

***The Practice of International Commercial Arbitration:
Beginning, Middle and End***

***Part 1: Commencing an International Commercial Arbitration:
Fundamentals and Strategy***

PROGRAM GUIDE

ACT I — DRAFTING AND NEGOTIATING THE ARBITRATION CLAUSE

(25:20) **Introduction to the Workshop and Act I - Prof. Christopher Gibson, Workshop Co-Chair**

Act I, Scene I — WHAT SHOULD BE IN THE DISPUTE RESOLUTION CLAUSE?

Counsel for TorGas and Drill-BD in separate conversations discuss the provisions they want to include in the dispute resolution clause of the Turnkey Contract being negotiated between the parties. What are the relevant components of a dispute resolution clause that the parties might consider? How may the parties' respective civil law and common law traditions influence their views as to what provisions the clause should contain? TorGas has been disappointed by a prior interminable arbitration and is concerned about costs and potential foot-dragging in arbitral deadlines and procedures. To what extent does the designation of a certain governing law and rules of arbitration affect the content of the clause?

Stage Left — Drill-BD's Discussion:

First, Drill-BD's in-house lawyer and external counsel (who is not a litigator but rather a commercial lawyer specializing in the field) are in Torvia in the midst of tortuous negotiations on the contract. They still need to discuss the dispute resolution provisions and ring an arbitration partner at home in the USL to get some headline points. A sleepy lawyer in the USL answers the phone and recites a series of things to look for – widest possible discovery, extension of grounds of appeal (notwithstanding Mattel), NY seat, avoid Torvian law and courts, and so on and so forth.

In-House Counsel for Drill-BD, Inc.	Thomas Sprange
Outside Counsel for Drill-BD, Inc.	Abby Cohen Smutny
Arbitration Counsel for Drill-BD, Inc.	Audley Sheppard

Stage Right — TorGas's Discussion:

Next, the in-house lawyer and external counsel for TorGas discuss their position on the conclusion of the Turnkey Contract. On the dispute resolution clause, as is traditional in civil law countries, these lawyers engage in a wider practice than one sees in common law countries where specialism kicks in early in practice. They are therefore well versed in arbitration and know what they want to achieve – a relatively quick and efficient procedure. They want an ICC arbitration in Torvia, which they believe will reflect traditional civil law litigation.

In-House Counsel for TorGas **Marc Veit**
Outside Counsel for TorGas **Philippe Pinsolle**

(16:30) Act I, Scene II — CAN WE GET WHAT WE WANT: NEGOTIATING THE DISPUTE RESOLUTION CLAUSE

All of the counsel for the TorGas and Drill-BD meet to negotiate the dispute resolution clause. How might the parties' conflicting positions be reconciled, including how may arbitration rules be modified to accommodate the parties' interests?

In-House Counsel for Drill-BD, Inc. **Thomas Sprange**
Outside Counsel for Drill-BD, Inc. **Abby Cohen Smutny**
Arbitration Counsel for Drill-BD, Inc. **Audley Sheppard**
In-House Counsel for TorGas **Marc Veit**
Outside Counsel for TorGas **Philippe Pinsolle**
Ministry of Energy Official **Eduardo Zuleta**

(28:43) Discussion: DRAFTING AND NEGOTIATING THE DISPUTE RESOLUTION CLAUSE

Moderator.....**Prof. Christopher Gibson**

Moderated Audience Q&A

ACT II — REQUEST FOR ARBITRATION, RESPONSE AND COUNTERCLAIM, AND ARBITRATOR APPOINTMENT ISSUES

(31:27) Introduction to Act IIKlaus Reichert, Workshop Co-Chair

Act II, Scene I — PUTTING THE SHOW ON THE ROAD – TORGAS STARTS THE ARBITRATION

The arbitration counsel for TorGas (based in Francophonia) meets with a Torvian in-house counsel for TorGas and a Francophonian TorGas executive to discuss strategy.

TorGas's arbitration counsel encourages TorGas to provide her with all relevant documentation and witnesses knowledgeable about the dispute. TorGas's in-house counsel and executive immediately push back on subjecting their personnel to cross-examination and to the notion of providing any documentation to Drill-BD, or, for that matter, to arbitration counsel. Arbitration counsel assures TorGas that she will convince the tribunal that only minimal – and delayed – disclosure to Drill-BD is warranted, if any.

Arbitration counsel recommends nominating an experienced arbitrator with some familiarity with Torvian law. TorGas, instead, favors nominating someone with a penchant for ruling with Torvian entities.

Arbitration Counsel for TorGas **Wendy J. Miles**
In-House Counsel for TorGas **Arif Hyder Ali**
TorGas Executive.....**David Brynmor Thomas**

(22:47) Act II, Scene II — DRILL-BD RISES TO MEET THE CHALLENGE

Drill-BD’s in-house counsel, who views international arbitration very much through the prism of USL litigation, meets with its USL arbitration counsel (a USL-trained litigation partner) and an executive of the company.

Arbitration counsel advises Drill-BD’s internal counsel and executive that they should expect: much less “discovery” of documents than they would get in USL-style litigation; a more substantive Response and Counterclaim; and expedited evidence gathering for both the defense and the counterclaim. They agree a strategy to push hard for document disclosure before any substantive merits briefing and to delay the proceedings by filing several preliminary motions, including a request for interim relief to preserve evidence covering communications with Torvian officials. They also discuss the merits of nominating a “hired gun” as arbitrator, and whether to challenge the TorGas nominee.

Arbitration Counsel for Drill-BD, Inc. **John Fellas**
In-House Counsel for Drill-BD, Inc.**John L. Gardiner**
Drill-BD, Inc. Executive **Carla Powers Herron**

(24:09) Discussion: HOW IMPORTANT ARE THE INITIAL FILINGS? REALITY V. PERCEPTIONS

Moderator..... **Klaus Reichert**

Moderated Q&A

ACT III — THE PRELIMINARY HEARING TO ORGANIZE THE ARBITRATION PROCEDURE

(15:23) Introduction to Act III Jean E. Kalicki, Workshop Co-Chair

Act III, Scene I — TORGAS PREPARES FOR THE PRELIMINARY HEARING

TorGas’s in-house counsel meets with external arbitration counsel to discuss strategies for the preliminary hearing. TorGas’s main goal is to expedite the proceedings and push for strict deadlines, in the hope that an early award will deflect mounting criticism in Torvia of TorGas’s own performance. With this objective in mind, TorGas’s in-house counsel suggests a tight schedule of written submissions accompanied by supporting documentary evidence, but no additional delays for document production and no need for witness testimony. Arbitration counsel explains that international arbitration represents a compromise between civil law and common law traditions, and that the Tribunal will likely reject suggestions that significantly depart from this notion of compromise. He nonetheless pledges to try, to the extent possible within the applicable framework, to limit the scope of information exchange and expedite the proceedings.

In-House Counsel for TorGas **Suzana M. Blades**
Arbitration Counsel for TorGas..... **Carlos Loperena**

(10:14) Act III, Scene II — DRILL-BD PREPARES FOR THE PRELIMINARY HEARING

Drill-BD’s in-house counsel and external arbitration counsel likewise meet to discuss strategies for the preliminary hearing. Drill-BD hopes to bifurcate the merits of the arbitration, first addressing the impact of alleged delays caused by the Torvian government and only later addressing any additional delays attributable to Drill-BD. In-house counsel urges aggressive discovery not only from TorGas, but also from Qualité de l’Essence and the Government of Torvia, since she suspects TorGas is shifting blame to Drill-BD for delays attributable to Torvian officials. She also seeks an interim order requiring preservation of communications with Torvian officials. Arbitration counsel explains that the Tribunal is unlikely to accept an extremely broad approach to discovery. He succeeds to some extent in moderating the client’s expectations, but pledges to be as aggressive as possible without offending the Tribunal.

In-House Counsel for Drill-BD, Inc. **Ann Ryan Robertson**
Arbitration Counsel for Drill-BD, Inc. **James M. Hosking**

(34:21) Act III, Scene III – THE PRELIMINARY HEARING

The preliminary hearing commences in London, which the Tribunal has requested as more convenient for that session than the arbitral seat in the City of Tor. External counsel present positions that are not quite as far apart as each client originally sought, but that still differ significantly. The Tribunal defers to the parties in areas where they have reached agreement, forges further middle-ground compromise in other areas, and rules (after a short deliberation) on disputed issues where the parties are still far apart. The group then turns to scheduling issues, and discovers that the Tribunal members’ own calendars impose additional constraints for the final hearings, which require revisiting some of the earlier discussions and rulings. The parties ultimately each leave the hearing with a sense of partial satisfaction.

In-House Counsel for Drill-BD, Inc. **Ann Ryan Robertson**
Arbitration Counsel for Drill-BD, Inc. **James M. Hosking**
In-House Counsel for TorGas **Suzana M. Blades**
Arbitration Counsel for TorGas **Carlos Loperena**
Arbitral Tribunal – Chair..... **Judith Gill**
 – Drill-BD appointee..... **Mark Kantor**
 – TorGas appointee..... **Teresa Giovannini**

(33:35) Discussion: THE PRELIMINARY HEARING

Moderator..... **Jean E. Kalicki**

The Practice of International Commercial Arbitration: Beginning, Middle and End

Part 2: The Merits Hearing: Getting the Message to the Tribunal

PROGRAM GUIDE

ACT I — ASSEMBLING YOUR CASE AND EVIDENCE

(23:09) **Introduction to the Workshop and Act - Prof. Guido S. Tawil, Workshop Co-Chair**

Act I, Scene I — Document Production in International Arbitration: A Compromise of Civil and Common Law Approaches

As the parties move toward the June 2011 hearing, each scrambles to amass the evidence in support of their respective claims and defences and counterclaims. TorGas and Drill-BD have exchanged document requests and, following objections by both parties, the tribunal has ordered the parties to produce certain documents that the tribunal determined to be “relevant to the case and material to its outcome.”

On TorGas side: TorGas’ senior executive and local counsel resist the tribunal’s document production order, which they perceive to be imposing Longhorn-style document disclosure on TorGas. Discussion ensues about the rules governing the conduct of TorGas lawyers versus Longhorn ethical rules, and how the IBA Rules on the Taking of Evidence in International Commercial Arbitration provide for a system of document disclosure that is a hybrid of civil and common law evidentiary practices.

TorGas Senior Executive	José María Alonso
TorGas In-House Counsel.....	Eduardo Silva Romero
TorGas Local Counsel.....	Luca G. Radicati Di Brozolo
TorGas Arbitration Counsel.....	John Gardiner

(6:50) **Act I, Scene II — Document Production in International Arbitration: Role of Professional Ethics**

On Drill-BD side: Drill-BD’s senior executive suddenly discovers a forgotten tranche of documents that are relevant within the scope of the tribunal’s order. Some are damaging to Drill-BD’s defenses and counterclaims. The existence of the documents is disclosed to outside lawyers and a discussion ensues on disclosure and obligations under IBA Rules.

Drill-BD Senior Executive	David Arias
Drill-BD In-House Counsel.....	Sylvia Noury
Drill-BD Local Counsel.....	Fernando Serec
Drill-BD Arbitration Counsel	Pierre Bienvenu

(13:07) **Act I, Scene III — Witness Preparation in International Arbitration:
A Compromise of Civil and Common Law Approaches**

On TorGas side: A junior arbitration counsel from TorGas’ outside law firm has a difficult discussion with TorGas’ senior executive witness about the content of his witness statement. The senior executive believes that, as an employee of TorGas, he may not give evidence. In-house counsel and senior outside counsel intervene to comfort the witness and support the lawyer.

TorGas Senior Executive **José María Alonso**
TorGas In-House Counsel..... **Eduardo Silva Romero**
TorGas Arbitration Counsel **John Gardiner**
TorGas Junior Arbitration Counsel..... **Wade Coriell**

(9:12) **Act I, Scene IV — Witness Preparation in International Arbitration:
Role of Professional Ethics**

On Drill-BD side: Some fairly overt witness coaching occurs in the course of preparing a witness for cross-examination, including in-house counsel telling the witness what to say in response to difficult questions and asking arbitration counsel to script his answers and have practice runs-through.

Drill-BD Witness **Hilmar Raeschke-Kessler**
Drill-BD In-House Counsel..... **Sylvia Noury**
Drill-BD Arbitration Counsel **James Loftis**
Drill-BD Arbitration Counsel **Pierre Bienvenu**

(27:02) **Discussion: CAN PARTIES AND COUNSEL ADOPT A COMPROMISE OF CIVIL AND
COMMON LAW APPROACHES WITHOUT COMPROMISING THEIR OWN LEGAL
PROFESSIONAL ETHICS?**

Moderator..... **Prof. Tawil**

Moderated Audience Q&A

ACT II — THE MERITS HEARING: PRESENTING YOUR CASE

(28:45) **Introduction to Act II Wendy J. Miles, Workshop Co-Chair**

Act II, Scene I — Prelude: Preliminary Issue on Non-Disclosure of Documents

Drill-BD requests to be heard on a preliminary issue regarding TorGas’ alleged non-disclosure of a broad category of documents previously ordered to be produced by the Tribunal. TorGas, in response, decides to raise with the Tribunal Drill-BD’s last minute disclosure of thousands of new documents (disclosed three days before the hearing, allegedly having been “discovered in a shed”) which are not sorted or systematized in any way. Ultimately, both parties are forced to insist on directions or an order from the Tribunal.

Drill-BD Arbitration Counsel	John Fellas
Drill-BD Local Counsel	Jennifer Smith
Drill-BD In-House Counsel	Eric Liebeler
TorGas Arbitration Counsel	Klaus Reichert
TorGas Local Counsel	Philippe Pinsolle
TorGas In-House Counsel	Alexis Mourre
Arbitral Tribunal – Chair	Judith Gill
– Drill-BD Appointee	Mark Kantor
– TorGas Appointee	Teresa Giovannini

(17:12) Act II, Scene II — The Tribunal Reacts: A Requirement for Compromise of Civil and Common Law Approaches and Sanctions for Ethical Breaches

The Tribunal responds by refocusing the parties on the issues and de-escalating the situation. The Tribunal members recognise the competing concerns of counsel and direct the parties to resolve the matter amicably. After private discussions, the parties agree that Drill-BD must search the documents through its electronic document management system and provide TorGas with non-privileged ‘shed documents’, and that the Tribunal shall be at liberty to draw negative inferences from TorGas’ failure to provide documents if, in the course of the hearing, it were to decide such non-disclosure was an issue (by reference to IBA Rules).

Drill-BD Arbitration Counsel	John Fellas
Drill-BD Local Counsel	Jennifer Smith
Drill-BD In-House Counsel	Eric Liebeler
TorGas Arbitration Counsel	Klaus Reichert
TorGas Local Counsel	Philippe Pinsolle
TorGas In-House Counsel	Alexis Mourre
Arbitral Tribunal – Chair	Judith Gill
– Drill-BD Appointee	Mark Kantor
– TorGas Appointee	Teresa Giovannini

(19:11) Act II, Scene III — The Evidential Hearing Commences: Opening Statements

Opening statements are critically important in international arbitration. They offer the first oral opportunity for each party to enable the Tribunal to see the case through the party’s own eyes (and speech). Opening statements are often relatively brief and restate points previously made in written form. Nevertheless, parties should not underestimate the effect of a well-presented opening statement, or indeed the damage (or at best worthlessness) of a poor opening. Counsel for the parties will demonstrate openings first from experienced local counsel and then from experienced international arbitration counsel.

Drill-BD Arbitration Counsel	John Fellas
Drill-BD Local Counsel	Jennifer Smith
Drill-BD In-House Counsel	Eric Liebeler
TorGas Arbitration Counsel	Klaus Reichert
TorGas Local Counsel	Philippe Pinsolle
TorGas In-House Counsel	Alexis Mourre
Arbitral Tribunal – Chair	Judith Gill
– Drill-BD Appointee	Mark Kantor

– TorGas Appointee **Teresa Giovannini**

(27:59) Discussion: EFFICIENCY AND EFFECTIVENESS IN DELIVERING THE MESSAGE

Moderator..... **Ms. Miles**

ACT III — THE MERITS HEARING: PRESENTING YOUR TESTIMONIAL EVIDENCE

Counsel for the parties test their opponent’s evidence. This final act demonstrates the good, the bad, and the ugly of examination-in-chief, cross-examination, and tactical decisions, as well as the deliberations of a Tribunal behind closed doors. It also shows how parties may attempt to apply novel procedural tools – some of questionable application and value – to seek procedural advantages.

(22:35) Introduction to Act III Michael S. Goldberg, Workshop Co-Chair

Act III, Scene I — Testimonial Evidence: Examination-in-chief, Cross-examination and Re-examination

Tribunals can keep a hearing running smoothly – or throw it into chaos. The Tribunal heads off gamesmanship in TorGas’s designation of its corporate representative and the order in which its witnesses will be cross-examined. Drill-BD oversteps its bounds in the examination-in-chief, and TorGas’s cross-examination of Drill-BD’s witness highlights some of the pitfalls that can result from ineffective witness preparation. Drill-BD decides whether and/or how to re-direct its witness and TorGas must consider how to handle Drill-BD’s overly-eager, party-appointed arbitrator.

Drill-BD Witness **Hilmar Raeschke-Kessler**
Drill-BD Arbitration Counsel **James Loftis**
TorGas Witness. **E.Y. Park**
TorGas Arbitration Counsel **Klaus Reichert**
TorGas In-House Counsel..... **Alexis Moure**
Arbitral Tribunal – Chair..... **Judith Gill**
– Drill-BD Appointee **Mark Kantor**
– TorGas Appointee **Teresa Giovannini**

(10:43) Act III, Scene II — Procedural Antics – Demonstrating the Unpredictable Nature of Arbitration

TorGas makes a last minute attempt to supplement a witness statement with new, never before disclosed testimony. The Tribunal deliberates on whether to allow it to be introduced over Drill-BD’s objection, considering timing, relative prejudice to the parties, and other practical considerations. Will the Tribunal be able to craft a fair and workable solution?

Drill-BD Arbitration Counsel **James Loftis**
TorGas Witness. **E.Y. Park**
TorGas Arbitration Counsel **David Brynmor Thomas**
Arbitral Tribunal – Chair..... **Judith Gill**

- Drill-BD Appointee **Mark Kantor**
- TorGas Appointee **Teresa Giovannini**

(16:29) Act III, Scene III – Demonstration of Cross-Examination and Re-examination of TorGas Fact Witness

TorGas’s examination-in-chief is an example of the brief, introductory examination-in-chief usually expected in international arbitration hearings. Drill-BD follows with an effective and efficient cross-examination. In the midst of the cross-examination, it is discovered that TorGas has violated one of the Tribunal’s instructions. How will the Tribunal deal with this breach?

TorGas Witness **Mike Lennon**
 Drill-BD Arbitration Counsel **Ronnie King**
 TorGas Arbitration Counsel **Carole Malinvaud**
 Arbitral Tribunal – Chair..... **Judith Gill**
 – Drill-BD Appointee **Mark Kantor**
 – TorGas Appointee **Teresa Giovannini**

(28:41) Discussion: KEEPING IT FAIR AND JUST: DEALING WITH TESTIMONIAL EVIDENCE AND LAWYER STRATEGIES IN AN INTERNATIONAL ARBITRATION CONTEXT

Moderator..... **Mr. Goldberg**

Moderated Audience Q&A

(72:40) Panel Discussion: PERSPECTIVES FROM CORPORATE COUNSEL: CHALLENGES TO DELIVERING THE PARTY’S MESSAGE EFFECTIVELY AND EFFICIENTLY

What “client management” considerations arise from the tension between civil and common law systems, particularly in relation to disclosure and witness preparation? How should the desire for an efficient hearing structure be balanced with the necessity to communicate the company’s message effectively? What value is testimonial evidence at the hearing following preparation of lengthy written witness statements? Are there better, fairer and more efficient approaches to ascertaining oral evidence? What are the best practices for establishing an efficient discovery plan (witness interviews, documents and data exchange) in coordination with outside counsel and the opposing party? Should corporate counsel insist on arbitration clauses in their contracts that specifically address testimonial evidence? What considerations must arbitration counsel always keep in mind when interacting with corporate in-house counsel and company personnel?

Moderator:

Alan R. Crain, Jr.
 Senior Vice President and General Counsel, Baker Hughes Inc., Houston

Panelists:

Dennis J. Grindinger
 Senior Vice President - Finance & General Counsel, Hunt Oil Co., Dallas

Javier Rubinstein

Global General Counsel, PricewaterhouseCoopers International, Ltd., New York

Eric C. Liebeler

Vice President & Associate General Counsel – Litigation, Siemens Corporation,
Washington, D.C.

Audience Q&A

Closing Remarks Lucy F. Reed

(34:09) **ADDRESS: ADVOCACY IN INTERNATIONAL ARBITRATION – Toby T. Landau**

The Practice of International Commercial Arbitration: Beginning, Middle and End

Part 3: The Final Curtain: Post-hearing Submissions, Deliberations and Enforcement

PROGRAM GUIDE

ACT I — POST-HEARING ISSUES

(33:57) Introduction to the Workshop and Act I Jennifer M. Smith, Workshop Co-Chair

An acrimonious merits hearing in Tor in June 2011 has concluded and the parties are preparing to file written closing submissions. The Tribunal ordered simultaneous closing submissions with no right of reply and, in addition to page limits, specified that the parties were not to refer to any new arguments or new evidence. The Tribunal did permit each side to submit one additional witness statement, the scope of which was limited to late-discovered documents. The order further provided that the parties were to file written costs submissions simultaneously a week after their closing submissions.

Act I, Scene I — Closing and Costs Submissions

The parties separately discuss the form and content of their closing and costs submissions. Drill-BD has discovered new evidence and wishes to introduce it. TorGas is concerned with the post-hearing behavior of one of its key witnesses and considers how to minimize the damage. With regard to the costs submissions, Drill-BD's in-house counsel grapples with some troublesome time sheet entries from its outside arbitration counsel. For its part, TorGas has paid all the costs to date in the arbitration, is upset at the length of the proceedings, and is concerned as to its chances of recovering these costs from Drill-BD.

Stage Right – Drill-BD Discussions

Drill-BD Executive..... **William H. Knull**
Arbitration Counsel for Drill-BD..... **Elie Kleiman**
In-House Counsel for Drill-BD **Richard D. Deutsch**

Stage Left – TorGas Discussions

TorGas Executive..... **Lucy Greenwood**
Arbitration Counsel for TorGas..... **Jonathan Sutcliffe**
In-House Counsel for TorGas **James Loftis**

(08:18) Act I, Scene II — Reaching a Deal or Waiting For the Award, Late Settlement Issues

After Drill-BD submitted its new evidence, without first seeking leave of the Tribunal, it learned that the new evidence might have been fabricated. Drill-BD is trying to minimize the harm to its reputation. Drill-BD has reached out to TorGas to see if a deal can be reached to resolve the arbitration and move on. The parties independently discuss different aspects of possible settlement negotiations and the impact on the timing of the award.

Stage Left – TorGas Discussions

TorGas Executive.....**Lucy Greenwood**
Arbitration Counsel for TorGas.....**Jonathan Sutcliffe**
In-House Counsel for TorGas **James Loftis**

Stage Right – Drill-BD Discussions

Drill-BD Executive.....**William H. Knull**
Arbitration Counsel for Drill-BD **Elie Kleiman**
In-House Counsel for Drill-BD **Richard D. Deutsch**

(46:44) Discussion: NAVIGATING TRICKY EVIDENTIARY ISSUES WHILE MAINTAINING PARTY EQUALITY

Moderator..... **Ms. Smith**

Moderated Audience Q&A

ACT II — DELIBERATION: THE UGLY, THE BAD AND THE GOOD

(16:01) Introduction to Act II Philippe Pinsolle, Workshop Co-Chair

The parties have filed their closing and costs submissions. The Tribunal meets to discuss the case and render an award. The Tribunal must decide three issues:

Preliminary issue: Drill-BD has filed new evidence with its closing submission that it considers crucial to the outcome of the case. Three days before the Tribunal meets to deliberate, TorGas objected to the new evidence and requested that the Tribunal strike it from the record. TorGas reserved its rights to challenge the award if its request was not granted.

Issue on the merits: The Tribunal must decide whether TorGas or Drill-BD should be held liable for the delays in commencing drilling. The Tribunal discusses the effect of Clause 7.2 of the Turnkey Contract that provides: *“Drill-BD shall meet the milestones set out in Annexe E to this Agreement. A party can only be held liable for delays which are within the parties’ reasonable control. Parties shall make their best efforts to mitigate the effects of delays and enter into good faith discussions.”*

Issue on costs: After ruling on the merits, the Tribunal must decide on costs. The discussions focus on how costs should be allocated and whether they are reasonable. The Tribunal also discusses whether management costs are recoverable.

Act II, Scene I — The Ugly

One of the arbitrators informs the other members of the Tribunal that he and his family will face serious harm if he does not render an award in favor of the party that has appointed him. His behaviour during deliberations is erratic and he leaves the room frequently before key decisions are to be made. The remaining two arbitrators address how to handle the situation.

Arbitral Tribunal – Chair..... **Jennifer Price**
– Drill-BD Appointee **Klaus Reichert**
– Tor-Gas Appointee **Wendy Miles**

(11:10) Act II, Scene II — The Bad

During the deliberation, one of the arbitrators is obviously biased: he will discuss all issues at stake for the sake of it and “bargains” his vote. At the end of the process, when all points have been discussed, the biased arbitrator suddenly decides that he will not sign the award and that he will render a dissenting opinion.

Arbitral Tribunal – Chair..... **Lucy F. Reed**
– Drill-BD Appointee **Louis Degos**
– Tor-Gas Appointee **Oliver J. Armas**

(13:04) Act II, Scene III — The Good

The Tribunal discusses the three issues described above. The aim of this scene is to show how deliberation should normally unfold.

Arbitral Tribunal – Chair..... **Judith Gill**
– Drill-BD Appointee **Mark Kantor**
– Tor-Gas Appointee **Teresa Giovannini**

(36:05) Discussion: IS ARBITRATION LIKE GREAT RESTAURANTS: BETTER NOT SEE WHAT HAPPENS IN THE KITCHEN?

Moderator..... **Mr. Pinsolle**

Moderated Audience Q&A

ACT III — RECONSIDERATION – CHALLENGE – ENFORCEMENT

(21:47) Introduction to Act III Prof. Tai-Heng Cheng, Workshop Co-Chair

At long last, the Tribunal issues its award – a divided 2-1 decision favoring TorGas.

The majority award is signed by the Chairman of the Tribunal and by TorGas’s nominee. In its opinion, the majority concludes that under the terms of the Turnkey contract, Drill-BD was strictly responsible for meeting the contractual milestones necessary to prepare the site for drilling, and that its failure to meet those milestones on schedule gave rise to liability in the amount of \$7 million. Because TorGas is the prevailing party, the

majority also concludes that TorGas is entitled to its “reasonable costs and attorneys fees,” which it calculates at 75% of TorGas’ requested amount.

The arbitrator appointed by Drill-BD has filed a separate and withering dissenting opinion, accusing the majority of reaching an overly technical decision and committing various legal and deliberative errors. The dissent argues that because TorGas’s delays in obtaining certain necessary drilling permits prevented Drill-BD from meeting the contractual milestones, TorGas should not be entitled to any delay damages, and each party should bear their own costs.

Act III, Scene I — Debriefing

The LCIA has provided the award to both sides, and the executive of each party meets with in-house and arbitration counsel to discuss their very differing reactions to the award and to plot next steps. In particular, the parties analyze the procedural mechanisms at their disposal with regard to promoting or resisting confirmation and enforcement.

Stage Left – TorGas Discussions

TorGas Executive..... **Catherine Amirfar**
Arbitration Counsel for TorGas..... **Barry Leon**
General Counsel for TorGas..... **Jennifer Thornton**

Stage Right – Drill-BD Discussions

Drill-BD Executive..... **Dietmar Prager**
Arbitration Counsel for Drill-BD..... **Julie Bédard**
General Counsel for Drill-BD..... **Joseph Neuhaus**

(16:46) Act III, Scene II — Local Enforcement Challenges

A month has passed and just as TorGas’ lawyers are putting the finishing touches on a request for confirmation, TorGas has suddenly found itself served with notice of a petition that Drill-BD’s lawyers have filed in Torvian state court seeking to vacate the award. To their great surprise, TorGas notes that Drill-BD has attached an unsealed copy of the arbitral award and dissent to its request for vacatur, and TorGas soon learns that the dissent’s scathing and colorful attack on Torvia’s investor climate is already getting top billing on Longhorn’s leading evening financial news program. Each side’s executive convenes a meeting with general counsel, local Torvian counsel and arbitration counsel to discuss these developments and to plan next steps.

Stage Left – TorGas Discussions

TorGas Executive..... **Catherine Amirfar**
Arbitration Counsel for TorGas..... **Barry Leon**
General Counsel for TorGas..... **Jennifer Thornton**
Local Counsel for TorGas **Giovanna Micheli**

Stage Right – Drill-BD Discussions

Drill-BD Executive..... **Dietmar Prager**
Arbitration Counsel for Drill-BD..... **Julie Bédard**
General Counsel for Drill-BD.....**Joseph Neuhaus**
Local Counsel for Drill-BD **Julia Peck**

(41:35) Discussion: IS THE AWARD JUST THE BEGINNING? STRATEGIZING FOR POST-ARBITRAL PROCEEDINGS

Moderator..... **Prof. Cheng**

Moderated Audience Q&A

(73:35) Panel Discussion: CORPORATE COUNSEL AND ARBITRATOR PERSPECTIVES

This panel engages leading arbitrators in a conversation with corporate counsel to discuss what corporate officers think about international arbitrations, and the tools – and their limitations – available to the tribunal to provide the arbitration services that users want.

Moderator..... **Mark C. Morril**, Senior Vice President & Deputy General Counsel,
Viacom Inc., New York

Panelists:

Dominique Brown-Berset

Brown & Page
Geneva

Teresa Cheng

Hong Kong International Arbitration Centre
Hong Kong

Fred G. Bennett

Quinn Emanuel
Los Angeles

Mark L. Greenberg

Mercuria Energy
Houston

Moderated Audience Q&A

Closing Remarks Ms. Reed

(36:17) ADDRESS: ARBITRAL DECISION-MAKING AND JUSTIFICATION – R. Doak Bishop