹⁰ In particular the ICAP has jurisdiction over disputes related to: commercial contracts and commercial relationships, transport, unfair competition, actions for damages arising from anticompetitive practices as well as disputes related to financial instruments and financial contracts.¹¹

Protocol 2 establishes the International Chamber of the Paris Court of Appeal (hereafter CICAP) which is a creation of a new chamber within the Paris Court of Appeal. Unlike Protocol 1, Protocol 2 does not contain a number of judges which would operate within the CICAP, however according to a report the Chamber would be composed of three judges which if necessary, would undergo additional training program both for technical and linguistic aspects.¹² In regard to the subject matter, the CICAP serves as an appellate body against decisions rendered by the ICAP, and has jurisdiction in international disputes of commercial and economic nature, as well as actions against awards rendered in international arbitration.¹³

It must be pointed out that the International Chambers are not separate courts and therefore the parties may choose by contract to refer a case to the courts within the jurisdiction of the Court of

/media/Files/Perspectives/2018/04/Protocol_relating_to_the_procedure_before_the_International_Chamber_of_the_Paris_Court_of_Appeal.pdf?la=en&hash=8539B15BCD02C6140DF2FDE5212C1B364FBCC1F4.

⁸ Audrey L., Creation of the International Chamber of the Paris Court of Appeals: a source of new challenges for Paris, available at: <http://www.dtmv.com/wp-content/uploads/2018/04/Article-Cr%C3%A9ation-de-la-CICAP-Audrey-Lemal-EN-VS.pdf>, p. 1.

⁹ Protocol 1, Preamble.

¹⁰ Ibid.

¹¹ Ibid, Article 1.

¹² Gaillard, E., & Banifatemi, Y. (2018). The International Chambers of the Paris Courts and Their Innovative Rules of Procedure. Retrieved from <https://www.shearman.com/perspectives/2018/04/paris-courts-and-their-innovative-rules-of-procedure>.

¹³ Protocol 1, Article 1.

Appeal of Paris and the case may then be assigned to the International Chamber of that court on appeal.¹⁴

1. Key features of the International Commercial Courts in Paris

The ICCP now have jurisdiction over commercial international litigations taking place in France, making the Paris forum a significantly more attractive forum to commercial litigants in France or even elsewhere in the European Union. According to the protocols, transnational commercial disputes include disputes relating to: commercial contracts and the termination of commercial relations; transport; unfair competition; anti-competitive commercial practices; and transactions in financial instruments, market standard master agreements and financial contracts, instruments and products. In addition, the said courts' jurisdiction may result from a contractual clause conferring jurisdiction to the courts located within the Paris Court of Appeal's judicial authority. In this respect, the French working group *Paris Place de Droit* has proposed a template that would enable parties to give jurisdiction directly to the international chambers of the Paris courts:

All disputes arising out of or relating to this contract, including issues relating to the performance, interpretation, validity, breach or termination thereof, shall be subject to the [exclusive] jurisdiction of the International Chamber of the Paris Court of First Instance (Tribunal de commerce de Paris), and all appeals from any decision of such court shall be subject to the [exclusive] jurisdiction of the International Chamber of the Paris Court of Appeal. The parties hereby unconditionally agree on the protocols which set out the terms pursuant to which the cases will be examined and adjudicated before these chambers.

❖ **Language** - Using a different language is no longer an obstacle in the proceedings. The main novelty introduced by the protocols is the authorization to use the English language in Court proceedings. At the outset it is important to be noted that in France there is an obligation for the use of French in the domestic courtrooms stemming from the ordinances of Villers - Cotterêts from 1539.¹⁵ As a result of this, all procedural documents in judicial proceedings, such as written submissions and procedural orders have to be drafted in French.

However, the Protocols allow for use of English in a wide variety of situations. If the parties wish so, all exhibits can be submitted in English without the need for translation.¹⁶ In particular the parties, their witnesses, experts, as well as the counsels of the parties when are foreign, are allowed to express themselves in English before the court.¹⁷ Conversely, if they do not speak English or wish to express themselves in other foreign language, such as their mother language, a simultaneous translation would be carried out by an interpreter which would be chosen by the parties.¹⁸ Taking into consideration the fact that the procedures before the

¹⁴ Gary F. Bell, The New International Commercial Courts — Competing With Arbitration? The Example Of The Singapore International Commercial Court, 11(2) CONTEMP. ASIA ARB. J. 193, 2018, p. 196.

¹⁵ Métais, P., & Valette, E. (2018). Paris as an international jurisdiction: creation of chambers specialized in cross-border disputes White & Case LLP International Law Firm, Global Law Practice. Retrieved from <https://www.whitecase.com/publications/alert/paris-international-jurisdiction-creation-chambers-specialized-cross-border>.

¹⁶ Protocol 1, Article 2 & Protocol 2, Article 2.

¹⁷ Ibid.

¹⁸ Protocol 1, Article 6 & Protocol 2, Article 3.

International Chambers are oral¹⁹, which itself is a novelty and variation form the traditional “written proceedings” used in France, it means that the major part of the proceedings can be conducted in English. Beside the fact that this gives the parties broad discretion in the use of English, it also drastically saves costs when it comes to submitting official and sworn in translations of documents as evidence. Finally, although judgments by the Chambers have to be drafted in French, they will be accompanied by a sworn translation in English.²⁰

In sum, documents written in English may be filed without translation; witnesses, experts and lawyers may express themselves in English, if necessary with simultaneous French translation; court orders shall be drawn up only in French, but will automatically be translated into English.²¹

❖ **Procedural Calendar** – Usually, the court’s calendar is only set from one hearing to the next, especially in first instance, and there often is a risk of multiple adjournments, at least from the point of view of the claimant. Both Protocols provide for an adapted procedure which is more flexible in comparison with traditional judicial case management. The judges have the power to define a procedural calendar in coordination with the parties. The calendar should include the dates for submission of documents, hearing of witness and expert testimonies, hearings of counsels and closing statements, as well date on which the decision should be rendered.²²

These calendars are similar to procedural timetables which are common in international commercial arbitration. The aim of this provision is to provide a strict calendar to which the parties must abide by, and ultimately have a final decision in much shorter period. An important novelty in the proceedings which would be conducted in front of the CICAP is the availability of a procedural judge (conseiller de la mise en état). The procedural judge is in charge of coordinating pre-trial matters such as: holding a preliminary hearing on the judicial administration of the taking of evidence, hearing in preparation for the trial, as well as determining the procedural calendar.²³ Compared to traditional judicial system where usually number of years are necessary for decision to be rendered, not into account the appeal process, in the specialized chambers the procedures would be streamlined, and the time would be rigorously managed. The final decision is expected to be rendered within a period of 6 months of the first case management hearing.²⁴ However, it should be pointed out that the procedural calendar is not imposed unilaterally by the Court; rather it is up to the parties to discuss and agreed up jointly by both parties during a preliminary hearing.

❖ **Evidence** - Additionally, the Protocols encompass a number of features which are not common for traditional civil law countries but are typical for common law systems, such as

¹⁹ Protocol 1, Article 2.1.

²⁰ Protocol 1, Article 7 & Protocol 2, Article 7.

²¹ Detlev Kühner and Jessica Noy-Gsell, The international chambers of the Paris Commercial Court and of the Paris Court of Appeal, available at: <https://bmhavocats.com/en/2019/07/30/the-international-chambers-of-the-paris-commercial-court-and-of-the-paris-court-of-appeal/>, p. 1.

²² Protocol 1, Article 3.

²³ Protocol 2, Article 4.

²⁴ Fairgrieve, D., & Le Tutour, S. (2018). Doors open for First Hearing of International Chamber at Paris Court of Appeal. Retrieved from <http://conflictoflaws.net/2018/doors-open-for-first-hearing-of-international-chamber-at-paris-court-of-appeal/>.

the UK. One of them is the emphasis on oral submissions in the procedure instead of the written documents-based approach. Usually in civil law systems the hearings are very short, time extensions are easily granted, and the counsels have limited time for oral arguments. The communication between the parties and the judge is typically with exchange of written submissions, and the evidence such as witness statements and expert statements are in written form. Contrary, the Protocols favor testimonial approach for evidence where witnesses and experts can be called to testify and answer questions. This means that the hearings would be longer, more detailed and the parties would not have time constraints to plead their case. In line with this novelty, the parties and their counsels have power to pose questions to the other party, to the experts and to the witnesses. Unlike traditional settings in civil law traditions, where the judge is the only one who has to power to interrogate the parties and the witnesses, the Protocols provide that witnesses can be “invited by the judge to respond to the questions that the parties wish to ask.”²⁵ Traditionally, cross-examination as a method for witness interrogation exists in civil law systems only in criminal law procedures. The fixed procedural calendar, which should provide for shorter deadlines for period between hearings and submissions along with the more detailed oral hearings serve as methods for achieving procedural economy – making the whole process more compact and streamlined. Thus, lawyers and/or respondents and appellants may directly address the parties, experts and witnesses, whereas only the judge is empowered to do so under the ordinary law of the Code of Civil Procedure.

Another novelty within the Protocols is the possibility for documents production which undoubtedly has its roots from the common law. The Protocols explicitly grant the power to the parties or to the judges to request documents which are held or in possession of the opposing party, or a third party.²⁶ There is an argument that this provision might be interpreted more extensively by the judges, as to include a broad style of documents production similar to discovery,²⁷ however this remains to be seen in the future cases where this issue will arise.

❖ **Judges** – The judges of the ICCP are qualified in commercial, financial and economic matters, with knowledge of the main applicable foreign laws, and can also conduct proceedings in English. As already noted, there will be permanent judges sitting in the International Chambers. The ICAP would be composed of 10 judges whereas the CICAP will have 3 judges. The judges should have experience in dealing with commercial, economic and financial disputes, and should possess a working knowledge in English. Additionally, the judges should be able apply to the merits of the case not only French law, but also any other foreign law or rules of law which might be applicable to the case. In order to be able to produce satisfying results the judges would have ongoing trainings and qualifications. However, when a certain complex case requires specific knowledge in other areas such as competition law or intellectual property rights, which would fall out of the subject matter of the International Chambers as defined in Article 1, the judges would be able to ask for assistance from other judges from those specialized chambers.²⁸

²⁵ Protocol 1, Article 4.4.4 & Protocol 2, Article 5.4.4.

²⁶ Protocol 1, Article 4.1 & Protocol 2, Article 5.1.

²⁷ Fairgrieve, D., & Le Tutour, S. (2018). Doors open for First Hearing of International Chamber at Paris Court of Appeal. Retrieved from <http://conflictoflaws.net/2018/doors-open-for-first-hearing-of-international-chamber-at-paris-court-of-appeal/>.

²⁸ Protocol 1, Preamble.

❖ **Participation of foreign lawyers** - The possibility to have foreign lawyers appear in front of the judges in the International Chambers is another novelty provided in the Protocols. Traditionally foreign lawyers are able to represent clients in front of the state courts, only if they are also admitted to a bar association within the jurisdiction of the court. Although there are lawyers which are admitted to several bars and consequently are able to practice law in several jurisdictions – this is really an exception, not the general rule. Contrary to this, in arbitration the parties are free to choose to be represented by whoever they deem fit, regardless of whether the counsel is submitted to one or several bar associations. The Protocols take an innovative approach which allow for participation of foreign lawyers but not without limitation. Namely, foreign lawyers would be able to appear before the International Chambers, as long as they are accompanied by a lawyer who is admitted to the Paris Bar.²⁹

IV. THE CREATION OF INTERNATIONAL COMMERCIAL COURTS IN THE CONTEXT OF BREXIT

The uncertainty of Brexit for the UK has provided other member states with an opportunity to offer alternative courts to international litigants along with the certainty that their decisions will be freely enforceable across the EU. Such initiatives are being contemplated by Amsterdam, Brussels, Dublin and Frankfurt, but Paris remains the only one to have put pen to paper. It is not France's aim to transpose common law rules into the French court system, but rather to develop a system within its legal tradition suited to international commercial contracts.³⁰

The aim of the reform undertaken within the French judicial system is to promote Paris as the next “legal hub” within the EU, and to attract parties which might be deterred from choosing London in the future. The acceptance of concepts from the common law tradition is a clear signal that the primary goal is to accommodate the needs of international litigants. Paris has already been established as a major center for international commercial disputes. The presence of the International Commercial Chamber (ICC), which is headquartered in Paris has had a major impact in establishing Paris as the primary choice for international commercial arbitration.

In addition, the only hearing facility of the International Center for Settlement of Investment Disputes (ICSID), outside from Washington is in Paris, which makes Paris a prominent place for international investment arbitration as well. The French government has been making efforts to increase Paris's competition with other major centers such as London, Geneva and Frankfurt even before the Protocols, most notably with the enactment of a pro-arbitration law in 2011 which made the country one of the most arbitration – friendly jurisdictions. The same result is expected with the International Chambers.

The undertaken reform can have impact on two levels: national and international. On international scale other countries have initiated similar initiatives trying to reform their judicial procedures as to accommodate international commercial parties. Frankfurt has already taken

²⁹ Fairgrieve, D., & Le Tutour, S. (2018). Doors open for First Hearing of International Chamber at Paris Court of Appeal. Retrieved from <http://conflictoflaws.net/2018/doors-open-for-first-hearing-of-international-chamber-at-paris-court-of-appeal/>.

³⁰ Patrick Dunaud, Global Outlook sponsored briefing: The International Chamber of the Paris Court of Appeal – France has risen to the challenge, available at: <https://www.legalbusiness.co.uk/analysis/disputes-yearbook-2018/global-outlook-sponsored-briefing-the-international-chamber-of-the-paris-court-of-appeal-france-has-risen-to-the-challenge/>

similar steps³¹ in Amsterdam and the Netherlands a draft legislation has been proposed,³² and in Zurich evaluations about establishing International Chambers are being made.³³ If the operation of the International Chambers proves successful, it is expected that similar chambers and specialized courts would be open in other countries and cities within the EU. The establishment of the CICAP and the reformation within the ICAP might prove the initial action which might trigger a chain of events that might lead to revolution in the judicial procedures. Looking at national level, the countries that have already undertaken initiatives might decide to establish similar chambers and specialized courts in other cities if the chambers within the major cities prove effective. Cities such as Rotterdam, Marseilles and Hamburg are just a few cities which have high concentration on disputes related to maritime law and might benefit from similar chambers.

It is important to be noted that the initiatives for establishment of specialized chambers and courts are groundbreaking within the EU, but similar initiatives have already been undertaken in other states in the world. Dubai, Qatar, and Singapore have already created new courts with the aim of attracting international commercial disputes. The Dubai International Financial Center (DIFC) is the oldest specialized court, established in 2004, which operates successfully having decided 217 disputes in 2016 alone, the Qatar International Court and Dispute Resolution Center (QICDRC), which was established in 2009 in Doha, rendered 38 decisions between 2009 and 2017, and the Singapore International Commercial Court (SICC), which is the most recently established in 2015, so far has heard 9 cases.³⁴ The statistics point out that the operation of the specialized courts becomes more attractive over longer period of time.

Will this be sufficient? One can hope that this will contribute to attracting more international dispute resolution in France (which is already a major dispute resolution centre thanks to the ICC). Paris has a very-well established cohort of international dispute resolution lawyers, whether in the major French law firms, their Anglo-Saxon competitors or some recently developed boutique dispute resolution law firms.³⁵

V. INTERNATIONAL COMMERCIAL COURTS or ARBITRATION – choice by the parties

The relationship between international commercial courts and international arbitration is not easy to define. True, they focus on the same type of disputes. Moreover, they tend to converge in both the offer and the characteristics of the service provided: while some of the international

³¹ More on this Weller, M. (2018). The Justice Initiative Frankfurt am Main 2017. Retrieved from <http://conflictoflaws.net/2017/the-justice-initiative-frankfurt-am-main-2017-law-made-in-frankfurt/>.

³² Henke, F. (2018). Netherlands Commercial Court: English proceedings in The Netherlands. Retrieved from <http://conflictoflaws.net/2018/netherlands-commercial-court-english-proceedings-in-the-netherlands/>.

³³ Matic, N. (2018). In The Pipeline: Zurich International Commercial Court - International Law - Switzerland. Retrieved from <http://www.mondaq.com/x/745118/international+trade+investment/In+The+Pipeline+Zurich+International+Commercial+Court>.

³⁴ Gaillard, E., & Banifatemi, Y. (2018). The International Chambers of the Paris Courts and Their Innovative Rules of Procedure. Retrieved from <https://www.shearman.com/perspectives/2018/04/paris-courts-and-their-innovative-rules-of-procedure>.

³⁵ Creation of an International Chamber within the Paris Court of Appeal, available at: <https://www.incegd.com/en/knowledge-bank/creation-of-an-international-chamber-within-the-paris-court-of-appeal>

commercial courts' *modi operandi* is imported from the arbitration world, distinctive elements of public courts' proceedings nowadays also cross-over into the rules set up by arbitral institutions and a growing trend of arbitrators to mirror the judicial *savoir-faire* can be observed⁸⁵. In light of this it would be fair to conclude that international commercial courts and arbitration are competitors in international commercial dispute resolution.³⁶

While arbitration provides for an attractive option for the resolution of transnational commercial disputes, some disputants prefer to have their disputes resolved by litigation. This may be attributed to the reason that certain disputes are better suited for a framework which is comparatively transparent, provide for an appellate mechanisms, with the choice of consolidation and joinder, and the assurance of a court decision. Some may be attributed to the inherent problems associated with the process of arbitration like the lack of regulation in the arbitration industry, lack of consensus to govern the emerging body of practitioners, from different backgrounds thus resulting in various issues, a lack of transparency and public liability in award making; increasing judicialisation and difficulty in process which result in delays and accompanied by high costs; lack of consistency and unpredictability in the enforcement of the arbitral awards; absence of an appellate mechanism.³⁷

The question remains whether International Commercial Courts can offer a more attractive forum for the resolution of international commercial disputes than arbitration. The most promising European ICC in this regard is currently the Netherlands Commercial Court, as it offers a modern court infrastructure and conducts proceedings in English. Law reforms allowing proceedings to be conducted entirely in English would certainly make the International Chambers in Frankfurt and Paris more attractive. However, in many situations, other issues are more important to parties than language. One of these is confidentiality, which public court proceedings cannot provide to the same degree as arbitration. Another is enforceability. A successful lawsuit is worthless if the judgment cannot be enforced in the opponent's home country. European court judgments can be enforced quite easily within the EU. In third countries, however, often this is not guaranteed. The Hague Convention on Choice of Court Agreements, whose contracting states undertake to mutually recognize and enforce judgments, currently only applies to the EU member states' relations with Mexico, Singapore and Montenegro. By contrast, the New York Convention on the Recognition and Enforcement of Arbitral Awards has 159 contracting states.³⁸

The success of international commercial courts towards arbitration will depend on their capacity to provide a fast proceedings, and free from its downsides of the traditional judicial proceedings or able to compensate for them. Due to the limited number of cases, there is not much information so far on how international commercial courts work. On the other side, the arbitration is boosting at international level. The time will show will be there a competition between international commercial courts and arbitration, or they will collaborate and co-exist.

³⁶ Marta Requejo Isidro, op. cit. 35.

³⁷ Pragya and Vedant Kumar, International Commercial Courts And Commercial Arbitration: Competitors Or Partners?, Indian Journal Of Law & International Affairs, 2017, p. 146.

³⁸ Dorothee Ruckteschler and Tanja Stooß, An important step toward endorsing litigation Do international commercial courts represent renewed competition for arbitration?, available at: <https://www.businesslaw-magazine.com/2019/06/06/an-important-step-toward-endorsing-litigation/>

VI. CONCLUSION

Competition between international arbitration and international commercial courts will encourage the improvement of procedures and practices on both sides to meet the expectations and desires of commercial parties in the field of dispute resolution. The recently created International Chambers aim to grant the same benefits to parties as international commercial arbitration, offering something of a hybrid; not quite arbitration, but not quite litigation in a national court either. Nevertheless, the advantages and disadvantages of the two systems seem to balance each other out overall, with the notable exception of the enforceability of the outcome.

Weighing in on the prospects of success of the Specialized Chambers it might be concluded that there are two factors which go in their favor. Firstly, it is the fact that such institutions already exist and have managed to establish themselves and operate with success in countries like Singapore where arbitration is very prominent, if not dominant compared to litigation, but also in countries that in the past have not been considered as attractive destination for dispute resolution such as Dubai and Qatar. Additionally, due to the existence of these institutions, international parties are already familiar with the concept of being able to litigate under flexible rules similar to arbitration, so the process of adaptation and familiarization should be short. Secondly, and most importantly the initiatives are triggered by the prospects of Brexit, which means that the countries are making institutional preparation to accommodate international litigants which favored London but would no longer be able to take advantage of the benefits of the EU regulations. In any case, the success of the international chambers and specialized courts would depend on the approach taken by the judges and the emerging case law which would reflect on the operation of the institutions. For this reason, the first cases which will be accepted by the chambers would have to throw the hardest punch, projecting trust and reliability. But also, we must take into account some of the challenges for the future. With the creation of the International Commercial Courts, there is a significant challenge for recruitment of bilingual judges, assistants, with knowledge of common law and common law evidentiary procedures. At the end, the time test will be the best answer to all questions concerning the battle between international commercial courts and arbitration.

References:

1. Audrey L., Creation of the International Chamber of the Paris Court of Appeals: a source of new challenges for Paris, available at: <http://www.dtmv.com/wp-content/uploads/2018/04/Article-Cr%C3%A9ation-de-la-CICAP-Audrey-Lemal-EN-VS.pdf>;
2. Creation of an International Chamber within the Paris Court of Appeal, available at: <https://www.incegd.com/en/knowledge-bank/creation-of-an-international-chamber-within-the-paris-court-of-appeal/>;
3. Detlev Kühner and Jessica Noy-Gsell, The international chambers of the Paris Commercial Court and of the Paris Court of Appeal, available at: <https://bmhavocats.com/en/2019/07/30/the-international-chambers-of-the-paris-commercial-court-and-of-the-paris-court-of-appeal/>;

4. Dorothee Ruckteschler and Tanja Stooß, An important step toward endorsing litigation Do international commercial courts represent renewed competition for arbitration?, available at: <https://www.businesslaw-magazine.com/2019/06/06/an-important-step-toward-endorsing-litigation/>;
5. Fairgrieve, D., & Le Tutour, S. (2018). Doors open for First Hearing of International Chamber at Paris Court of Appeal, available at: <http://conflictoflaws.net/2018/doors-open-for-first-hearing-of-internationalchamber-at-paris-court-of-appeal/>;
6. Gaillard, E., & Banifatemi, Y. (2018). The International Chambers of the Paris Courts and Their Innovative Rules of Procedure. Retrieved from <https://www.shearman.com/perspectives/2018/04/paris-courts-and-their-innovative-rules-of-procedure>.
7. Gary F. Bell, The New International Commercial Courts — Competing With Arbitration? The Example Of The Singapore International Commercial Court, 11(2) CONTEMP. ASIA ARB. J. 193, 2018, p. 196.
8. Henke, F. (2018). Netherlands Commercial Court: English proceedings in The Netherlands. Retrieved from <http://conflictoflaws.net/2018/netherlands-commercial-court-english-proceedings-in-the-netherlands/>.
9. Ioana Knoll-Tudor (Jeantet), The European and Singapore International Commercial Courts: Several Movements, a Single Symphony, available at: <http://arbitrationblog.kluwerarbitration.com/2019/03/06/the-european-and-singapore-international-commercial-courts-several-movements-a-single-symphony/>;
10. Knoll-Tudor, I. (2018). Specialised Chambers for International Commercial Disputes: Paris in the Spotlight - Kluwer Arbitration Blog, available at: <http://arbitrationblog.kluwerarbitration.com/2018/02/14/specialised-chambers-international-commercial-disputes-paris-spotlight/>;
11. Marta Requejo Isidro, 'International Commercial Courts in the Litigation Market' (2019) MPILux Research Paper Series 2019 (2), [www.mpi.lu];
12. Matic, N. (2018). In The Pipeline: Zurich International Commercial Court - International Law - Switzerland. Available a: <http://www.mondaq.com/x/745118/international+trade+investment/In+The+Pipeline+Zurich+International+Commercial+Court>.
13. Métais, P., & Valette, E. (2018). Paris as an international jurisdiction: creation of chambers specialized in cross-border disputes White & Case LLP International Law Firm, Global Law Practice, available at: <https://www.whitecase.com/publications/alert/paris-international-jurisdiction-creation-chambers-specialized-cross-border>.
14. Patrick Dunaud, Global Outlook sponsored briefing: The International Chamber of the Paris Court of Appeal – France has risen to the challenge, available at: <https://www.legalbusiness.co.uk/analysis/disputes-yearbook-2018/global-outlook-sponsored-briefing-the-international-chamber-of-the-paris-court-of-appeal-france-has-risen-to-the-challenge/>
15. Pragya and Vedant Kumar, International Commercial Courts And Commercial Arbitration: Competitors Or Partners?, Indian Journal Of Law & International Affairs, 2017;

16. Weller, M. (2018). The Justice Initiative Frankfurt am Main 2017, available at : <http://conflictoflaws.net/2017/the-justice-initiative-frankfurt-am-main-2017-law-made-in-frankfurt/>.

Legal texts:

1. Protocol relating to the procedure before the International Chamber of the Paris Commercial Court, Original - Protocole relatif à la procédure devant la chambre internationale du tribunal du commerce de Paris, available at: http://www.avocatparis.org/system/files/editos/protocoles_signes_creation_jurisdiction_commerciale_internationale_2.pdf, English (unofficial) translation available at: https://www.shearman.com/-/media/Files/Perspectives/2018/04/Protocol_relating_to_the_procedure_before_the_International_Chamber_of_the_Paris_Commercial_Court.pdf?la=en&hash=BEE7E9D9833EC33B9DADCFA576972DE8791EA49E.
2. Protocol relating to the procedure before the International Chamber of the Paris Court of Appeal, Original - Protocole relatif à la procédure devant la Chambre Internationale de la cour d'appel de Paris, available at: http://www.avocatparis.org/system/files/editos/protocoles_signes_creation_jurisdiction_commerciale_internationale_1.pdf, English (unofficial) translation available at: https://www.shearman.com/-/media/Files/Perspectives/2018/04/Protocol_relating_to_the_procedure_before_the_International_Chamber_of_the_Paris_Court_of_Appeal.pdf?la=en&hash=8539B15BCD02C6140DF2FDE5212C1B364FBCC1F4.
3. Report of the Haut comité juridique de la place financière de Paris, available at: http://www.justice.gouv.fr/publication/Rapport_chambres_internationales.pdf.