

Pascale ACCAOUI LORFING (Ph. D.)

plorfing@gmail.com

+ 33 (0) 6 88 48 12 05

[linkedin.com/in/pascale-accouli-lorfing](https://www.linkedin.com/in/pascale-accouli-lorfing)

Associate Researcher at CREDIMI – University of Burgundy

Affiliate Professor at ESCP – Business School – Paris

Researcher in International Contracts and Investment Contracts & Arbitration

Current research in International Contracts

The change of circumstances and its effects in comparative law

The power of the arbitrator towards contracts in hardship situation

The contractual stabilization clauses, renegotiation, contractual equilibrium, and force majeure.

Current research in Investment Contracts

The right for State to regulate and foreign investor's Protection.

The evolution of the indirect expropriation in arbitral awards

The general exception and the national security exceptions in international investment agreements

◆ **BOOKS**

- ◆ Dr. P. Accaoui Lorfing & Dr. Y. Levashova (ed), ***"Balancing the Protection of Foreign Investors and States' Responses in the (Post) Pandemic World"***, Kluwer Law International, 2022.
- ◆ ***La renégociation des contrats internationaux*** (thesis), Bruylant, FEDUCI collections, November 2011. (*The renegotiation of International Contracts*), Bruylant, FEDUCI Collections, November 2011.

WEBINARS

- ◆ ***"ISDS Reform: Comparative, Regional and Institutional Approaches"***, Side Event to UNCITRAL Working Group III Session, Vienna, 10 October 2023, (*co-organised with Dr. Yulia Levashova*).
- ◆ ***"International Investment Arbitration in Latin America: Progress or Inertia?"*** in collaboration with the Center for the Advancement of the Rule of Law in the Americas (CAROLA), *University of Georgetown University School of Law*, (Washington D.C.), (15 September 2021); https://youtu.be/_hpOa5cWZ7c
- ◆ ***"Balancing States' responses and the Protection of Foreign Investors in the (Post) Pandemic World"***, (*co-organised with Dr. Yulia Levashova*), (9 October 2020). <https://mediaserveur.u-bourgogne.fr/permalink/v125f6a44beb0c13yizd/iframe/>

- ◆ **“Force Majeure, Hardship, Frustration and Related Doctrines: Comparative Views from Europe, The Middle East and the Americas”**, (3 September 2020); <https://mediaserveur.u-bourgogne.fr/permalink/v125f645e65ce15gmk8p/iframe/>

CONFERENCES - PANEL DISCUSSIONS

“Impact on the Energy Crisis on Arbitrators: Comparative Law Approach on Hardship and Force Majeure”, in *Energy Law Group 7th Energy Event*, 12 May 2023, Paris.

« **L’expropriation existe-t-il une spécificité européenne?** », in *Nouveaux regards sur le droit européen des investissements*, sous la direction de Raphaël Maurel, Conference 5 et 6 Decembre 2022, CREDIMI, University of Dijon.

« **Drafting Tailor-Made Clauses: The Need to Adapt Hardship Clauses to the Circumstances of the Case** », in *The ICC Force Majeure & Hardship Clauses 2020. Dealing with Force Majeure Events in International Trade*, ICC Italia – UNIDROIT, Rome, 14 October 2022.

“The International Legal Framework for Foreign Investment Control: Article XXI GATT on Security Exceptions”, in *Investment Screening Mechanism, The Emerging Law of Investment Control in Europe: Screening, Sanctions and Subsidies*, CELIS Symposium, Uppsala University, (1- 3 June 2022).

“La clause ICC d’imprévision 2020. L’adaptation du contrat par le juge ou l’arbitre. Faut-il exclure l’article 1195 du code civil français ? », in *L’invocation de la force majeure et l’imprévision dans les crises actuelles. Les nouvelles clauses ICC de Force Majeure et Imprévision 2020 : une solution équilibrée pour les entreprises*, (18 mai 2022), Paris.

Change in circumstances: Comparative approach on Force Majeure, Hardship, Frustration and Commercial Impracticability, *University Paris II – LLB Comparative Judicial Systems: Civil Law, Common Law & Islamic Law*, (18 February 2021).

La force majeure, le hardship et les théories de la Common Law (Frustration, Commercial Impracticability) dans les contrats internationaux, (with Mrs M.-B. Burghetto), *University Paris – Nanterre, Master II on International Commercial Law*, (26 Novembre 2020).

COVID-19: Hardship or Force Majeure? *ESSEC – Paris, Master on Consumer and Competition Law*, (6 May 2020).

Hardship & Force majeure in International Contract Practice in the light of COVID-19, *University Paris – Nanterre, Master II on International Commercial Law*, (10 March 2020).

Screening by National Institutions Outside the EU in Light of the OECD, UNCTAD and Other Guidelines for Recipient Country Investment Policies, in *Panel on Scrutiny by Public Institutions*, in *Colloquium: Actors in International Investment Law: Beyond Claimants, Respondents & Arbitrators*, *University Paris II, Panthéon Assas*, (26 – 27 September 2019).

Hardship Theory in Latin America & France Through a Practical Case, with Professor Alejandro GARRO (Columbia Law School, U.S.A), organized by the International Commission – Latin America (co-leaders P. Cuba-Schiler & M.-B. Burghetto) Paris Bar Association (Maison du Barreau), (18 April 2019).

Hardship: Comparative Law Approach and International Contractual Practice, University Paris – Nanterre, Master II on International Commercial Law, (13 March 2019).

Hardship: Comparative Law Approach and International Contractual Practice, University La Rochelle, Master on Business Law, (5 February 2019).

Hardship: Comparative Law Approach and Contractual Provisions, White & Case - Arbitration Team, Paris, (14 January 2019).

Contract Revision for Hardship: Drafting Efficient revision Clauses in Order to Anticipate Risks and Better Handle International Disputes, With Helen van Lith (Secretary of the ICC Commission on Arbitration and ADR) and Prof. Vincent Mazeaud, *Squire Patton Boggs*, Paris, (6 December 2018).

Adaptation of International Contracts by Arbitrators at the ICC Annual Institute Conference Hardship & Force Majeure in International Commercial Contracts. Dealing with Unforeseen Events in a Changing World, Paris, 29 November 2018. (Panel members with Dr. Christoph Brunner and Professor Fabio Bortolotti as moderator), [ICC Institute of International Business Law & Practice](#) Annual Conference on *Hardship & Force Majeure in International Commercial Contracts. Dealing with Unforeseen Events in a Changing World*, Paris - (29 November 2018).

ARTICLES

2023

- ◆ “A Comparative Approach to Change of Circumstances: Towards a Development of a Substantive Hardship Rule?”, in *Mélanges en hommage au Professeur Emmanuel Gaillard*, to be published in 2023.
- ◆ « L’expropriation existe-t-il une spécificité européenne ? », in Raphaël Maurel (dir), *Nouveaux regards sur le droit européen des investissements*, CREDIMI - LexisNexis, 2023, vol. 59, pp. 291 – 308.
- ◆ « Unsustainable Investment: Scoping Expropriation Without Compensation », in Ottavio Quirico and Katarzyna Kwapisz Williams (Eds): *The European Union and the Evolving Architectures of International Economic Agreements*, Springer 2023.
- ◆ “Implications and Feasibility of Contract Renegotiation of Public-Private Partnership (PPP) in France”, in *Revisiting Public-Private Partnerships: Lessons from COVID-19*, Dr. Tharun Dolla, Prof. Boeing Laishram and Dr. Ganesh Devkar (ed), Springer 2023.
- ◆ “The International Legal Framework for Foreign Investment Control”, in Pohl, J.H., T. Papadopoulos, and J. Wiesenthal (eds.) *National Security Review of Investments. Trends in the Law and Policy of Investment Screening*. Springer Studies in Law & Geoeconomics, vol. 2, Springer 2023.

- ◆ “National Legislation and Screening Mechanism as Limit to Foreign Investment in the Host State: Updated Overview” *International Business Law Journal*, Chronicle on Investments, to be published in 2023.

2022

- ◆ “Considering the Interests of States vis-à-vis Foreign Direct Investors (FDI)”, *International Business Law Journal*, Chronicle on Investments n° 2, 2022, pp. 163 – 166.
- ◆ “ICSID Award: *Eco Oro Mineral Corp. v. The Republic of Colombia*, Decision on Jurisdiction, Liability and Directions on Quantum, rendered on 9 September 2021”, *International Business Law Journal*, Chronicle on Investments.
- ◆ “Tools of International Investment Agreement and Investment Contract: National Security Interest and Force Majeure” in Dr. P. Accaoui Lorfing & Dr. Y. Levashova (ed), “*Balancing the Protection of Foreign Investors and States’ Responses in the (Post) Pandemic World*” to be published by Wolters Kluwer, June 2022.

2021

- ◆ “Variations of Hardship and International Disputes”, Report on 36th ICC SIA & QMUL Annual Joint Symposium of Arbitrators, 8 – 9 March 2012, online, *ICC Dispute Resolution Bulletin*, 2021, Issue 2, pp. 108 – 111.
- ◆ “Draft Code of Conduct for Arbitrators in International Investment Disputes – Version Two” in *International Business Law Journal*, Chronicle on Investments, n° 4, 2021, pp. 581 – 585.
- ◆ “Screening of Foreign Direct Investment (FDI) and the States’ Security Interests in Light of the OECD, UNCTAD and Other International Guidelines, in Catharine Titi (ed) “*Public Actors in International Investment Law*”, *European Yearbook of International Economic Law, Special Issue*, 2021, pp. 179 – 199. (<https://doi.org/10.1007/978-3-030-58916-5> open access)
- ◆ “European Union – Vietnam Investment Protection Agreement”, in *International Business Law Journal*, Chronicle on Investments, n° 1, 2021, pp. 123 – 126.

2020

- ◆ “COVID-19 and National Interest: Intensified Screening Mechanism of Foreign Direct Investment (FDI)”, *International Business Law Journal*, Chronicle on Investments, n° 4, 2020, pp. 520 – 525.
- ◆ “Structure of the Standing Multilateral Investment Court”, *International Business Law Journal*, Chronicle on Investments, n° 2, 2020, pp. 275 – 276.
- ◆ Book Review, M. Rubino-Sammartano, *International Arbitration: Law and Practice*, 2 volumes, (Bruylant, June 2019), *International Business Law Journal*, Chronicle on Investments, n° 2, 2020, pp. 276 – 278.

- ◆ Book Review, Yulia Levashova, The Right of State to Regulate in International Investment Law”, (Wolters Kluwer, 2019), *International Business Law Journal*, Chronicle on Investments, n° 2, 2020, pp. 278 – 279.

2019

- ◆ Analysis of the Case Law *Union Fenosa Gas, S.A v./ Arab Republic of Egypt, ICSID 31 August 2018*, *International Business Law Journal*, Chronicle on Investments, n° 4, 2019, pp. 437 - 447.
- ◆ “Foreign Investment Agreement: Latest news: China (*New Draft Foreign Investment Law 26 December 2018*) & The Netherlands (*Revised Model Investment Agreement - 26 October 2018*), *International Business Law Journal*, Chronicle on Investments, n°2, 2019, p. 217 – 224.
- ◆ Possible Reform of Investor-State Dispute Settlement: European Union and its Member States – UNCITRAL Working Group III on Investor-State Dispute Settlement Reform (ISDS), *International Business Law Journal*, Chronicle on Investments, n° 2, 2019, p. 217 – 224.

2018

- ◆ “Adaptation of Contracts by Arbitrators: Realities and Perspectives”, in Fabio Bortolotti & Dorothy Ufot (ed), *Hardship and Force Majeure in International Commercial Contracts. Dealing with Unforeseen Events in a Changing World*, ICC Institute Dossiers of World Business Law, ICC Publication n° 796E, 2018, Chapter II, pp. 41 – 81.
- ◆ “Article 1195 of the French Civil Code on Revision for Hardship in Light of Comparative Law”, *International Business Law Journal*, n° 5, 2018, pp. 449 – 464.
- ◆ “The Evolution and Current Status of the Concept of Indirect Expropriation in Investment Treaties and Arbitration”, *Indian Journal of Arbitration Law (IJAL)*, vol. 6, n° 2, pp. 98 – 137, (co-authored with M.-B. Burghetto).
- ◆ Book review of *UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Emmanuel Gaillard et de George A. Bermann (dir), Pedone, Paris, Edition Spéciale 2017 (New York: Nations Unies, 2017), *Revue de Droit des Affaires Internationales (RDAI)*, n° 1, 2018, p. 117-118.

2017

- ◆ “The Evolution of State Contract since the 1960s”, *International Business Law Journal (IBLJ)*, n° 5, 2017, pp. 393 – 430.
- ◆ « Les clauses relatives au traitement des circonstances extraordinaires et à l’intangibilité » in *Lamy Contrats Internationaux*, Fascicule 316, Part 3, *Pratique des contrats et des clauses ; Les grandes clauses des contrats internationaux*.
- ◆ « Les contrats d’investissement », in *Lamy Contrats Internationaux*, Fascicule 362, Part 3, *Pratique des contrats et des clauses ; Les contrats de type concessif et les différents PPP*.

2015

- ◆ “L’obligation de renégociation : étude de droit comparé”, *Revue de Droit International et de Droit Comparé (RDIC)*, 2015/2, pp. 233 – 277. (The Obligation of Renegotiation in Comparative Law)

2010

- ◆ “The Contractually Unforeseen Renegotiation”, *International Business Law Journal (IBLJ)*, n° 1, 2010, pp. 35 – 56.

CONTRIBUTIONS

- ◆ **Co-author**, Chronicle of Law and Practice in International Investment, *International Business Law Journal (IBLJ)* (since 2019 with A. de Nanteuil)
- ◆ **Contributor to Lamy International Contracts (since 2016)**
 - The Investment Contract (Fascicle n° 362)
 - The Big clauses in International Contracts & Investment Contracts (Stabilization clauses, Equilibrium Clauses, Force majeure Clauses) (Fascicle n° 316)

TEACHING

- ◆ *International Business Law*, ESCP Business School, Master International Business, January – Mars 2022, (16 hours) (in French)
- ◆ *International Business Law*, Paris School of Business, Master management - Grande Ecole, April – September 2022 (30 hours)
- ◆ *Compliance*, Paris School of Business, Master International Business, May – September 2022, (30 hours).
- ◆ *Hardship & Force Majeure in International Commercial Contracts*, Université de Bourgogne, Dijon, April 2022 (6 hours) (in French)
- ◆ *International Investment Law & Arbitration*, ESSEC Business School, BBA Program (September – December 2020 (25 hours).

ACTIVE MEMBER OF WORKING GROUPS (International & Investment Contracts & Arbitration)

- ◆ CAROLA Faculty Affiliate (*Centre of the advancement of the Rule of Law in the Americas*) (since July 2022) <https://www.law.georgetown.edu/carola/who-we-are/affiliates/>
- ◆ ILA – Member of the international Law Association (French Branch)
- ◆ IAI - Member of the *International Arbitration Institute*– (<https://www.iaiparis.com/profile/pascale.accaouilorfing>)
- ◆ Associate Member, CREDIMI (*Research Centre on International Market & Investment Law*) (<https://credimi.u-bourgogne.fr>)
- ◆ Member of the I.C.C. Institute of World Business Law (<https://iccwbo.org>)
- ◆ Member of ICC Commission on Arbitration and ADR (Delegation of ICC Lebanon).
- ◆ Working Group on Arbitration & Investment in *International Business Law Journal (IBLJ)* (since 2017) (<https://www.iblj.com>)

- ◆ Working Group on International Contracts (since 2010), preside the subgroup on “*Contract Disruption in Contemporary Times*”.
- ◆ MENA Legal Club (since 2018) (Analysis of Commercial and Investment Law & Arbitration in Middle East & African Countries)
- ◆ Society of Comparative Law, Arbitration Group (since 2010) (www.legiscompare.fr)

INTERNSHIP

- ◆ **1990: ICC International Court of Arbitration**
Worked on files in the commercial and investment arbitration (Terms of Reference, Case Management, Arbitral Proceedings, and Decision of the International Court of Arbitration). Counsel meetings, Restraint Committees, General Assembly of the Arbitration Court.
- ◆ **1989: Internship Gide – Loyrette – Nouel**
Worked on various litigations in civil law and arbitration.

EDUCATION

- ◆ ***Ph. D (University Paris II – Assas), with distinction (September 2008)***
Subject: *The Renegotiation of International Contracts* under the supervision of Professor Philippe Fouchard and Professor Charles Jarrosson, (2008) (Distinction: Very honourable with the jury's congratulations)
- ◆ ***Summer Program at The Hague Academy of International Law*** (July – August 1987)
- ◆ ***Diplôme d’Etudes Approfondies in International Law (D.E.A) Université de Paris II – Assas.*** (1986 - 1987)
- ◆ ***LL.M. Private Law***, Saint-Joseph University (*U.S.J*) of Beirut – Lebanon (1985)

LANGUAGES

- ◆ French (native),
- ◆ Arabic (native Lebanon),
- ◆ English (fluent)