

Transnational Supply Chain Governance and the Limits of International Commercial Arbitration: Toward a Polycentric Legal Order

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Summary

Global supply chains produce rules of conduct that no national legal system was designed to govern. This article argues that national law and international commercial arbitration cannot deal adequately with supply chain disputes, either alone or together. It proposes a polycentric alternative, built around a network of international commercial courts in the Free and Open Indo-Pacific (FOIP) region.

Two case studies. The argument starts from two hypothetical disputes. In the first, a US vaccine manufacturer brings ICC arbitration under New York law against a South African distributor. The distributor had bought compulsorily licensed generics during the COVID-19 pandemic, in breach of an exclusivity clause. In the second, a Thai second-tier automotive supplier brings JCAA arbitration under Japanese law. It seeks compensation for emergency production it carried out for its Japanese first-tier customer after the 2016 Kumamoto earthquake, which the contract did not cover. The two cases show the same three problems. Formal legality and social fairness point in different directions. The norms that actually operate are relational and unwritten rather than explicit. And arbitrators tend to apply the mainstream reading of the governing national law, so arbitration repeats the gap instead of closing it.

Theoretical framework. The article builds an account of supply chain norms on four pillars: Williamson's transaction cost economics, Macneil's relational contract theory, Teubner and Collins on network contracts, and Aoki's comparative institutional analysis. Aoki's idea of institutional complementarity is central. It shows that treating arbitration, domestic courts and international commercial courts as competitors is the wrong model. They are better understood as complementary institutions.

Modified legal pluralism. The article sets this approach against three others: the view that non-state norms are valid only as a supplement to national law, legal pluralism, and Berger's autonomous *lex mercatoria*. It then proposes a three-stage test for recognizing transnational supply chain norms:

1. Empirical identification of the norm as a governance practice that actually operates.
2. Legal-doctrinal testing of its content.
3. Repeated recognition by quasi-public institutions, which together can serve as a Hartian "rule of recognition."

Legitimacy. Arbitration draws its legitimacy from party autonomy, and that legitimacy is weakest where bargaining power is unequal. To address this, the article combines Cotterrell's constitutive law, which identifies the norms a community actually lives by, with Selznick's responsive law, which judges whether law serves that

community's real needs. Japanese commercial law serves as a laboratory. The wrongful-dismissal case law is a methodological success: it recognized a social norm openly, case by case, and the legislature later codified it. Cases on blank bills, erroneous funds transfers, clearing-house dishonor sanctions and privately printed bills are methodological failures. In those cases the courts either applied transplanted formal law mechanically or gave private norms legal force without explaining why.

Three-tier institutional design. The article proposes three complementary tiers:

1. Private arbitration, for resolving individual disputes.
2. International commercial courts backed by public authority, which develop transnational norms through published, reasoned judgments.
3. SIFoCC, UNCITRAL and UNIDROIT, which coordinate norms and govern the network of courts.

It argues that the four-jurisdiction FOIP configuration (Singapore, Australia, Japan and India) is a theoretical necessity rather than a geopolitical convenience. It brings together different experiences of legal transplantation and matches the region's supply chain geography. It also calls for a Tokyo International Commercial Court (TICC) to provide the Japanese node of the network. Drawing on Cotterrell's typology of social relations, it confines the network's normative scope to instrumental economic relations, to respond to concerns about Asian legal and cultural pluralism.

Conclusion. The article presents itself as the first step in a larger research program. Still to come are a comparative study, at monograph length, of the tension between formal law and the underlying social institutions in the four FOIP jurisdictions, and an examination of mandatory supply chain due-diligence legislation.