



Business and human rights remedy Hague style: a smart collaborative mix from dialogue to mediation and arbitration

Parallel session

27 November

13:30-14:45

Initiatives: *Proposed Global Trust Fund for Access to Justice and the Project for Drafting the Hague Rules on Business and Human Rights Arbitration.*

Organizers: *Working Group on a Global Trust Fund for Access to Justice and NJCM (the Dutch Chapter of the International Commission of Jurists), Lawyers for Better Business (L4BB) and the Working Group on International Arbitration on Business and Human Rights.*

Panel outline

This panel will discuss two initiatives linked to The Hague as global city of Peace and Justice, aimed at reinforcing non-judicial and judicial collaborative mechanisms in the Remedy Pillar of the UNGP's.

The **Global Trust Fund for Access to Justice** aims to connect victims with corporations more effectively by seeking donations from corporations and wealthy individuals to fund awareness raising, capacity building and research to improve access to remedy and increase the chances that victims of human rights violations will receive a proper remedy. The remedies contemplated cover the spectrum of collaboration between business and human rights holders, from dialogue to mediation and finally to arbitration as private judicial remedy.

The business and human rights arbitration initiative¹ aims to contribute to the remedy pillar of the UNGP's by creating business and human rights arbitration rules, to be drafted by a team of experts in international human rights disputes and experts in international arbitration. These '**Hague Rules on Business and Human Rights International Arbitration**' will be devised in consultation with stakeholders in the business and human rights community, to encourage their acceptance by all

¹ See for the proposal by the Working Group <http://www.l4bb.org/news/TribunalV6.pdf> and for a related set of Q&A's <http://www.l4bb.org/news/Q&A.pdf>

parties who can eventually use them. The Hague Institute for Global Justice is coordinating the project with financial backing from the The Hague Municipality and support from the Netherlands Ministry of Foreign Affairs.

After an explanation of both initiatives the panel will discuss their feasibility and conditions for their acceptance, using a hypothetical conflict case to compare different approaches. Key aspects of an arbitration process aimed at an effective and rights compatible remedy will be analysed from the points of view of the parties involved.

Issues to be addressed will include:

- aims and objects of the Global Trust Fund for Access to Justice;
- arbitration as consensual dispute resolution in business and human rights and its place in the Third Pillar;
- the differences between state based judicial remedies and arbitration as “private judicial remedy”;
- the differences between international business and human rights arbitration and international state-investor arbitration;
- existing mechanisms for enforcement, including the 1958 UN Convention on Recognition and Enforcement of Foreign Arbitral Awards, adopted by 156 states;
- the use of arbitration in supply chain contracts to benefit the sourcing corporation and potential victims of human rights abuses;
- the use of arbitration in existing business and human rights instruments (the Bangladesh Accord 2013, the Dutch Multi-stakeholder Agreement for the Garment Industry 2016).

Moderator: Prof. Martijn Scheltema (Erasmus University Rotterdam and partner at the Hague Law Firm Pels Rijcken Drooglever Fortuijn, Chair of the IBA CSR Committee and member of the Working Groups of both initiatives).

Panelists:

- Elise Groulx-Diggs (Associate Tenant Doughty Street Chambers and Senior Fellow at Georgetown University Law Center, Convenor of the ABA Center for Human Rights Business and Human Rights Advisory Board Project. Co-Chair Member of the Global Trust Fund Working Group)
- Dr Joseph Wilde Ramsing (senior researcher at SOMO and coordinator OECD Watch)(tbc)
- Professor Steven Ratner (Michigan Law School and member of the BHR International Arbitration Working Group)
- Professor Jan Eijsbouts (Maastricht University, Mentor of the Sustainable Business and Human Rights Working Group of the Dutch Section of the International Commission of Jurists NJCM, member of the BHR International Arbitration Working Group and Project Leader of the Arbitration Rules Drafting project at The Hague Institute for Global Justice).
- Joris Oldenziel (Head of Public Affairs and Stakeholder Engagement Bangladesh Accord)

ANNEX – SHORT BIOS

Prof. Martijn Scheltema (Moderator)

Professor at Erasmus University Rotterdam

Martijn Scheltema researches effectiveness of multi-stakeholder initiatives (including their ADR capabilities) in the international arena in connection with business and human rights and the environment. He is partner of Pels Rijcken & Droogleever Fortuijn. He has been involved in several international human rights landmark cases with the Dutch Supreme Court. He is the only Dutch lawyer ranked for business and human rights in the Chambers Global guide. He chairs the business and human rights practice group of his firm. Further related positions:

- Chair of the independent binding dispute resolution mechanism of the Dutch BHR Garment Industry Agreement (concluded between industry, government and NGOs).
- Chair of the Corporate Social Responsibility Committee of the International Bar Association (involved in business human rights).
- Member of the steering committee of the MSI Integrity Academic network
- Member of the American Bar Association Business Human Rights Project
- Member of the OECD Academic network on Responsible Business Conduct
- Has been founding board member of ACCESS (www.accessfacility.org).

His academic work includes over 100 academic publications.

Elise Groulx Diggs,

Associate Tenant Doughty Street Chambers and Principal at BI for Business Integrity & Partners LLC

Elise Groulx Diggs, **Esq., Ad.E., LL.M.**, advises corporations, governments and international organizations on the human rights and legal issues associated with their investment projects and global supply chains. She has expertise in assessing the legal risks of business operations in fragile states and conflict affected areas. She also assists and advises clients with mediation services and advice on remediation processes. Elise serves as the Convenor of the Advisory Board of the Business & Human Rights Project, American Bar Association (ABA) Center for Human Rights. She is an Officer of the CSR Committee of the International Bar Association (IBA). In a recently published global ranking, Chambers and Partners placed Elise among the top seven individual lawyers practising in the emerging field of Business and Human Rights law. She practises law as an Associate Tenant at Doughty Street Chambers in London and with law firms in Paris. She is Principal of the consulting firm, BI for Business Integrity & Partners LLC, based in Washington DC. Elise is licensed to practise law in France (Paris Bar) and Canada (Quebec Bar) and is a licensed legal consultant in the State of New York. She is also an accredited mediator, recently certified as a mediator in France by *l'Institut Français de Certification des Médiateurs* (IFCM) and certified by IMI (International Mediation Institute, The Hague). Elise practised as a criminal defence lawyer for many years in Montreal and, concurrently, founded two international legal NGOs with UN accreditation that participated in negotiations leading to the Rome Treaty and the rules of evidence and procedure of the International Criminal Court (ICC).

Dr. Joseph Wilde-Ramsing,
Senior Researcher, SOMO

Joseph Wilde-Ramsing was born on 18 November 1978, in Wilmington, North Carolina (USA). In 2001, Joseph graduated from the University of North Carolina with two Bachelor's degrees in political science and Spanish, both with honors. After working at the US embassy in Madrid, Spain, Joseph returned to the US to complete a Master's degree in political science from Tulane University in New Orleans in 2004. In 2005, Joseph began work as a researcher at the Amsterdam-based Centre for Research on Multinational Corporations (SOMO) and Coordinator of the OECD Watch network. Joseph currently coordinates SOMO's research and policy advocacy on energy, natural resources, and public services and in SOMO's Human Rights and Grievance Mechanisms program. As coordinator of OECD Watch, he frequently represents civil society organisations as a key stakeholder to the OECD Investment Committee and has conducted extensive research and analysis of OECD Guidelines cases. Joseph serves as an Independent Advisor to the Social and Economic Council (SER) of the Netherlands. In 2013, he earned the degree of Ph.D. from the University of Twente's Centre for Studies in Technology and Sustainable Development (CSTM) with a dissertation on sustainable development and corporate accountability in the global energy sector. He has since published several papers and peer-reviewed articles on the drivers and impacts of large-scale energy and extractives projects, and continues to advise communities and NGOs seeking to use the OECD Guidelines to hold corporations accountable for adverse impacts.

Mr Joris Oldenziel,
Head of Public Affairs and Stakeholder Engagement at the Accord on Fire and Building Safety in Bangladesh

Joris Oldenziel, who earned a Master Degree in International Relations at the University of Amsterdam, is Head of Public Affairs and Stakeholder Engagement at the Accord on Fire and Building Safety in Bangladesh, a ground-breaking legally binding agreement between trade unions and 220 garment brands designed to work towards a safe and healthy Bangladeshi Ready-Made Garment Industry. He has a background in Responsible Business Conduct and Corporate Accountability. This includes research and analysis of corporate policies and practices at SOMO (Centre for Research on Multinational Corporations), with a particular focus on labour and human rights in global supply chains. His expertise includes international policy advocacy on standards and principles for responsible business conduct, multi-stakeholder initiatives and judicial and non-judicial remedies for workers and communities. He is co-founder of networks of civil society organisations working together to promote responsible business conduct (Dutch MVO Platform, the European Coalition for Corporate Justice and OECD Watch). He represented OECD Watch, the NGO stakeholder group at the OECD, in the negotiations on the 2011 Update of the OECD Guidelines for Multinational Enterprises. He also serves as Advising member of the Social and Economic Council (SER) of the Committee on CSR and human rights due diligence.

Professor Steven Ratner
Professor of Law at the University of Michigan Law School

Steven Ratner is the Bruno Simma Collegiate Professor of Law at the University of Michigan Law School. His research addresses a range of public international law issues, including the regulation of foreign investment, individual and corporate accountability for human rights violations, normative orders concerning armed conflict, and territorial borders and ethnic conflict. He has served on two expert panels of the UN Secretary-General addressing post-conflict justice in Cambodia and in Sri Lanka and is a member of the U.S. Department of State Advisory Committee on International Law. He has also provided expert advice in a number of investment-related arbitrations and is a member of the international Working Group on Business and Human Rights Arbitration, which is promoting the development of arbitration as a means to address human rights violations by corporations and those in their supply chain. His most recent book is *The Thin Justice of International Law: A Moral Reckoning of the Law of Nations*, issued by Oxford University Press in 2015.

Professor Jan Eijsbouts

Professor of Corporate Social Responsibility at the Faculty of Law, Maastricht University

Jan Eijsbouts is Professor of Corporate Social Responsibility and Professorial Fellow at the Institute for Corporate Law, Governance and Innovation Policies at the Faculty of Law, Maastricht University. He is former Group General Counsel and Director of Legal Affairs of AkzoNobel, a Dutch multinational active world-wide in coatings and chemicals. At the International Bar Association he was Council member of the Legal Practice Division and Co-chair of the Corporate Counsel Forum and of the Corporate Social Responsibility Committee. During 2008-2011 he also served as Chair of the Chief Legal Officers Round Tables Europe and North America. He is a member of the Gaemo Group, Corporate Responsibility International, Chairman of the Board of the World Legal Forum Foundation and a former founding member of the Board of ACCESS Facility Foundation (both at The Hague). He is also a member and project manager of the Working Group on International Business and Human Rights Arbitration. He is member of the International Advisory Boards of the Mentor Group (Boston) and of the CEELI Institute (Prague) and a member of the Ius Commune Research School, the OECD Academic Network on Responsible Business Conduct and the Public Private Network of HiIL (The Hague Institute for the Internationalisation of Law). He is an accredited mediator at CEDR, ACB and the PRIME Finance Foundation (The Hague).