

Contract Drafting and International Arbitration

**Thursday, Feb.
8th, 2024,
245 Sullivan St.,
NY, NY 10012**

5:00 pm – 7.30 pm

PANELISTS

Gregory Classon

**Myrna Barakat
Friedman**

Richard Gray

Mark Kantor

Lisa D. Love

MODERATOR

**Giuditta
Cordero-Moss**

CLOSING REMARKS

Franco Ferrari

The event will take the form of a panel discussion among current and former transactional lawyers, involved in drafting, negotiating, and deciding on international commercial contracts. Following the panel discussion, there will be ample time for a Q&A session involving the audience. The purpose of the discussion is to contribute material and experience regarding contract clauses the construction of which has proven to be raise issues, clauses that are meant to be interpreted literally, clauses that are likely to be read in light of the governing law, etc. The panelists will discuss, among others things, the circumstances under which these clauses are drafted and the expectations of the drafters when they insert them into the contract. The event is part of a series of workshops organized around the world, including in Oslo, Rome, Paris, London, Sao Paolo, and Singapore. It is part of an empirical research project, which analyzes whether international contracts are construed uniformly in arbitration, or whether legal traditions play a role even where the framework is an international one.

More on the project

Lawyers spend considerable resources to draft contract terms that reflect the interests of the businesses they represent. But, in case of dispute, will arbitrators give effect to the contract terms as drafted? Apparently not, and certainly not always, according to a pilot study carried out by Prof. Giuditta Cordero-Moss (University of Oslo), with the help of Professors Franco Ferrari (NYU), Diego P. Fernandez Arroyo (SciencesPo), Cristiano Zanetti (Universidade de Sao Paolo), and Gary Bell (NUS).

A pilot study was recently completed. It is briefly described on the Kluwer Arbitration Blog under the title "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 light of the applicable law (53%). A minority considered the contract to be self-sufficient (26%) or subject to transnational law (21%).
- Within each approach, the outcome was 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.

Register at <https://forms.gle/82FzBHW5Q21PFyLb8>

BIOS

Gregory Classon is a civil mediator in the NJ state court system, and is a member of a number of ADR neutral rosters including the ICC, AAA and FINRA. Previously, Gregory worked as an in-house counsel for 40 years, lastly at Solvay S.A., the Belgian chemical concern from which he retired in 2021. There, his assignments included a posting in Paris, France where he supported the financial restructuring of Rhodia S.A., purchased by Solvay in 2011. Gregory also worked in the legal departments of Metallgesellschaft, the German trading and industrial conglomerate, and Transworld Oil, the private, Bermuda-based, oil trading concern.

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 (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.

Franco Ferrari is the Clarence D. Ashley Professor at NYU School of Law, which he joined in Fall of 2010, after serving as professor of law at Verona University (2002-16), Bologna University (1998-2002), and Tilburg University (1995-98). Professor Ferrari, a former legal officer at the UN Office of Legal Affairs, works and does research in the areas of international commercial law, conflict of laws, comparative law, and international commercial arbitration. He is a recipient of the 2018 Certificate of Merit for High Technical Craftmanship and Utility to Practicing Lawyers and Scholars awarded by the ASIL. He also acts as an international arbitrator both in international commercial arbitrations and investment arbitrations.

Myrna Barakat Friedman is a commercial arbitrator, mediator and dispute prevention neutral based in New York City with over 25 years' experience advising on domestic and cross-border transactional matters. Ms. Barakat Friedman is the Founder and Managing Director of MB Corporate Advisory Partners, a boutique corporate and strategic advisory firm. Prior to establishing MBCAP, Myrna was a Managing Director of Corporate Development and Chief M&A Counsel at CIT Group. She was previously a corporate and M&A lawyer at Sullivan & Cromwell advising national and foreign corporations and financial institutions on a broad range of securities offerings and business combinations.

Richard Gray was a corporate finance lawyer for more than 32 years at Milbank LLP, where he was resident at various times in the firm's offices in New York, London, Singapore and Hong Hong, and a member of the firm's legal opinion committee for more than ten years. His practice included banking and other financial transactions, financial restructuring and project finance, and he was a co-author of the first edition of The LSTA's Complete Credit Agreement Guide and a member of the Editorial Board of Butterworths Journal of International Banking and Financial Law. He is currently an independent arbitrator, a Fellow of the Chartered Institute of Arbitrators and listed on rosters of arbitrators, including some specialty panels for financial disputes, for AAA, ICDR, CPR, SIAC and HKIAC.

Mark Kantor is a retired partner of Milbank, Tweed, Hadley & McCloy (now Milbank LLP), an international arbitrator in investment and commercial disputes, Adjunct Professor at the Georgetown University Law Center and Editor-in-Chief of the online journal Transnational Dispute Management. He has authored numerous works, including Reports of Overseas Private Investment Corporation Determinations (eds. Mark Kantor, Michael D. Nolan and Karl P. Sauvart), Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence (OGEMID Best Book 2008) and "A Code of Conduct for Party-Appointed Experts in International Arbitration – Can One be Found?" 26 Arbitration International 323 (2010) (OGEMID Best International Dispute Resolution Article 2010).

Lisa D. Love, FCI Arb, is Co-Managing Partner of Love and Long, LLP and an arbitrator and mediator with JAMS. Lisa has 40 years of experience as a complex commercial transactions attorney. Having represented parties on many sides of complex transactions, Lisa uses her experience as a commercial transactions attorney to provide perspective and inform her decision making as an arbitrator and her conciliatory efforts as a mediator in the areas of domestic and international mergers, acquisitions and joint ventures, corporate finance, franchising, infrastructure and project development, construction, real estate, energy, maritime, intellectual property technology transfers, corporate governance and ethics.