**Written Skills in International Arbitration**

**Cours 1**

Timeline of an Arbitration Agreement:

* Request for arbitration
* Constitution of the Arbitral Tribunal
* Terms of Reference:
  + Generally contains some rules
* Statement of Claim (4/6 months)
* Statement of Defence (4/6 months)
* Document production phase:
  + today became a standard, because after the statements the TA generally knows what the Parties are standing for
* Reply (2/3 months)
* Rejoinder (2/3 months)
* Hearings
* Post Hearing Briefs
* Award

It is possible to have other phases with regards of the specification of the arbitration.

In Investment Arbitration: possible to divide the proceedings between the jurisdiction and the merits of the case.

Between the request for arbitration and the answer you will have only two months.

* Research of documents: need to investigate the facts, gets the correspondence from the clients, the draft history of the contract… the search for documents is very important and is key.
  + People don’t like to give documents
    - It is often what people have done in their corporation and as they will be afraid not to have done the right thing, will not give the documents nor factual elements.
  + Need to get the objective facts: in order to be able to have an overview of the case
  + Very important to have the history backed up by the facts
* Comply with the Rules:
  + There are very specific things to include in the various steps of the procedure and in the written elements as well
  + Be careful to draft as the Tribunal expects it
  + Evolution: also before the TA gave the Parties to draft as they wanted, but now TA have developed their own preferences and at the stage of Terms of Reference the TA will explain its preferences and the councils to apply these recommendations

The writing is an exercise of strategy: Cf. examples

Written advocacy:

* How to present a good argument? Format need to be respected, spell checks, foot notes…
* Regarding the content: it’s the way you write and present your arguments.
  + The TA will go back to your writings.
* Explain and convince the TA of your position.
  + Find the facts, the argument and write an outline.
  + Also witnesses: best strategy is to address the witnesses.
    - You do that with your clients, even thought need to dig.
* Investment arbitration: an investor and a case, the investor need to have a qualified investor actually making an investment.
* The way you raise issues must be extremely careful, because the proceedings might go back on it later on.
  + Very strategic matters
    - Build your theory!
  + The way the claims are drafted: clearly sets up the case.
* Need to make the most compatible defence with regards to the fact and your regard on the case
  + You tell a story including the “bad facts”: need to address them

Need to address all the claims:

* Answer to the Request for arbitration: just put an hint, not display the all case: it is not your statement
* Corruption: possible to argue fraud and that consequently the contract is null and void and therefore non enforceable, you can go as well to a criminal court
* However, in case you loose on that argument, need to argue on alternatives at the same time
* Statement of reply: need to appoint an expert to deconstruct the remedies.
* And then you address what you have to say.
* Also it is important not to right the same things depending on the judges
  + The TA does not like last minute surprises: so very early in the procedure all the elements must be displayed.
* Request for relief

Finally an important element is that you have to do every thing under the applicable law.

Regarding the costs of arbitration: share of the costs or possible to put the costs on to the losing party.

Corruption: International Public policy: bribery, corruption…Regarding all these elements, you need to look at the international public policy into the domestic law to have the details about how it is forbidden an sanctioned.

Request for relief: