"International" Arbitration in an Increasingly Regional World
by J. Greenaway and C. Ludwig

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"International" arbitration in an increasingly regional world
Joanne Greenaway and Claudia Ludwig

Executive Summary
The article examines the recent proliferation of institutions worldwide, looking first at the
global expansion of the international institutions and then at the growth of independent
regional institutions, whilst recognising that there is no clear dichotomy between the two
models.

Many of the major international institutions have recently expanded, or are seriously
considering expansion, into new jurisdictions by setting up subsidiaries or entering into joint
ventures/partnerships with regional centres. These global expansion plans seem to be driven,
on one hand, by the international institutions themselves in order to address increased
competition and, on the other hand, by new or existing regional institutions seeking to draw
upon the experience and reputation of the international institutions and entering into
partnership or similar arrangements with them.

The growth in independent regional institutions is arguably driven largely by convenience
factors such as location, contacts with local lawyers, language and culture as well as familiarity
of the institution with the local process, court system and legal framework. The trend to
regionalism can also be seen as a response to the legitimacy problems which international
arbitration suffers in some parts of the developing world. Parties from emerging jurisdictions
often want to be able to influence the arbitration process with their own tailored rules which
are sensitive to local issues and appoint local arbitrators who understand them. At the same
time, many such jurisdictions are promoting arbitration as a safe dispute resolution mechanism
in order to attract investments.

In parallel to the move to regionalism there has also been a move to specialisation as parties
are increasingly interested in institutions that can deliver expertise in certain types of cases. This
is evidenced by the continued growth of ICSID notwithstanding a recent backlash from certain
South American states in particular.

The authors conclude that, while the growth of regionalism, in whichever form, is undeniable,
this should not be seen as a threat to international arbitration. On the contrary, it should
increase the trust users put in arbitration as a dispute resolution mechanism, help to resolve the
credibility and legitimacy issues international arbitration faces and increase the efficiency and
quality of the arbitral process. Nor should the growth of regionalism be seen as the only solution
to the challenges international arbitration faces as a result of its increased global popularity.
An increased sensitivity of arbitrators and those involved in the arbitration process is also
crucial to take account of the background of the parties and the cultural context of the dispute
from which it arises.
1. INTRODUCTION

A study into choices in international arbitration conducted in 2010\(^1\) confirmed that users of arbitration increasingly look to 'regional' arbitration institutions as viable alternatives to 'international' institutions. When asked about top influences on the choice of arbitral institution, 32% of those surveyed cited "regional knowledge and presence". Whilst there are, of course, other key influences, including neutrality and internationalism, it is clear that parties are increasingly opting for non-traditional institutions, particularly as the reputations of those institutions grow and they develop a track record.

While the growth of regional institutions is driven by the users who choose local institutions for location and convenience as well as familiarity with the parties’ language and the local legal and business culture, it is also driven by the institutions themselves. As such, different types of regional models have started to evolve and take shape. On one hand, governments seek to attract investment into their region and lay the foundations for such investment by opening up new arbitration centres, either in partnership with an international institution or independently. On the other hand, the traditionally 'international' institutions increasingly look to expand globally and have sought to do so by engaging representatives in the different regions of the world promoting their services.

What is clear, therefore, is that there is no strict regional/international dichotomy but rather the definitions are fluid and models are numerous. It is worth recalling, by way of example, that the LCIA started out as a 'regional' institution, focusing on disputes which involved at least one English party or were otherwise connected to England. These days, the LCIA hears many disputes which have no connection to England whatsoever. Similarly, the SCC\(^2\) which started out as a 'regional' institution now serves Eastern Europe and increasingly has a wider geographical remit. Some of the new 'regional' institutions behave more and more like 'international' institutions, particularly where they serve as a platform for a wide region. SIAC\(^3\) is a notable example as it serves a wide variety of Asian and Australian parties.

This article will examine the recent proliferation of institutions worldwide, looking first at the global expansion of the international institutions and then at the growth in regional institutions. It will explore whether this trend to regionalism and the move of more and more cases to smaller, more regional institutions threatens to undermine the position of the international institutions. As Ahmed El-Kosheri famously argued, arbitration has universal aspirations which "transcend the particularities of any given culture and, going beyond regional and domestic experience….". As such, there should be no requirement for a regional focus.\(^4\) Conversely, we will consider whether the growth of the regional institutions can be seen as simply an inevitable reflection of the increased popularity and growth of arbitration globally and therefore a trend to be welcomed. We shall also discuss whether there is a risk that the new regional institutions reduce the quality of awards due to their lack of experience or whether the increased competition and the greater pool and diversity of arbitrators in fact improves the overall quality of the arbitral process and resulting arbitral awards.

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\(^1\) "2010 International Arbitration Survey: Choices in International Arbitration", by Queen Mary University of London, School of International Arbitration and White & Case.

\(^2\) Stockholm Chamber of Commerce.

\(^3\) Singapore International Arbitration Centre.

2. GROWTH AND GLOBAL EXPANSION OF INTERNATIONAL INSTITUTIONS

The major international institutions (particularly the ICC, LCIA and ICDR\textsuperscript{5}) have all experienced significant overall growth in the last five years, even though, in the case of LCIA and the ICC, this growth has slightly slowed since 2010.\textsuperscript{6} Although we tend to expect an increase in disputes during a recession, this slight slowdown in growth may be due, on one hand, to the economic climate and the parties' reluctance to incur the costs of arbitration proceedings unless settlement negotiations are simply no option and, on the other hand, an increase in competition, caused by the opening of new regional centres.

In addition to growing internally, all three international institutions have already expanded or are at least seriously considering expansion into new jurisdictions. However, they have chosen slightly different models through which to do so.

The LCIA has been particularly active in this regard. In February 2008, in order to promote arbitration in the Middle East, the LCIA entered into a partnership with the Dubai International Finance Centre to form the DIFC-LCIA Arbitration Centre. The Centre's rules are a close adaptation of the LCIA Rules, with minor changes to align them with the DIFC-LCIA Arbitration Centre's needs. A year later, in April 2009, the LCIA launched LCIA-India, the first independent subsidiary of the LCIA. LCIA-India launched new rules in April 2010 which are almost identical to the LCIA Rules with some minor changes. Finally, in July 2011, the Government of the Republic of Mauritius, the LCIA and the Mauritius International Arbitration Centre Limited (MIAC) entered into an agreement for the establishment and operation of a new arbitration centre in Mauritius, to be known as the LCIA-MIAC Arbitration Centre. New bespoke LCIA-MIAC rules for arbitration and mediation came into effect on 1 October 2012.

For its part, the ICC, since 1998, has had a Standing Committee on Arbitration in Hong Kong in order to promote arbitration in Hong Kong and Asia. The authors understand that the ICC is currently considering the merit of opening more regional centres and seriously contemplating the opening of a centre in New York. In the pipeline is also an affiliated organisation of the ICC in Israel, the Jerusalem Arbitration Centre, which is due to launch in September 2013. A joint venture agreement establishing the centre was signed on 27 March 2013. This arbitration centre will have a wider mandate than other institutions in that its expected effect is to promote peace between Israelis and Palestinians by developing a shared business culture, doubling the scope of commercial transactions and providing more confidence in their business dealings through the ability to resolve disputes effectively in a neutral forum and to produce awards that are enforceable by their respective judicial systems.

The ICDR has focussed on spreading its wings worldwide through the establishment of various joint ventures with local existing organisations. In February 2006, the ICDR opened an office in Mexico City, through a joint venture with the Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce (CANACO). In October 2007, the ICDR opened an office in Singapore through a joint venture with SIAC. The new joint facility, the International Centre for Dispute Resolution - Singapore, provides comprehensive rules for the conduct of arbitration and mediation, training and the appointment of arbitrators to the panel of arbitrators.

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\textsuperscript{5} International Centre for Dispute Resolution, the international wing of the American Arbitration Association (AAA).

\textsuperscript{6} The LCIA had 137 new cases in 2007, a number which almost doubled in 2008 (221 new cases) and 2009 (285 new cases). There has been a small decrease in the number of cases in 2010 (267 new cases) and 2011 (237 new cases). In comparison, the ICC accepted 599 new cases in 2007, 663 new cases in 2008, 817 new cases in 2009, 793 new cases in 2010 and 796 new cases in 2011. The AAA/ICDR registered 621 new cases in 2007, 703 new cases in 2008, 836 new cases in 2009, 888 new cases in 2010 and 994 new cases in 2011.
of ICDR Singapore and case administration services for submitted disputes. Finally, on 11 January 2010, the AAA entered into a partnership with the Kingdom of Bahrain to launch the Bahrain Chamber of Dispute Resolution (BCDR-AAA). Bahrain has since enacted legislation which entrenches the role of the BCDR-AAA, establishes an arbitration "free zone" (which provides users of the centre with a guarantee that awards cannot be challenged in the local courts of Bahrain) and introduces the concept of statutory arbitration.

The driver behind the international institutions' global expansion plans seems to be competition and a reluctance to lose market share, based on the realisation that global acceptance can only be achieved by having local centres which are close to the end-user, work in the appropriate time zone and are staffed by people with the necessary language skills, cultural awareness and local knowledge. Nonetheless, it should be acknowledged that this model is also often driven by countries wishing to set up an arbitration centre or an existing regional arbitration centre which wants to draw upon the experience of an international institution. Partnership with an international institution can give a regional institution added credibility and legitimacy.

3. GROWTH IN REGIONAL INSTITUTIONS

At the same time as the international institutions have expanded into new jurisdictions by setting up their own new regional centres or entering into partnerships or joint ventures with regional centres, there has been a tremendous growth of independent regional institutions. Many of these have proved to be remarkably successful, without the infrastructure or reputation of an international institution behind them. Whilst regional institutions have existed for many years (notably the LCIA in its original form since 1892, the SCC since 1917 and the AAA since 1926), there has been something of an upsurge in the number of jurisdictions that have selected this route in recent years. Some of the more notable (and more established) of these institutions include the HKIAC, SIAC, KLRCA, CRCICA and CIETAC.

In terms of case-load, the HKIAC (Hong Kong International Arbitration Centre) is one of the most significant, with 502 cases registered in 2011 alone. Its Rules are based on the UNCITRAL Model Law, with the notable addition of a strict obligation of confidentiality, something which is considered important by users in the region. The HKIAC is an important centre in particular for Chinese parties whenever they are not obliged by Chinese law to arbitrate in the People's Republic of China (which they are obliged to do when a substantial part of the subject matter is connected to China, the relevant contract was signed in China and both parties to the dispute are Chinese). The HKIAC's expected new set of rules due to be published this year will no doubt only add to the popularity of the institution.

SIAC has shown remarkable growth in the last five years: from 86 new cases in 2007 to 188 new cases in 2011. Last year was SIAC's busiest year so far. They received 235 new cases, up 25% from 2011 and nearly 20% above the previous busiest year (2010). This is mainly a result of the Singapore Government's investment and concerted effort to develop a sophisticated legal and physical infrastructure. The SIAC is particularly popular with Indian, Indonesian, Hong Kong, Malaysian and South Korean but also Australian parties, given its relative proximity to those countries and its perceived neutrality for their disputes, as well as its reputation in general. It is also increasingly popular amongst Chinese parties, competing to a large extent with the HKIAC for those disputes where parties are not legally obliged to arbitrate within the PRC itself.
Amongst the oldest of the 'regional' institutions are the KLRCA (Kuala Lumpur Regional Centre for Arbitration) and the CRCICA (Cairo Regional Centre for International Arbitration). They were both established by agreement with the Asian-African Legal Consultative Committee in the aftermath of the introduction of the UNCITRAL Rules in 1976. The idea was to promote the use of arbitration in Asia and Africa where formal arbitration was not popular, primarily because the legal profession was unfamiliar with the mechanics of arbitration procedures. It was also felt that efforts should be made to promote institutions at national level to encourage resort to arbitration to a larger extent and to enable proceedings to take place within the countries where the performance of the contract was to take place. A unique feature about these institutions is that, unlike other institutions (apart from the LCIA), they are non-profit. Their independent functioning has been assured by their respective host governments. It has taken nearly a decade for both of these institutions to become fully operational, attributed by some to the "virtual monopoly of the established institutions of the West in this field".

Despite being one of the oldest regional institutions, the KLRCA has also proven to be innovative. It has recently (at the 2012 Global Islamic Finance Forum) launched an adapted set of its Arbitration Rules for Islamic arbitration. The new rules are referred to as the i-Arbitration Rules and aim to allow for the resolution of disputes arising from any contract that contains Sharia (Islamic Law) issues (the "i" prefix being a well-recognised indication of Sharia compliance). The aim behind the i-Arbitration Rules is to provide arbitration that is suitable for international commercial transactions premised on Islamic principles and recognised and enforced internationally. With this step, the KLRCA is trying to establish itself as a rival to the arbitration centres in Hong Kong and Singapore, aiming to capture a growing sector within the growing arbitration market. It also highlights the increase in Islamic finance parties relying on arbitration to resolve their disputes.

Established in 1956, CIETAC (China International Economic and Trade Arbitration Commission) is one of the most established regional institutions and the most commonly used in China for international disputes. While the CIETAC dispute resolution process has become more international with the adoption of the new CIETAC Rules which came into force on 1 May 2012, it still caters for many regional and cultural peculiarities. The CIETAC Rules provide for a relatively speedy dispute resolution process of 6-12 months. They also emphasize and provide for mediation as part of the arbitration process by allowing the arbitrators themselves to act as mediators, which is culturally in line with the accepted local practice of the blend of mediation and arbitration known as 'med-arb'. Another point of difference as compared to other institutions operating in the international sphere is that, generally speaking, the CIETAC Rules rely much less on witnesses and oral testimony.

The recent split between CIETAC Shanghai and CIETAC Beijing can be seen as an example of even further regionalism or 'sub-regionalism'. On 1 May 2012, the Shanghai sub-commission announced that it had split form CIETAG Beijing, declaring itself an independent arbitration institution with its own arbitration rules and panel of arbitrators. Early this year, CIETAC Beijing responded by removing the authorisation of its Shanghai and South China (Shenzhen) sub-commisions to accept and administer cases, even if the parties have specified arbitration in

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7 According to a report by Global Arbitration Review on 20 February 2013, the CRCICA witnessed an increase of almost 20% in its caseload in 2012. It registered 78 new cases in 2012, compared with 66 cases in 2011. The previous record was 67 cases in 2007.

either of the two cities. The two sub-commissions rejected this suspension as having no legal foundation and therefore no binding effect. In a joint announcement published on 29 January, the two dissident bodies claimed that they were formed not as mere branches of CIETAC but as independent arbitration institutions by the municipal governments in Shenzhen and Shanghai, in 1983 and 1998 respectively. They say they can therefore accept and administer CIETAC cases without approval from their former parent body in Beijing.

There are many less-known regional institutions, many of which also have a significant load of international cases. Examples are the CICA (International Conciliation and Arbitration Centre of the US-Costa Rica Chamber of Commerce) which registered 335 international cases between 2003 and 2007, the KCAB (Korean Commercial Arbitration Board) which registered 243 international cases between those dates, the VIAC (International Arbitration Centre of the Austrian Federal Economic Chamber) which registered 225 international cases between those dates, the SAKIG (Court of Arbitration at the Polish Chamber of Commerce) which registered 221 international cases between those dates and the NAI (The Netherlands Arbitration Institute) which registered 154 international cases between those dates.9

The JCAA (the Japan Commercial Arbitration Association) has a slightly lower caseload than other regional institutions (registering only 66 cases between 2003 and 2007). This could be attributed to the fact that, traditionally Japanese parties are culturally dispute averse and, if a dispute cannot be avoided, they prefer the local courts over arbitration. However, this dynamic appears to be gradually changing.

Many other regional institutions also exist, such as the Chamber of National and International Arbitration Milan, the Mongolian National Arbitration Court and the Tehran Regional Arbitration Centre, although these have not yet gained much traction internationally.

Furthermore, several other institutions have launched recently or are planning to do so in the near future. These are concentrated in developing countries and jurisdictions but are not restricted to particular regions. For example, in Asia, Cambodia’s National Arbitration Centre just named its first board members and is due to open shortly, planning to build a capacity to administer international arbitrations. In Africa, 2012 was a busy year for local arbitration as the Lagos Court of Arbitration launched in Nigeria in November 2012 and the Kigali International Arbitration Centre launched in Rwanda by law in 2011, publishing its rules in May 2012.

4. WHAT IS DRIVING THIS GROWTH?

Understanding what is behind this proliferation of regional institutions is not straightforward and is no doubt driven by various different factors in different regions and jurisdictions.

According to the 2010 Queen Mary Study, convenience factors such as location, contacts with local lawyers, language and culture play a major role in the selection of institution.10 This inevitably extends to the institution being in the appropriate time zone and being staffed by personnel with the relevant language skills and cultural awareness. A regional institution is obviously particularly attractive where both parties share the same language and culture.

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9 “International Arbitration: Corporate attitudes and practices 2008”, survey by Queen Mary University of London, School of International Arbitration and Pricewaterhouse Coopers LLP.
10 “2010 International Arbitration Survey: Choices in International Arbitration”, by Queen Mary University of London, School of International Arbitration and White & Case.
However, depending on the relative bargaining power, a party may also opt to accommodate its counterparty by agreeing to an institution which shares the counterparty’s regional and cultural background.

Another important factor in the choice of institution, according to the 2010 Queen Mary Study, is the familiarity of that institution with the local process and court system and the legal framework. Not only do parties often value their cases being handled by teams who are experts in the relevant region, but there has been a drive towards the ability to appoint local arbitrators who share the same cultural background as one or other of the parties. ‘Regional’ institutions often seek to sell themselves on the basis that their list of arbitrators is comprised of local individuals. It must be acknowledged, however, that the international institutions have also sought to ‘open’ their lists of arbitrators. The ICC, in particular, as a result of the diversification and increased activity of its national committees, has included arbitrators from over 60 nationalities and an increasing number of non-Europeans on its ICC Commission on Arbitration and the ICC Court of Arbitration.

It is also interesting that there is a marked variation in costs amongst institutions, perhaps another factor driving the growth in popularity of the regional bodies. Generally, when comparing institutions which charge on an ad valorem basis, the costs are less for regional and smaller institutions. Nonetheless, this is not necessarily the case at all levels of the costs scale. There are some interesting peculiarities such as the fact that CIETAC is the most expensive institution for cases of $1 million or more but, in most other cases, one of the cheapest.

As the location of some of the new regional institutions shows, the trend to regionalism is at least partly driven by emerging markets and developing jurisdictions. International arbitration suffers from legitimacy problems in some areas of the developing world. A way to address this problem is to establish regional institutions with their own tailored rules which are sensitive to local issues and have local arbitrators who understand them, thereby allowing the developing jurisdictions to influence the arbitration process. This was certainly the motivation behind the establishment of the Mauritius Arbitration Centre, which was meant as a platform for Africa as a whole, aiming to grow expertise, provide a centre of excellence for training and a safe seat. It is also one reason behind the backlash against investment arbitration which is seen by many to have too small a pool of arbitrators and to be disconnected from local issues and politics. Similar considerations have led regional institutions such as the KLRCA to adopt tailored rules which recognise the particularities of the Islamic culture. Commentators have argued strongly that, whereas Islam recognises arbitration, the way in which the arbitral process has developed through the ‘international’ institutions has not taken sufficient account of aspects of Islamic roots such as an emphasis on conciliation and the importance to many users of appointing a known, trusted Muslim arbitrator.

Emerging jurisdictions seem to realise the economic contribution an institution can make to a particular country or region. Governments are increasingly promoting arbitration in their

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11 “2010 International Arbitration Survey: Choices in International Arbitration”, by Queen Mary University of London, School of International Arbitration and White & Case.
jurisdiction, recognising that the ability to offer a safe dispute resolution mechanism and the relevant infrastructure (such as hearing facilities) attracts investment. Examples are the highly profitable Maxwell Chambers in Singapore as well as the DIFC in Dubai which both contribute to the growth of the economy of their respective regions. It may be easier and more effective for a government to set up a regional arbitration institution, possibly linked with an international arbitration institution to give it credibility and legitimacy, than trying to resolve the delay, corruption and other issues affecting its state court system.

So, do the new regional institutions in the developing world evidence a power shift away from Europe and the US? In the authors' view this would seem too simplistic a conclusion. First, several major regional institutions are based in developed countries. Examples include the Swiss Chambers’ Arbitration Institution, the DIS (Deutsche Institution fuer Schiedsgerichtsbarkeit), the ICAC (International Commercial Arbitration Court), the SCC (Stockholm Chamber of Commerce) and the ACICA (Australian Centre for International Commercial Arbitration), some of which are amongst the newer institutions. Second, and importantly, many of the new regional centres have been set up as a branch of or in partnership with one of the international institutions which are either Europe or US-based. However, it would be fair to conclude that a larger proportion of the newer regional institutions are based in developing jurisdictions. Furthermore, the regional institutions are clearly becoming increasingly established and a lack of track record or credibility does not seem to have been a barrier to entry for these new institutions. SIAC, for example, not only demonstrates this by its statistical achievements in terms of case load, but now also by branching out in a similar way to the 'international institutions', recently announcing plans to open three international offices in 2013: in Mumbai, in Seoul and in the Gulf.

5. GROWTH OF INDUSTRY SPECIFIC INSTITUTIONS

As well as the move to regionalism there has also been a move to specialisation as parties are increasingly interested in institutions that can deliver expertise in certain types of cases.

This, of course, is not a new phenomenon. An example of a long-established industry specific institution is the WIPO Arbitration and Mediation Centre which deals with technology, entertainment and other disputes involving intellectual property.

However, there are also more recent developments. In January 2012, a new financial dispute resolution body, the Panel of Recognised International Market Experts in finance (“PRIME Finance”) was launched in The Hague. Its aim is to provide a bespoke forum for the resolution of complex financial disputes. These would include cases relating to derivatives, swaps, wholesale financial market trading and other financial products. The Prime Finance dispute resolution rules are based on a tailored version of the UNCITRAL Rules. On 28 January 2013, on the occasion of its first birthday, PRIME Finance unveiled two draft model arbitration clauses - one with London seat and one with a New York seat - which it proposes to insert into the ISDA Master Agreements.

The initiative coincides with a consultation process by ISDA (the "International Swaps and Derivatives Association") as to the inclusion of arbitration as a dispute resolution option in the ISDA Master Agreements. ISDA is expected to release a number of model form arbitration clauses of its own later this year for use in conjunction with the Master Agreements. ISDA has previously indicated that arbitration under the PRIME Finance arbitration rules is one of the options under consideration, although it is anticipated that ISDA's model clauses will cover a number of the
major arbitral institutions and venues, including arbitration under the LCIA, ICC, HKIAC, SIAC and AAA/ICDR rules.

In a similarly vein, ICSID is an established institution that caters specifically for investment treaty cases and (despite the recent backlash addressed below) continues to grow in popularity for such disputes. There were 50 cases registered by ICSID in 2012 compared to 38 in 2011, 26 in 2010, 25 in 2009 and 21 in 2008. Nonetheless, the SCC and ICC too are marketing themselves as investment treaty fora and beginning to establish themselves as such. Since 1993, the SCC has administered 46 investment arbitrations, including four new investment arbitrations in 2011. According to the ICC’s 2012 report on arbitration involving states and state entities, approximately 10% of ICC arbitrations involve a state or a state entity. However, a large number of these cases are commercial disputes. The revised 2012 ICC Rules contain particular provisions to address the participation of states/state entities in ICC arbitrations such as Article 13(4) which gives the ICC Court discretion to appoint a sole arbitrator or the president of the arbitral tribunal directly, rather than upon the proposal of an ICC National Committee, in cases where one or more of the parties is a state or state entity. This addresses the concern raised by states about the role of the ICC National Committees in the appointment process and the perceived lack of neutrality of those Committees due to the fact that they are often composed of leading companies and business associations in their respective countries.

In recent years, as a result of the perceived anti-state bias within the ICSID system, there has been a growing backlash against ICSID by several South American states in particular. As a reaction, UNASUR (Union of South American Nations), an intergovernmental union modelled on the EU, is trying to develop an arbitration centre as an alternative to ICSID (albeit with limited jurisdiction, precluding, among others, disputes relating to energy, unless otherwise stated in the relevant treaty or contract). The UNASUR Constitutive Treaty entered into force in March 2011. A working group is looking at the establishment of a pan regional centre for the resolution of investment disputes. The proposal so far foresees a two-step process whereby the UNASUR dispute resolution mechanism would be available for state to state and investor state disputes for UNASUR states only in the first instance and, after an initial period, would be opened to investors and states from elsewhere. According to the draft procedural rules, the main differences of UNASUR over ICSID and the reasons why UNASUR may have more success than ICSID in the region are that (1) awards would have precedential value, (2) there is an appellate tribunal and (3) non-compliance with an award may result in suspension from UNASUR. Furthermore, Brazil, which attracts most FDI in the region, is a signatory whereas it is not a signatory to ICSID.

It is notable that the solution that is being worked towards by UNASUR is a regional one which is yet again evidence of the comfort taken in a local institution and the fear of imposition from further afield. Part of the rationale behind this project appears to be to give the relevant states more control over the dispute resolution process since they are closely involved with the establishment of the institution and its rules. This is certainly of concern to Ecuador, which took the lead in developing the UNASUR proposal. According to its President, Rafael Correa, the object of the new investment arbitration centre is to fight the "intellectual colonialism" that plagues

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14 Bolivia, Ecuador and Venezuela withdrew from the ICSID Convention in 2007, 2009 and 2012 respectively. Furthermore, on 6 March 2013, Ecuador's President, Rafael Correa, requested that Ecuador's legislature (the National Assembly) approve the denunciation of the Bilateral Investment Treaty between the USA and Ecuador. Venezuela had previously terminated its Bilateral Investment Treaty with the Netherlands. South Africa has also recently expressed its intention to withdraw from 13 Bilateral Investment Treaties and Australia is starting to remove investor state dispute resolution from the remit of its investment/trade treaties.
many other arbitration institutions and the misconceived belief that to resolve an investment dispute one must go to Washington, London or Paris.15

6. CONCLUSION

The growth of regional institutions is undeniable but has developed along different models. On one hand, there is the increasingly popular model of new independent regional institutions, both as a backlash against foreign imposed structures but also as a result of more parties from different regions and cultures becoming interested in international arbitration as a dispute resolution mechanism and more governments seeing it as a business venture and tool to access foreign investment. On the other hand, the shift towards regionalism is driven by the expansion of the international institutions into new jurisdictions in order to increase their global reach and, of course, to compete with the home-grown institutions and prevent them from monopolising on local business. Arguably, these local branches could be seen to constitute the best of both worlds as they combine the experience of the international institutions with the local knowledge of the regional institutions

Whichever model is favoured, (and the two approaches seem to sit quite comfortably side by side), regionalism should not be seen as a threat to international arbitration. The opening of new arbitration centres is simply a reflection of the continued growth of arbitration globally which in turn is a reflection of an increased interest in arbitration by the developing world. This increased interest by the developing world should be welcomed and supported. The international institutions should share their knowledge and expertise so that new regional institutions which have the necessary local know-how but lack expertise can prosper.

Arbitration was originally conceived as a local process and there are benefits to the "town elder model" in terms of the trust placed by users in a 'wise' business-person with local knowledge and understanding.16 This is evidenced by feedback from users of arbitration. They place very highly in their choice of institution, factors such as location, contacts with local lawyers and familiarity with language, culture, local process/court system and the legal framework.

Furthermore, a move away from a few international institutions which enjoy a monopoly on international arbitration to a wider choice of institutions should improve the users' experience of international arbitration. With the younger institutions easing the pressure on the existing institutions and a more even spread of cases among different institutions efficiency should increase. In addition, the greater competition should improve the quality of the services offered by the different institutions. Finally, a larger and more diverse pool of arbitrators should increase the credibility and legitimacy of the arbitration process and reduce the number of challenges on the ground of bias.17 Any teething problems of the new regional institutions and any lack of experience of their home-grown arbitrators and variation in quality of awards will, in all likelihood, diminish over time. In 2005, El Kosheri advocated building on the institutions that are "tried and tested" at that point being the universal arbitration culture embodied in the ICC system

15 Christian Leathley, "What will the recent entry into force of the new UNASUR Treaty mean for investment arbitration in South America?", Kluwer Arbitration Blog, 13 April 2011.
for example. However, the fact that newer bodies have been able to gain credibility and legitimacy by building a track record on the basis of competent lawyers and a reputable set of rules shows that new institutions too can make an important contribution to the development of a universal arbitration culture.

As the number of users of international arbitration increases and they become more and more sophisticated and demanding, the institutions have to adapt. Who will be best placed to do this will be seen in the coming years. The independent regional institutions are growing in experience and reputation as borne out by the statistics. They have the advantage of being free of any link to the established international institutions and any legitimacy issues those institutions have in particular in developing jurisdictions. At the same time, the international heavyweights have increasing global presence which allows them to respond to the users' call for more familiarity with the parties’ language and the local legal and business culture. Assuming the arbitration market continues to grow, there should be space for both models, giving the users the widest choice depending on their cultural background but also the particular treaty or contract and dispute.

Regionalism – whether as a result of new independent regional institutions or an expansion of the international institutions into new jurisdictions - should, however, not be seen as the only solution to the challenges international arbitration faces as a result of its increased popularity globally and its use by many different legal cultures. While arbitration inevitably needs to reflect different legal cultures, this does not necessarily require setting up new regional institutions but rather, and most importantly, an increased sensitivity of arbitrators and those involved in the arbitration process. It is crucial that arbitrators avoid "cultural determinism" and "being excessively reliant on both the common and civil law traditions at the expense of other legal traditions that operate within different and changing legal cultures". Rather, they should take account of the background of the parties, who may well not recognise themselves in either of these traditions, try to harmonise any differences in approach and show an understanding of the cultural context of the dispute from which it arises.

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