

UiO : Oslo Centre for Commercial Law

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CONTRACT DRAFTING AND INTERNATIONAL ARBITRATION

Panel discussion

Guillaume Briant

Fabien Gélinas

Pierrick Le Goff

Gisèle Stephens-Chu

Francisco Trebuq

Moderator

Giuditta Cordero-Moss

Concluding Remarks

Diego Fernández Arroyo

Paris, 22 February 2024

8.30 – 11.00 am CET (welcome from 8.00)

Address: Sciences Po, 1 Place St Thomas d'Aquin, Salle K27

Registration: <https://docs.google.com/forms/d/13hxODCAmKyGH0LXmSgmTLw4a7LRovPAyzoccTdgnZoY/edit>

Zoom link:

<https://sciencespo.zoom.us/j/94032126427?pwd=L3pGbTRSbnVFNFU1MWpEY05wTDVCdz09>

Panel discussion on contract drafting and international arbitration

Welcome to a panel discussion among transactional lawyers who regularly draft and negotiate international commercial contracts.

Questions and comments from the audience will be welcome after the panel discussion.

The purpose of the discussion is to contribute material and experience on contract clauses whose construction has proven to be uncertain, clauses that are meant to be interpreted faithfully, clauses that will probably be read in the light of the governing law, etc.

The panelists will discuss among others the circumstances under which these clauses are drafted, and the expectations of the drafters when they insert them into the contract.

Short bios:

Diego Fernández Arroyo, is a professor at Sciences Po Law School in Paris and director of its LLM in Transnational Arbitration & Dispute Settlement. He is a member of the Curatorium of the Hague Academy of International Law, and of the *Institut de droit international*, and the current President of the International Academy of Arbitration Law. He has been invited in many universities of all continents. He is actively involved in the practice of international arbitration as an independent arbitrator. He has authored and edited 30 books and more than 200 articles in publications of more than 20 countries.

Guillaume Briant, co-head of the corporate M&A and private equity team, Stephenson Harwood (Paris), member of the Paris and New York bars, has been advising for more than 18 years European and US investors on their inbound investments in France, and French corporate players in their international operations, mainly within technology (including telecoms), life sciences and energy sectors, but also the agri-food, media, and manufacturing industries. He regularly leads international transactions and quarterbacks cross-border teams of lawyers, with a particular focus on pan-European or cross-Atlantic transactions. In an increasingly complex international legal landscape, Guillaume also advises on issues arising from foreign investment control in France as well as compliance and international sanctions in the context of M&A and Private Equity transactions.

Giuditta Cordero-Moss, Dr. juris (Oslo), PhD (Moscow), Professor, Oslo University, former corporate lawyer, arbitrator in international disputes since 2002. She is, i.a.: Delegate for Norway, UNCITRAL Working Group on Arbitration

This discussion is one in a series of workshops organized in Oslo, Rome, Paris, London, Vienna, Sao Paulo and Singapore.

It is part of an empirical research project which verifies whether international contracts are construed uniformly in arbitration, or whether legal traditions play a role even though the frame is international.

More on the project

We spend considerable resources in writing contract terms that reflect our business interests. But, in case of dispute, will arbitrators give the contract effect according to its wording?

Not really and not always, according to a pilot study carried out by Giuditta Cordero-Moss (University of Oslo), in cooperation with: New York University (prof Franco Ferrari), Sciences Po Paris (prof Diego Fernandez Arroyo), University of Sao Paulo (prof Cristiano Zanetti) and National University of Singapore (prof Gary Bell).

(since 2007); Member of the ICC Court of Arbitration (since 2018); Member of the Curatorium of the Hague Academy of International Law (since 2019); President of the International Academy of Comparative Law (since 2022); former President (2017-20) and Judge (2007-2020) of the European Bank for Reconstruction and Development Administrative Tribunal.

[Fabien Gélinas](#), is Sir William C. Macdonald Professor of Law at McGill University, where he formerly served as Associate Dean of Law and Director of the Institute of Comparative Law. His teaching and research areas include common law and civil law contracts and international commercial and investment arbitration. A former Supreme Court law clerk, he studied law and politics at the Universities of Ottawa, Poitiers, and Montreal, and at the Paris School of Diplomatic and Strategic Studies. Gélinas also holds a doctorate in law from the University of Oxford and was formerly general counsel of the ICC International Court of Arbitration. He serves as arbitrator and tribunal chair in very large international commercial and investment matters.

[Pierrick Le Goff](#), partner, De Gaulle Fleurance; affiliate professor, Sciences Po Law School (Paris), focuses mainly on international arbitration, compliance and construction projects, both as counsel and arbitrator, i.a. in the construction, energy, aeronautics, life science and transport sectors. Former Group General Counsel, Alstom. He gained specific expertise in compliance in the context of white-collar crime investigations, the management of compliance programs and the handling of cases involving trade compliance and economic sanctions. LLM and PhD Law, Marburg University; LL.M., University of Pennsylvania; DEA (international law), Paris II. Member of the Paris & New York Bars. Chair of the Board, International Mediation Institute (IMI); member (as

A pilot study was recently completed. It is briefly described in [Kluwer Arbitration Blog, Pilot Empirical Project on Construction of Contracts in International Arbitration](#).

The pilot study asked 32 experienced international arbitrators to solve three cases in which the outcome would differ according to how literally or purposively the contract would be read.

- The majority of participants read the contract in the light of the applicable law (53%).*
- A minority considered the contract to be self-sufficient (26%) or subject to the transnational law (21%);*
- Within each approach, the outcome is not consistent: considering the contract to be self-sufficient leads to both literal (64%) and purposive construction (36%), and so does the transnational approach, although to a lesser extent (respectively, 9% and 91%).*

The pilot project will be followed by a main study, in which 150 experienced arbitrators will be asked to answer a questionnaire based on 10 contract clauses.

The panel discussion will contribute to the development of the questionnaire

representative of academia, ICC Governing Body for Dispute Resolution Services; member, UNIDROIT / ICC working group on international investment contracts.

[Gisèle Stephens-Chu](#) is a dual-qualified French Avocat and English Solicitor-Advocate and the founder of Paris-based boutique Stephens Chu Dispute Resolution. She has acted for corporations and States or State-owned entities in over 50 commercial and investment treaty disputes, often involving complex and high value claims. Her experience spans many sectors and jurisdictions, with a particular focus on Africa and Europe. She is recognized for her client-oriented and strategic approach, advocacy skills, and ability to navigate common law and civil law systems seamlessly. Gisèle is listed as a Global Leader by Who's Who Legal: Arbitration and by the Legal 500 (Private Practice Powerlist, Arbitration, France). She regularly publishes and speaks on international arbitration and international law and teaches at *Université Paris II Panthéon Assas*.

[Francisco Trebucq](#) is counsel at the Swiss Italian team of the International Court of Arbitration of the International Chamber of Commerce, and Professor of Contract law at the University Siglo 21 (Argentina). He holds a PHD in Contract law from La Sapienza University (Italy), an LLM in Business law from Paris 2 University (France) and a general LLM from Temple University (USA). He is a qualified lawyer in Argentina and Italy.