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# THE 2010 UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

## A 90-Minute Introduction for Contract Drafters, Litigation Counsel, IDR Advocates and Arbitrators

*UNIDROIT Principles Working Group participants speaking across five video-linked locations will address practical topics and answer questions from all locations.*

*London:* M. Joachim Bonell, *Working Group Chair*

*New York:* Neil B. Cohen, Alejandro M. Garro

*Paris:* Bénédicte Fauvarque-Cosson

*Frankfurt:* Eckart Brödermann

*Washington:* Henry D. Gabriel

*Moderator:* Richard L. Mattiaccio

### Wednesday, February 25, 2015

12:00 Noon Eastern 5:00 p.m. GMT 6:00 p.m. GMT+1

at the offices of Squire Patton Boggs:

7 Devonshire Square, London

30 Rockefeller Plaza, New York City

4 Avenue Velasquez, Paris

2550 M Street, NW, Washington, D.C.

Taunusanlage 17, Frankfurt am Main

## PROGRAM

### Welcoming Remarks

Richard L. Mattiaccio

### Why Practitioners Should Care About an International Restatement of Contracts

M. Joachim Bonell

- Contractual choice of law
- A gap-filler for governing law (e.g. CISG)
- Soft law guide for courts and arbitrators
- A model for legislators
- Statistics reflect initial impact

### Principles Familiar to Civil and Common Law Traditions

Alejandro M. Garro

- Contract Formation
- Specific Results
- Best Efforts

### Principles Familiar to Civil Law, Unfamiliar to Common Law Tradition

Eckart Brödermann

- Knock-Out Doctrine
- Pre-contractual conduct in contract interpretation
- Course of performance in contract interpretation
- Duty of Good Faith in contract negotiations

### Principles Familiar to Common Law, Unfamiliar to Civil Law Traditions

Henry D. Gabriel

- Avoiding a contract by notice only
- Terminating for non-performance by notice
- Limitations on right to specific performance

### Principles New to Both Civil Law and Common Law Traditions

Benedicte Fauvarque-Cosson

- Modification without consideration or cause
- Hardship, including right of disadvantaged party to request renegotiation

### Some of the New Topics Addressed in 2010

Neil B. Cohen

- Plurality of Obligors
  - When liability is joint and several
  - When obligations are separate
  - Availability of set-off
  - Availability of defenses
  - Effect of performance or set-off
  - Effect of settlement or release

### Questions and Answers

### Concluding Remarks

# Faculty



London:

**M. Joachim Bonell**

- **Chair, UNIDROIT Principles Working Group**
- **Professor of Law Emeritus, Univ. of Rome “La Sapienza”**

Professor Michael Joachim Bonell is Professor Emeritus of the University of Rome I “La Sapienza” and is Consultant to the International Institute for the Unification of Private Law (UNIDROIT). He was Professor of comparative law and international contract law at the Universities of Milan (1983-1985) and Rome (1985-2011) and Visiting Professor at numerous foreign universities, among others Columbia University School of Law (New York) and Oxford University. As representative of Italy to the United Nations Commission for International Trade Law (UNCITRAL), he participated in a number of diplomatic conferences for the adoption of international uniform law instruments and was Chairman of the XXIIIrd Plenary Session of UNCITRAL (1990).

Prof. Bonell is the Chairman of the Working Group for the preparation of the various editions of the UNIDROIT Principles of International Commercial Contracts, was a Member of the Commission for European Contract Law and an Advisor to the Study Group for a European Civil Code. Prof. Bonell has acted as a sole arbitrator or chairman in several cases involving transnational commercial disputes and was a member of the First Panel for Category “F” Claims at the United Nations Commission in Geneva. He is the author of several publications, including *An International Restatement of Contract Law* (3rd ed., 2005) and *The UNIDROIT Principles in Practice* (2nd ed., 2006). He is also Editor-in-Chief of UNILEX, a database of international legal sources relating to the CISG and UNIDROIT Principles available at: [www.unilex.info](http://www.unilex.info).

For further information, please see:

<http://www.unidroit.org/overview-principles-2010/309-instruments/commercial-contracts/unidroit-principles-2010/unidroit-principles-2010-history/780-michael-joachim-bonell-curriculum-vitae>



New York:

**Neil B. Cohen**

- **Jeffrey D. Forchelli Professor of Law, Brooklyn Law School**

Professor Neil B. Cohen teaches domestic and international commercial law, contracts, and conflicts of laws. For two decades, he has been a key participant in major domestic and international law reform projects with respect to commercial transactions. He was the Reporter for Revised Article 1 of the Uniform Commercial Code and for the American Law Institute’s *Restatement of the Law of Suretyship and Guaranty*; in honor of his accomplishments as Reporter for the *Restatement*, he was named as the Institute’s R. Ammi Cutter Reporter. Professor Cohen currently serves as the Director of Research of the Permanent Editorial Board for the Uniform Commercial Code. He is a Fellow and Regent of the American College of Commercial Finance Lawyers and an adviser for the American Law Institute’s *Principles of the Law of Software Contracts*. In addition he has been a member of several drafting committees for revising various articles of the UCC.

Prof. Cohen has been active since 1995 in the modernization, harmonization, and internationalization of commercial law, serving as a member of United States delegation to the United Nations Commission on International Trade Law for its work on harmonizing and modernizing the law of secured credit, as a member of the Working Group that prepared the Hague Principles on Choice of Law in International Commercial Contracts, and as an Observer for the Working Group that produced the 2010 UNIDROIT Principles. In 2009, he was named to the United States Department of State’s Advisory Committee on Private International Law. Professor Cohen is a co-author of one of the leading contracts casebooks and has published numerous law review articles in the field of commercial law. He is the recipient of both the Homer Kripke Lifetime Achievement Award from the American College of Commercial Finance Lawyers and the John Minor Wisdom Awards from the American Law Institute.

For further information, please see: <http://www.brooklaw.edu/faculty/directory/facultymember/biography.aspx?id=neil.cohen>



*New York:*

**Alejandro M. Garro**

- **Adjunct Professor of Law; Senior Research Scholar**
- **Columbia Law Parker School of Foreign and Comparative Law**

Professor Alejandro Garro's teaching focus is on comparative law and international commercial law. His research and writing explores various aspects of Latin American legal systems from a comparative perspective. For example, his work on international sales compares the Vienna Convention on Contracts for the International Sale of Goods with the rights, obligations, and remedies enjoyed by sellers and buyers under the domestic sales law of various Latin American jurisdictions. In his work on "Latin American Arbitration Law and Practice," he provides an overview of the different approaches taken by arbitration statutes recently adopted in some Latin American countries.

Prof. Garro has served as a member of the UNIDROIT Principles Working Group. He currently represents Argentina before Working Group VI of UNCITRAL in charge of preparing a Legislative Guide on Secured Transactions. He has been very active in multi-national and national efforts to improve the administration of justice in Latin America. He has contributed to the drafting of bills on commercial arbitration laws for Bolivia and Peru and to the preparation of a law on secured transactions for Puerto Rico. Recent publications include studies on land registration, security interests in personal property, international sales and international commercial arbitration.

For further information, please see: <http://www.law.columbia.edu/null?exclusive=filemgr.download&id=87145>



*Paris:*

**Bénédicte Fauvarque-Cosson**

- **Professor of law, University Panthéon-Assas, Paris II, France**

Professor Bénédicte Fauvarque-Cosson teaches comparative law, private international law and international commercial law. She has pioneered the development of legal instruments that make cross-border contracts possible. Her knowledge of both continental and Anglo-American law enables her to bridge the gap between the two legal traditions. She is the president of the "Société de Législation Comparée", vice-president of the International Academy of Comparative Law and co-president of Trans Europe Experts, which she co-founded. She has been a member of several working groups, including the UNIDROIT Principles Working Group and the Study Group on a European Civil Code, and the Hague Conference working group in charge of establishing Principles on Choice of Law in International Contracts.

Prof. Fauvarque-Cosson is the scientific director of the *Recueil Dalloz*, a leading weekly law review and is a member of the "Institut Universitaire de France" (2009-2014). She was the special adviser to the Vice-President of the European Commission and Commissioner for Justice and advised on strategic issues for developing European civil law and EU citizenship (2011-2014).

For further information, please see: [http://ec.europa.eu/civil\\_service/docs/special\\_advisers/2011/fauvarque-cosson-cv\\_en.pdf](http://ec.europa.eu/civil_service/docs/special_advisers/2011/fauvarque-cosson-cv_en.pdf)



Washington, D.C.:

**Henry D. Gabriel**

- **Professor of Law, Elon University School of Law**

Professor Henry Gabriel has spent the last two decades engaged in the development of uniform commercial laws, both domestically and globally. A life member of the Uniform Law Commission, he has served that organization for 21 years. He was the reporter for the revisions of the sales and lease provisions of the Uniform Commercial Code as well as the chair of the committee to revise the articles governing documents of title. He also served on the drafting committee of the Uniform Electronic Transactions Act.

Prof. Gabriel is a Fellow of the Chartered Institute of Arbitrators and an elected member of the American Law Institute. He is a member of the UNIDROIT Governing Council and has served on the 2010 UNIDROIT Principles Working Group. Professor Gabriel serves as a U.S. delegate to the U.N. Commission on International Trade Law where he has worked on international trade laws for electronic commerce and transport documents. He also advises the U.S. State Department as a member of the Department's Advisory Committee on Private International Law.

For further information, please see:

[http://www.elon.edu/e-web/law/faculty/gabriel\\_henry.xhtml](http://www.elon.edu/e-web/law/faculty/gabriel_henry.xhtml)



Frankfurt:

**Eckart Brödermann**

- **Partner, Brödermann Jahn Recht. mbH, Hamburg Germany**

Professor Dr. Eckart Brödermann served as an Observer for the 2010 UNIDROIT Principles Working Group. He was involved in the common frame of reference project of the European Commission and in the process of preparation of the International Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.

He is a member of the Faculty of law at the Hamburg University and a founding partner of the law firm Brödermann Jahn RA GmbH. In his teaching and his over 90 publications, he concentrates on international and comparative contract and company law and on international dispute resolution with a focus on risk management and on arbitration. He is co-editor in chief of the Hamburg Law Review, co-author *inter alia* of a well-known German textbook on private international law and international litigation and arbitration (since 1989, 7<sup>th</sup> ed. 2015, translated to Chinese in 2014) and of a leading commentary of the German BGB (since 2006, 9<sup>th</sup> ed. 2014). Initially trained as a French lawyer and as a New York lawyer, he concentrates in his German law practice on international arbitrations and cross border business law (complex transactions and projects, such as public procurement, construction or foreign investment projects worldwide). Since 1983, he has acted as counsel or arbitrator in over 50 arbitrations under ca. 15 different arbitration regimes (e.g. CIETAC Shanghai, chairman), and related to ca. 20 industries. He is a managing director of the Chinese European Arbitration Centre.

Prof. Brödermann is active in numerous bar or other legal associations in the international commercial and comparative law fields, including the IBA (International Bar Association, Chair emeritus, Space Law Committee); the IPBA (Interpacific Bar Association, Vice President, Section on Dispute Resolution and Arbitration); CELA (Chinese European Legal Association, former President); the BRAK (German Federal Bar, Working Group "Private International Law"); the HRAC (Hamburg Bar Organization, Chair of the Committee on International Business Law; Member of the Board); the New York Bar (Member); the Chartered Institute (Fellow). His action as chair at the finals of the Willem C. Vis Moot Court competition is available at you tube ("Vis Moot Finals 2013").

For further information, please see:

<http://www.german-law.com/en/professionals/partners/eckart-broedermann/>



*Program Moderator and Host,  
New York:*

**Richard L. Mattiaccio**

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- **Partner, Squire Patton Boggs (US) LLP**
- **Chair, CIArb NY Branch  
Programming Committee**

Richard Mattiaccio is a partner in the New York office of Squire Patton Boggs (US) LLP. He practices in the Litigation, International Dispute Resolution, and Intellectual Property practice groups at his firm. The focus of his practice for the past 30 years has been on cross-border disputes arising from long-term commercial supply contracts; licensing arrangements; intellectual property rights; energy supply and services contracts; manufacturing, distribution, franchising and retailing agreements; shareholder and partnership agreements; and hedge fund and other investor relationships. Mr. Mattiaccio has represented claimants and respondents in international, commercial and large complex cases administered under AAA, ICDR, ICC, UNCITRAL and other rules. He has served since the 1980's as an international and commercial arbitrator under various rules. He is currently a panel arbitrator with AAA, ICDR, ICC and CPR.

Mr. Mattiaccio served as an observer for the AAA at the opening session of the 2010 UNIDROIT Principles. He currently serves as chair of the Programming Committee of the Chartered Institute of Arbitrators CIArb New York Branch. He is a Fellow of the College of Commercial Arbitrators (CCA), serves on the Executive Committee of the Board of the New York International Arbitration Center, Inc. (NYIAC), and is a member of the International Arbitration Club of New York (IACNY). He co-chairs the International Dispute Resolution (IDR) Committee of the NYSBA Dispute Resolution, and is a member of the New York City Bar International Commercial Disputes Committee (ICDC).

For further information, please see: <http://www.squiresanders.com/rmattiaccio/>

# Squire Patton Boggs Hosts



*London Host:*

**George von Mehren**  
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George von Mehren leads the Squire Patton Boggs International Dispute Resolution (IDR) Practice Group. Recent editions of The American Lawyer's Arbitration Scorecard have recognized three of his arbitration victories as among the largest in the world. He has represented clients in more than 60 international cases with multimillion to multibillion US dollar claims, including BIT cases, in numerous pricing and other disputes under long-term natural gas and LNG contracts, and in many cases involving breach of contract claims.



*Frankfurt Host:*

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**Partner, Squire Patton Boggs**  
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Horst Daniel heads the international dispute resolution practice in the Squire Patton Boggs Frankfurt office. For more than 20 years he has focused on high profile national and international dispute resolution, regularly representing national and international companies at German and EU courts or in arbitration proceedings. His particular expertise is in commercial arbitration and litigation, unfair competition, intellectual property, antitrust and product liability matters.



*Paris Host:*

**Antoine Adeline**  
**Partner, Squire Patton Boggs**  
**4, Avenue Velasquez**

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Antoine Adeline is a partner within the commercial dispute resolution department of the Paris office. He is a French and Canadian national, has lived and practiced in England for five years and brings more than 20 years' experience to Squire Sanders, as a trial advocate and litigation and arbitration lawyer in a highly international environment. His particular focus is on arbitration, cross border disputes, alternative dispute resolution, and corporate insolvency. He has experience in litigation and arbitration both in common law and in civil law contexts.



*Washington, D.C. Host:*

**Stephen P. Anway**  
**Partner, Squire Patton Boggs**  
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Stephen Anway is a partner in Squire Patton Boggs fully dedicated to the firm's international arbitration practice. He has acted as counsel in approximately 50 international arbitral proceedings, including arbitrations brought under more than ten different investment treaties, free-trade agreements and the Energy Charter Treaty. He has a particular expertise in natural gas price review arbitrations. Each spring, Mr. Anway teaches a 13-week doctrinal course on international arbitration at Case Western Reserve University School of Law, where he serves as an Adjunct Professor of Law.