

Rédacteurs en chef • Editors in Chief

Charles Kaplan ■ Charles Nairac

lextenso

Les  
**Cahiers**  
de  
**l'Arbitrage**

The  
**Paris**  
**Journal**  
**International**  
**of**  
**Arbitration**

2022 1



# Sorbonne Arbitrage: a legal scientific pilgrimage

Kamalia MEHTIYEVA  
Professor of law  
Paris-Est Créteil University

The Grand Salon of Sorbonne University in Paris is one of the academic world's most emblematic and historical places. This symbolic lieu for the scientific community served, on 14 February 2022, as a venue for the celebration of a birth. Law professors, practitioners and students, brought together by a common passion for arbitration, totaling two hundred participants, gathered in the Grand Salon, with as many attending remotely, to inaugurate the newly-born *Sorbonne Arbitrage* initiative.

It all began when Professor Thomas Clay, initiator of the project, realised that the Sorbonne law school counts among the highest number of international arbitration specialists in the world: Farhad Ameli, Hervé Ascencio, Mathias Audit, Laurent Aynès, Sylvain Bollée, Loïc Cadiet, Philippe Delebecque, Liliane Larribère, Remy Libchaber, Daniel Mainguy, Pierre Mayer and Philippe Stoffel-Munck, to name but a few.

And yet, in spite of this unique concentration of arbitration specialists in one University, the link between their respective activities and Sorbonne law school has not always been clear. Their academic and professional pursuits remain scattered, when it is, on the contrary, necessary to promote synergies.

From an assessment of the need to the implementation of the initiative, Professor Clay did what it took to create a new "label" – *Sorbonne Arbitrage*. Owing to the oft-decried inertia of the French university system, this took a good deal of battling established mindsets, compounded by a crippling lack of funds. Summarising the predicament of scholars in France and abroad, Professor Clay declared: "Universities suffer from overly restrictive frameworks that end up breaking initiatives. Old patterns are excessively cumbersome, forcing one to go through national bodies and either create new degrees or partnerships".

One can only deplore the irony that such restrictions are being imposed on scholars, in a place of freedom *par excellence*, the University, when they simply seek to cultivate and share ideas, knowledge and research. Hence *Sorbonne Arbitrage* appears as an oasis of academic freedom in an increasingly gridlocked university environment.

As emphasized by University President Professor Christine Neau-Leduc during her inaugural address, such flexible initiatives are testament to the Sorbonne tradition of academic excellence and commitment to interdisciplinarity. These

characteristics are of great benefit to the eighteen thousand students of the Sorbonne Law School, as pointed out by Faculty Director Agnes Roblot-Troisier, who also reminded the audience of the University's status as Europe's largest centre for studies in social sciences.

However, despite its impressive assets, the University sometimes lacks the means to accompany students beyond its doors. *Sorbonne Arbitrage*, in the words of Professor Neau-Leduc, is conceived to be a bridge between the University and the law in practice and to narrow the gap between the legal profession and academia.

From this perspective, the *Sorbonne Arbitrage* initiative could not have been both more daring and necessary. At a time when the head of the French State advocates that universities must become "more effective in professional training", their role in France has never been more in question.

In midst of a crisis, a new institution is being built, which may, if it fulfils and even exceeds its goals, perhaps give an example of how the University crisis may be resolved.

Whatever *Sorbonne Arbitrage's* contribution to wider educational and societal goals may be, the combination of theory and practice is in its DNA, as shown at the very first event organized by *Sorbonne Arbitrage*, which brought together a professor and a practitioner. Professor Daniel Mainguy, from Paris 1 Panthéon-Sorbonne and Jalal El-Ahdab, partner at Bird & Bird, introduced their newly released and rethought presentation of arbitration: *Arbitration Law: Theory and Practice* (original title in French *Droit de l'arbitrage: théorie et pratique*, LexisNexis, 2021).

The question remains: what is *Sorbonne Arbitrage*?

With so many legal minds gathered in one room, how can one escape a common legal exercise which we teach our students from the very first day of their legal studies? To identify, to define, and finally to ... categorize.

Without any false modesty, lawyers are masters of the art of definition. But those who master an art know its limits. Is definition always possible? Does definition always lead to understanding? Do we not sometimes fall into our own trap when we attempt to define? Therefore, should not the temptation to define be resisted in favour of allowing *Sorbonne Arbitrage* to define itself?

## To define

Old labels rarely fit new ideas, and emerging concepts often deserve their own categories. Yet, legal minds still feel the irresistible urge to define. Professor Clay proved no exception and baptized *Sorbonne Arbitrage* an "unidentified university object". Lawyers do not lack humour but even an admittedly amusing definition can fail to satisfy.

One is prone to forget Albert Camus' famous prophecy: naming things badly only adds to the misfortune of the world ("*Mal nommer les choses c'est ajouter au malheur du monde*").

Reductive simplicity harms the prospect of full self-realisation which sometimes can only be achieved through self-definition.

## To self-define

Self-definition, on the contrary, rescues lawyers from the spell of constant categorization and would allow the newly-created *Sorbonne Arbitrage* freely to develop its essence.

After all, a parent's first duty under the law is twofold : to declare the birth of the newborn and to name their offspring. Both have been fulfilled by Professor Clay in his role as the *pater* of *Sorbonne Arbitrage*.

Professor Thomas Clay named the newborn and named it well. Against all odds, since international arbitration forms a multicultural and multilingual community, the new legal initiative bears a French name.

However, once legal parental duties have been duly fulfilled, parents have a limited say as to the future of their child. What matters most is a simple parental blessing of longevity and prosperity, which Professor Clay has a fittingly given to *Sorbonne Arbitrage*, wishing it to continue bringing together lawyers passionate about arbitration, even a hundred-and-fifty years from now.

What will the trajectory of *Sorbonne Arbitrage* be, on its path of self-definition? One can only hope it will tend towards greater enrichment and greater academic freedom since, as Professor Clay has stated, *Sorbonne Arbitrage* is a federation where everyone leads and everyone has the same level of responsibility to bring up the newborn. It is a pure example of participatory democracy, leaving room for imagination, where inventiveness is rewarded.

The chosen method of governance shapes the essence of the thing governed and contributes to its self-definition: participatory democracy will be implemented through discussions over newly published books and articles, conferences, feedback from arbitrators on non-confidential cases, organising moots, webinars, discussing new doctoral theses in the field of arbitration and inventing other formats such as "one day, one judgment" ("*un jour, un arrêt*") to discuss the most recent French or foreign caselaw.

Through these initiatives, *Sorbonne Arbitrage* will live and define itself. More lively than a think tank, more diverse than a school of thought, *Sorbonne Arbitrage* will be a scientific pilgrimage. It will also be a scientific umbrella which covers a cohesive gathering of intellects and serves as a shelter for independent and irreducible spirits.

And on this path of scientific pilgrimage and self-definition, *Sorbonne Arbitrage* will reassert the place of Paris as world center for international arbitration.

**Rédacteurs en chef**  
**Editors in Chief**

Charles Kaplan  
Charles Nairac

**Comité scientifique**  
**Advisory Committee**

John Beechey  
Gary Born  
Yves Derains  
Ibrahim Fadlallah  
Juan Fernández-Armesto  
Fabien Gélinas  
Judith Gill  
Alexandre Job  
Emmanuel Jolivet  
Géraud de La Pradelle  
Serge Lazareff  
Filip de Ly  
Pierre Mayer  
Jan Paulsson  
William W. Park  
Philippe Pinsolle  
Luca Radicati di Brozolo  
Eduardo Silva-Romero  
Guido Santiago Tawil

**Secrétaire de rédaction**  
**Assistant Editor**

Priscille Pedone

**Comité de rédaction**  
**Editorial Committee**

Christian Camboulive  
Thomas Clay  
Louis Degos  
Romain Dupeyré  
Laurent Jaeger  
Laurence Kiffer  
Laurent Lévy  
Fernando Mantilla Serrano  
Alexis Mourre  
Priscille Pedone  
Andrea Pinna  
Philippe Pinsolle  
Michael Polkinghorne  
José Rosell  
Éric Schwartz  
Christophe Seraglini  
Éric Teynier

**Fondateur**  
**Founder**

Alexis Mourre

**Administration / Management**

**Les Cahiers de l'Arbitrage • The Paris Journal of International Arbitration**

Revue éditée par Lextenso

La Grande Arche La Défense – 1, Parvis de La Défense – 92044 Paris – La Défense Cedex

Tél. : 01 40 93 40 00 – Fax : 01 41 08 12 39

P-DG, Directeur de la publication : Bruno Vergé

Directrice générale déléguée : Emmanuelle Filiberti

Assistante d'édition : Sylvie Mauzen

sylvie.mauzen@lextenso.fr

ISSN : 2107-5387

Revue trimestrielle – Dépôt légal : à parution

**Abonnement / Subscription**

Tél. : 01 40 93 40 40 – Fax : 01 41 09 92 10

abonnements@lextenso.fr

Tarif France 2022 : 458,93 € TTC (435 € HT)

Tarif Étranger 2022 : 500 €

Prix au numéro France : 128,71 € TTC (122 € HT)

Prix au numéro Étranger : 140,30 €

*Imprimé en France.* - Duplprint Mayenne, 733, rue Saint Léonard, 53101 Mayenne CEDEX

N° 2972647N - Dépôt légal : à parution

Imprimé sur des papiers produits en Pologne (couverture, 0 % de fibres recyclées)  
et en Allemagne (intérieur, 100 % de fibres recyclées), issus de forêts gérées  
durablement ; impact gaz à effet de serre pour un exemplaire : 428 g éq. CO<sub>2</sub>



Éditorial par Charles KAPLAN et Charles NAIRAC

### I. Doctrine – Débats / Articles – Debates

- *Towards a New Arbitration Law in Italy: Arbitrators' Power to Order Interim Relief Finally Recognized?*, by Andrea CARLEVARIS
- *L'intervention des secrétaires des tribunaux arbitraux*, par Jose ROSELL

### II. Commentaires de jurisprudence – Case Law

Sous la direction de Christophe SERAGLINI

- *Quelles tâches le tribunal arbitral peut-il confier à son secrétaire ?*, par Marc DAL et Estelle LEVY
- *La saga Kabab-Ji c. Kout Food continue : Zoom sur la décision de la Supreme Court du 27 octobre 2021*, par Peter ROSHER et Mathilde ADANT
- *La condamnation des arbitrages d'investissement internes à l'UE fondés sur l'accord des parties : l'inconséquence de la CJUE avérée*, par Benjamin REMY
- *Portée du Traité bilatéral d'investissement devant le juge français et contrôle de la compétence du tribunal arbitral : l'affaire Serafin Garcia*, par François DE BÉRARD

### III. Panorama international de jurisprudence / Panorama Of World Case Law

Sous la direction de Michael POLKINGHORNE et Louis DEGOS

- *Belgique*, par Bernard HANOTIAU
- *France, partie I [arbitrage interne et international]*, par Priscille PEDONE
- *France, partie II [Règlements amiables]*, par Priscille PEDONE

### IV. Tables de jurisprudence 2020-2021 / 2020-2021 Table of Cases

par Priscille PEDONE et Bertrand ROBERT

### V. Index 2020-2021

par Bertrand ROBERT et Priscille PEDONE

### VI. Événement / Event

Sous la direction de Priscille PEDONE

- *Sorbonne Arbitrage: a legal scientific pilgrimage*, by Kamalia MEHTIYEVA



Revue trimestrielle  
ISBN : 978-2-275-11085-1  
ISSN : 2107-5387  
[www.lgdj-editions.fr](http://www.lgdj-editions.fr)

Prix au numéro :  
France : 128,71 €  
Étranger : 140,30 €