



Current Trends on International Commercial Dispute Settlement — An Overview

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- **Private Justice v Public Justice?**
 - ▶ Reflex: some public element/authority is always associated to the very notion of Justice
 - However, 'Private Justice' (i.e. the settlement of legal disputes by private adjudicators whose decisions are largely enforced by private means) becomes more and more significant
 - ▶ Different expectations and assumptions exist as to their legitimacy



Settings for the settlement of international commercial disputes:

- *Arbitral tribunals*
- *[Mediators]*
- *Domestic courts (including ICC)*
- *International courts*

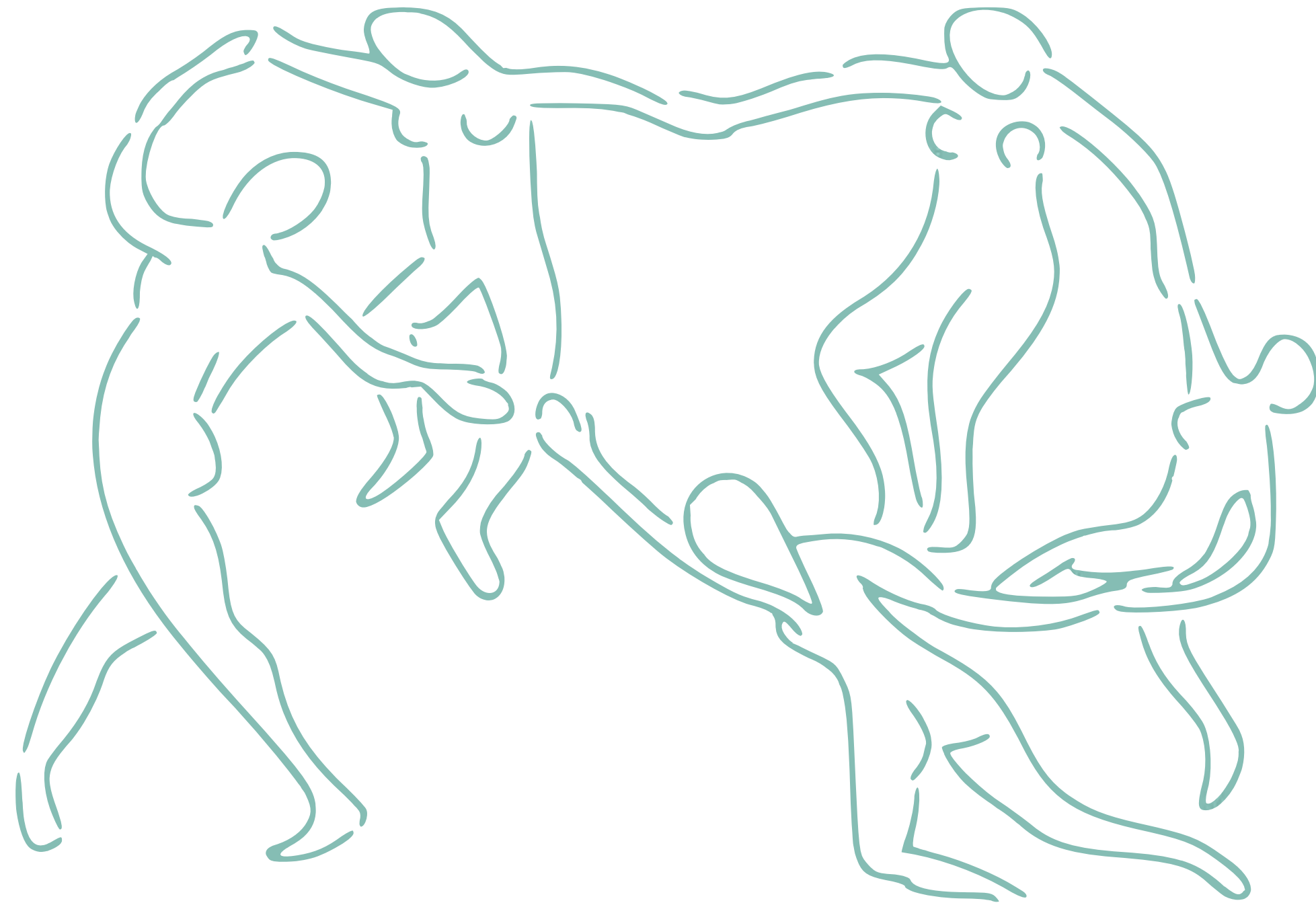


Introduction — International Commercial Dispute Settlement

- ▶ ‘Private Justice’ protected and controlled by State (or supranational) courts?
 - *Human right to access to justice includes the right to arbitrate – See for instance ECHR case-law:*
 - *Mutu and Pechstein v Switzerland (2018)*
 - *Ali Riza et al. v Turkey (2020)*
 - *Control of impartiality and independence of arbitrators*
 - *Halliburton v Chubb (2020) U.K. Supreme Court*
 - *Recognition and enforcement / annulment of awards*
 - *NY Convention / UNCITRAL ML*

Introduction — International Commercial Dispute Settlement

- Private adjudicators and public courts ---



competition or collaboration?

Arbitration

- Peak of Arbitration = *de facto* quasi exclusive jurisdiction in many commercial fields
 - ▶ The vast majority of the most economically relevant commercial disputes is now systematically submitted to arbitration
 - *Commercial disputes in general*
 - *Investment disputes*
 - *Inter-state disputes related to trade issues*
 - *Sports arbitration*
 - ▶ Boom of arbitral institutions — opening new offices across all continents

- This growing ‘arbitralisation’ is not for free --- it calls for reform to enhance core values of **transparency**, **consistency** and **accountability** (vectors of legitimacy)
 - ▶ **Reform is ongoing in ISDS**
for procedural and substantial issues
 - ▶ **ICA is still far from acknowledging the need for a comprehensive reform**
 - *But arbitral institutions have engaged in some reforms*

- Different reactions to the expansion of Arbitration
 - ▶ **Arbitration users:** general preference for Arbitration but concerns about **efficiency, celerity** and **costs**
 - ▶ **Civil Society:** general unease about allowing private adjudication of **disputes concerning public interests**
 - ▶ **States:** generally a **proactive attitude** in favour of arbitration since the 50s
 - *At national and international level*
 - *Promoter & Regulator = more space for arbitration in exchange of some control (**ISDS: State criticism** is peculiar and normally related with its role of respondent in actual cases)*

- ‘Denationalisation’ of Commercial Law (which is also generally applicable to Private International Law) :
 - ▶ **Erosion of the exclusive role** once played by the State and **end of State monopoly on normative production** (amazing amount of substantial and procedural soft law)
 - ▶ **States** nevertheless retain an important **role in the IBL game**:
 - Establishing some general IBL objectives
 - Developing a part of its content
 - Adjudicating IBL disputes

- International tools to catch up **(or try to do so)** with the New York Convention?
 - ▶ **2005 Hague Convention on Choice of Courts Agreements**
 - ▶ **2019 Hague Convention on Recognition and Enforcement of Judgments**
 - ▶ **2018 Singapore Convention (UN) on International Settlement Agreements Resulting from Mediation**

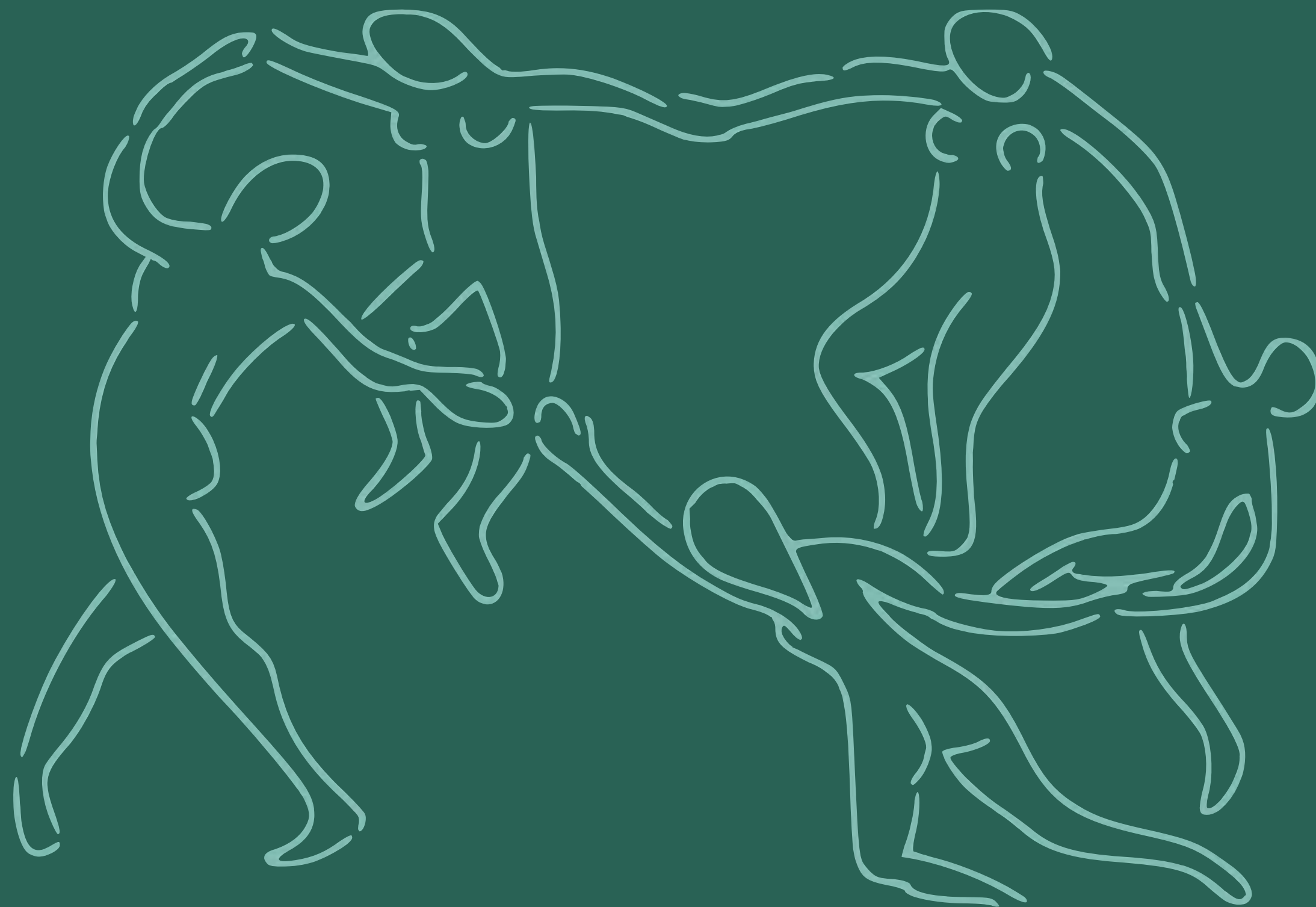
- **Emergency of international commercial courts**
 - ▶ **Arbitration copycat?** More flexible procedures and specialised (possibly foreign) judges but still within public national judicial structure
 - ▶ **How flexible? One telling fact:** the use of English language before the new International Commercial Court of Paris (ICCP)
 - ▶ **A competitor for arbitration?** Aggressive marketing by these international commercial courts: *see Singapore International Commercial Court (website)*

International Courts

- ICJ examines PrIL issues when deciding on PIL issues
- Human Rights courts indirectly address PrIL issues
- Regional courts dealing with commercial issues

Which Future?

Dialogues and Transformations



- Impact of ‘legitimisation trend’ in Arbitration
- Evolution of international commercial courts
- Development of international Mediation
- Use of international conventions by private institutions and State courts



Thank you and see you in 2021!