

CONFERENCE
ORGANISED BY EW BARKER CENTRE FOR LAW & BUSINESS

SOFT LAW IN INTERNATIONAL ARBITRATION CONFERENCE

Convenor: Associate Professor Gary F. Bell (NUS Law)

11 January 2018 (Thursday)

NUS Law (Bukit Timah Campus), Eu Tong Sen Building Level 1, Lee Sheridan Conference Room



From Left: Associate Professor Gary F. Bell (NUS Law), Professor Diego P. Fernandez Arroyo (Sciences Po law School), Dr. Friedrich Jakob Rosenfeld (New York University, USA), Professor Caroline Kleiner (Université de Strasbourg), Professor Giuditta Cordero-Moss (University of Oslo, Norway, Department of Private Law), Professor Marco Torsello (University of Verona, Italy & Partner, Studio ARBLIT Radicati di Brozolo Sabatini Benedettelli Torsello), Professor Franco Ferrari (New York University School of Law), Professor Seung Wha Chang (Seoul National University, School of Law).

EW Barker Centre for Law & Business (EWBCLB) was pleased to organise a conference on 'Soft Law in International Arbitration Conference' on 11 January 2018 at NUS Law.

The conference was part of a collaboration between NUS Law School (Assoc. Prof. Gary F Bell), NYU Law School (Prof. Franco Ferrari), Sciences Po Law School (Paris) (Prof. Diego Arroyo) and University of Verona School of Law (Prof. Marco Torsello). The plan was to have four conferences over four years on the topic of soft law where each conference will be hosted and financed by one of the institutions.

The conference would be on the following topics

1. Soft Law and Arbitration
2. Soft Law, Conflict of Laws and Transnational Jurisdiction

3. Soft Law and Substantive Law and 4 General Theory of Soft Law

The first conference which was hosted by NUS Law School on the topic of "Soft Law in International Arbitration" on 11 January 2018 will lead to a book on the topic.

Soft law is a law that is not of compulsory application but which parties or governments may decide to follow or implement. The field of international arbitration is filled with soft law. In fact, one could argue that most of the law applicable in arbitration is soft law chosen by the parties. The *UNCITRAL Model Law on International Commercial Arbitration* is a form of soft law – it is proposed as a document that parliaments may adopt as law with or without amendment. Yet its influence has been tremendous and it is now the law in many countries and jurisdictions particularly in Asia, including Singapore. However, for most matters, the parties to an arbitration may exclude the arbitration law and choose their own rules, usually a set of rules such as the *Singapore International Arbitration Centre (SIAC) Rules* which are a form of soft law which, once chosen by the parties, will prevail over most of the arbitration law of the seat of the arbitration. There are literally hundreds of such soft law rules of arbitration to choose from, the main ones being the *ICC, LCIA, UNCITRAL Rules* etc. Even when it comes to conducting the arbitration the parties may choose for example the *IBA Guidelines on the Taking of Evidence on International Arbitration*. There are also now soft law rules or guidelines on conflicts of interests, ethics, transparency, party representation etc. There are also many indications that soft law in substantive matters, such as the *UNIDROIT Principles of International Commercial Contracts*, sometimes are used in international arbitration and by arbitral tribunals in ways that would be unthinkable in a national court. Even the *Lex Mercatoria*, a vague form of soft law, is sometimes invoked and applied. There are therefore probably few fields of law, if any, where soft law has more practical relevance than in international arbitration.

The aim of this project was to evaluate the use, the effect and the evolution of soft law in international arbitration. It touched on topics such as whether the proliferation of Rules of Arbitration is a good thing, whether efforts at harmonizing everything through soft law do not go against the flexibility of procedure and approaches which international arbitration had promised. Are recourses to substantive soft law a way for arbitral tribunals to disregard or reinterpret the applicable domestic law?



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