



Institute for  
**TRANSNATIONAL  
ARBITRATION**  
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American Society  
of International Law

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## 10th Annual ITA-ASIL Conference

### Gateway Issues in International Arbitration

April 3, 2013 • Renaissance Washington, DC Downtown Hotel • Washington, D.C.

*Conference Co-Chairs*

**Sophie Nappert**, Avocat, Bar of Quebec, Canada  
Solicitor of the Supreme Court of England and Wales, London

**Prof. Thomas J. Stipanowich**, William H. Webster Chair in Dispute Resolution,  
Academic Director, Straus Institute for Dispute Resolution, Pepperdine University School of Law, Malibu



*Presented by*

Institute for Transnational Arbitration's Academic Council and The American Society of International Law

“Gateway” issues in international arbitration are those issues that national courts are asked to address at the threshold of arbitration proceedings to ensure that the process is properly founded in party consent. Legal systems differ in their responses to the challenge of reconciling efficacy and legitimacy in arbitration, and even in the extent to which they acknowledge that the challenge exists and try to articulate a framework for addressing it. The challenge consists of identifying those issues that the courts properly address at the “gateway” of arbitration.

The American Society of International Law (ASIL) 107th Annual Meeting, April 3-6, 2013, immediately follow the ITA-ASIL Conference at the Renaissance Washington, DC Downtown Hotel, Washington, D.C. The Annual Meeting will address “International Law in a Multipolar World.”  
For more information and important updates, visit: [www.asil.org](http://www.asil.org).

REGISTER ONLINE: [www.cailaw.org/ita/asil-details-2013.html](http://www.cailaw.org/ita/asil-details-2013.html)  
Registration includes a buffet lunch with the faculty.

Conference papers will also be published in the 2013:3 issue of  
ITA's law journal, [World Arbitration and Mediation Review](#).

2.75 hours of MCLE credit are available. The course ID Number: 901260700.

8:00 **Registration** and Continental Breakfast

9:00 **WELCOME AND INTRODUCTION**

**R. Doak Bishop**, Chair, Institute for Transnational Arbitration Advisory Board  
King & Spalding, Houston, Texas

9:05-9:35 **KEYNOTE PRESENTATION: GATEWAY ISSUES IN INTERNATIONAL ARBITRATION**

**Prof. George A. Bermann**, Chief Reporter, ALI Restatement (Third) of the US Law of International Commercial Arbitration; Jean Monnet Professor of EU Law, Walter Gellhorn Professor of Law, Columbia University Law School, New York

9:35-10:45 **COMMERCIAL ARBITRATION**

**Introduction and Moderator: Prof. Thomas J. Stipanowich**

In international commercial arbitration, “gateway” issues encompass a widely varying array of questions that must be decided in advance of addressing the merits, as well as the allocation of decision-making authority between courts and arbitrators. Among the more troublesome factual scenarios are issues regarding the scope of agreements to arbitrate; questions of privity and the rights and obligations of non-signatory third parties; and the fulfillment of conditions precedent to arbitral jurisdiction. These “cases of trouble” have produced different responses by U.S. and European courts regarding appropriate default rules for decision-making, as well as the level of explicitness required to overcome default rules and reallocate decision-making authority. A leading arbitration scholar and noted international practitioner engage with and offer spirited reflections on these challenging issues.

**Panelists:**

**Prof. Alan Scott Rau**, Mark G. and Judy G. Yudof Chair in Law, University of Texas School of Law, Austin  
**Timothy G. Nelson**, Skadden, Arps, Slate, Meagher & Flom LLP, New York

**Roundtable and Q&A**

10:45-11:05 **Break**

11:05-12:15 **INVESTMENT ARBITRATION**

**Introduction and Moderator: Sophie Nappert**

When it comes to investment treaty arbitration, “gateway” issues potentially arise in regard to nearly every aspect of the case, starting with conditions precedent to jurisdiction, the claimant’s eligibility to present the claim, the existence of a covered investment, the scope of the tribunal’s jurisdiction and the claims’ admissibility. The growing complexity of these issues may lead some to wonder whether it is becoming too difficult to gain access to arbitration of the issues giving rise to investment disputes at all or whether tribunals must continue to stand guard or even further re-enforce the entryway. Two practitioners will address these issues by focusing on such questions as whether tribunals are taking conditions precedent established in investment treaties seriously enough and whether tribunals are permitting too many aspects of a dispute to be characterized as a threshold question.

**Panelists:**

**Abby Cohen Smutny**, White & Case LLP, Washington, D.C.  
**Laurence Shore**, Herbert Smith Freehills New York LLP, New York

**Roundtable and Q&A**

12:15 **CONCLUDING REMARKS**

**Prof. Andrea K. Bjorklund**, Chair, ITA Academic Council  
Visiting Professor, Faculty of Law, McGill University, Montreal;  
Professor of Law, University of California-Davis School of Law, Davis

12:20-1:30

### NETWORKING LUNCHEON

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Arbitration and Mediation Center of The Chamber of Commerce Brazil-Canada (CAM/CCBC)  
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