

# The currency of trust: How the Singapore International Commercial Court fortifies global commerce

By James Allsop

A DECADE ago, the Singapore International Commercial Court (SICC) was established with a simple yet profound ambition: to serve as a forum where international commercial disputes could be resolved with the same confidence and integrity that underpins successful commercial transactions.

Since the SICC's inception, the astonishing growth in international trade and commerce has created a corresponding need for commercial dispute resolution. Despite a lack of any apparent harmony or organisational clarity in this global ecosystem, it works dynamically and effectively, providing the impetus for the development of a modern international commercial law, a modern-day *lex mercatoria*.

## The notion of international commerce

There is an innate paradox that arises in considering the value and workings of international commerce. Commerce begins with self-interest, and encompasses disagreements, misunderstandings and sometimes a lack of good faith. Yet, commercial transactions flourish only when both sides feel they have secured something worthwhile.

Thus, commerce is both selfish and part of the betterment of the human condition. In this way, reputation and relationships become currency, and goodwill becomes a strategic asset that safeguards future dealings, creating peace and mutual cooperation entirely separate from national interests.

Rudolf von Jhering captured this tension in *Law as a Means to an End*: "Long before the State rose from its couch, in the morning twilight of history, trade had already completed part of its day's work. While states were fighting one another, trade found out and levelled the

road which led from one people to another and established between them a relation of exchange of goods and ideas; a pathfinder in the wilderness, a herald of peace, a torch bearer of culture."

This idealism has its place. From ancient maritime routes linking China, Arabia and Europe, merchants forged norms of good faith, fair dealing and proportionate remedies – not through decree, but through practice. These customs still persist; commerce is formed on the basis of honesty, good faith and decency.

As a result, the effective resolution of commercial disputes mandates competence, efficiency, fairness and trust in execution. Moreover, the judicial task in international commerce must be undertaken effectively to engender not only the loyalty of local citizens, but also to inspire the confidence of every foreign state, merchant and trader involved.

## The asymmetry and interconnection of international justice

If one is looking for a taxonomically symmetrical or even apparently well-organised hierarchy and logically connected organisation, one will find it entirely lacking.

What exists is an asymmetrical anational body of tribunals, institutions, people, courts and alternative dispute resolution (ADR) centres across the world; but they are interconnected. They are interconnected by the New York Convention on enforcement of arbitration awards, the Model Law on arbitration, the Singapore Convention on Mediation, and the developing coherence and common approach to international enforcement of court judgments under various international conventions on choice of court and enforcement of foreign judgments.

More importantly, however, they are connected by common values of fairness and due process, providing the requisite degree of trust and dignity for international and foreign commercial parties seeking justice.

It is this interconnection that calls for the self-conscious competence of, and mutual cooperation between arbitration institutions and participants, commercial courts and judges. Similarly, it is within this cooperation that confidence in the international justice system is maintained. It arises from the knowledge that decision makers – wherever seated in tribunals and courts – will give any party seeking justice a fair hearing above narrow national or commercial interests.

There is a universal faith that we as humans all wish to place in impartial adjudicators to deliver justice and uphold the rule of law.

Into this system, the SICC has inserted a distinctive node – a hybrid forum that marries judicial transparency with the specialism of international arbitration. By convening jurists and eminent practitioners from common-law and civil-law jurisdictions, the SICC facilitates the appreciation of different perspectives on common principles and underlying values.

This global exchange is an inherently important part of the judicial task, as no judge can fully appreciate the nature and importance of what he or she does without appreciating how judges in other traditions undertake the same task.

As Lord Thomas, the former lord chief justice of England and Wales, said in his seminal speech in 2016, the strategic objective of the commercial court adapting to respond to the globalised world must be based upon the aim of "strengthening the rule of law in our global village".

The development of the law in the past



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decade has shown that the best way to do this is to construct a legal order that provides an appropriate foundation of legal security to commercial relationships, and which is also sufficiently adapted to the requirements of those relationships by providing necessary flexibility and freedom of choice. It is clear that the SICC embodies this aspiration.

Concerns at the time of the SICC's establishment that it might undermine arbitration in Singapore by hearing international disputes in a court instead of by arbitration were misplaced.

The SICC, Singapore International Arbi-

tration Centre and ADR centres do not act as rivals, but as partners in safeguarding the rule of law in international commerce in Singapore. All have seen immense and separate growth in the last decade, a testament to their complementary roles.

Over the first 10 years, the SICC has handled disputes in a wide range of international commerce, including shipping, commodities, finance and technology, with each case reinforcing bedrock principles of good faith, proportional remedies and reasoned interpretation.

By bolstering the integrity and reach of the international justice system, the SICC has illuminated a path for future courts to follow – one where trust in a fair process is the linchpin of global trade.

## A beacon for global commerce

Trade reconciles self-interest with mutual benefit; it builds bridges where narrow rivalry would erect walls. But the promise of trade can only be fully realised if there exists an international justice system that commands international confidence. The SICC, after 10 years, has demonstrated its vital role in vindicating these high ideals in the practical reality of its operation.

As global trade continues to evolve, the SICC's experience offers a beacon: institutions that are firm in principle yet flexible in practice; forums where strangers partake in processes that leave each party assured that justice has been done. Here, commerce and justice co-evolve, bound by the same spirit of cooperation, foresight and respect.

The writer was appointed as an international judge to the Singapore International Commercial Court on Jan 5, 2024. He is the former chief justice of the Federal Court of Australia, a position he held for a decade.