

GLOBALIZATION AND INTERNATIONAL COMMERCIAL ARBITRATION

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ABSTRACT

International commercial arbitration is a private transnational system of dispute resolution composed of multilateral conventions, bilateral treaties, national arbitration laws, and principles and norms of private informal dispute resolution. Conditions associated with globalization have transformed international commercial arbitration from a private informal regime of dispute resolution controlled by a small epistemic (expert) community into a more formal, legalistic and increasingly institutionalized regime that is dominated by the International Chamber of Commerce and large multinational Anglo-American law firms. This transformation, however, does not indicate a shift away from the national sovereignty system. National states and their legal systems continue to play an important governance role within the regime. Although some members of the epistemic community advocate “denationalizing” international commercial arbitration - or detaching it from the fetters of national legal systems - national courts and national laws continue to play a central support and supervisory role in the effective operation of the regime. The idea of a supranational system of international commercial arbitration law - a “lex mercatoria” or new law merchant - governing the regime has not gained widespread acceptance or legitimacy. While there has been some limited convergence of international commercial arbitration norms (e.g. the party autonomy principle), diverse national approaches to arbitration persist despite efforts to harmonize and unify international commercial arbitration law.

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