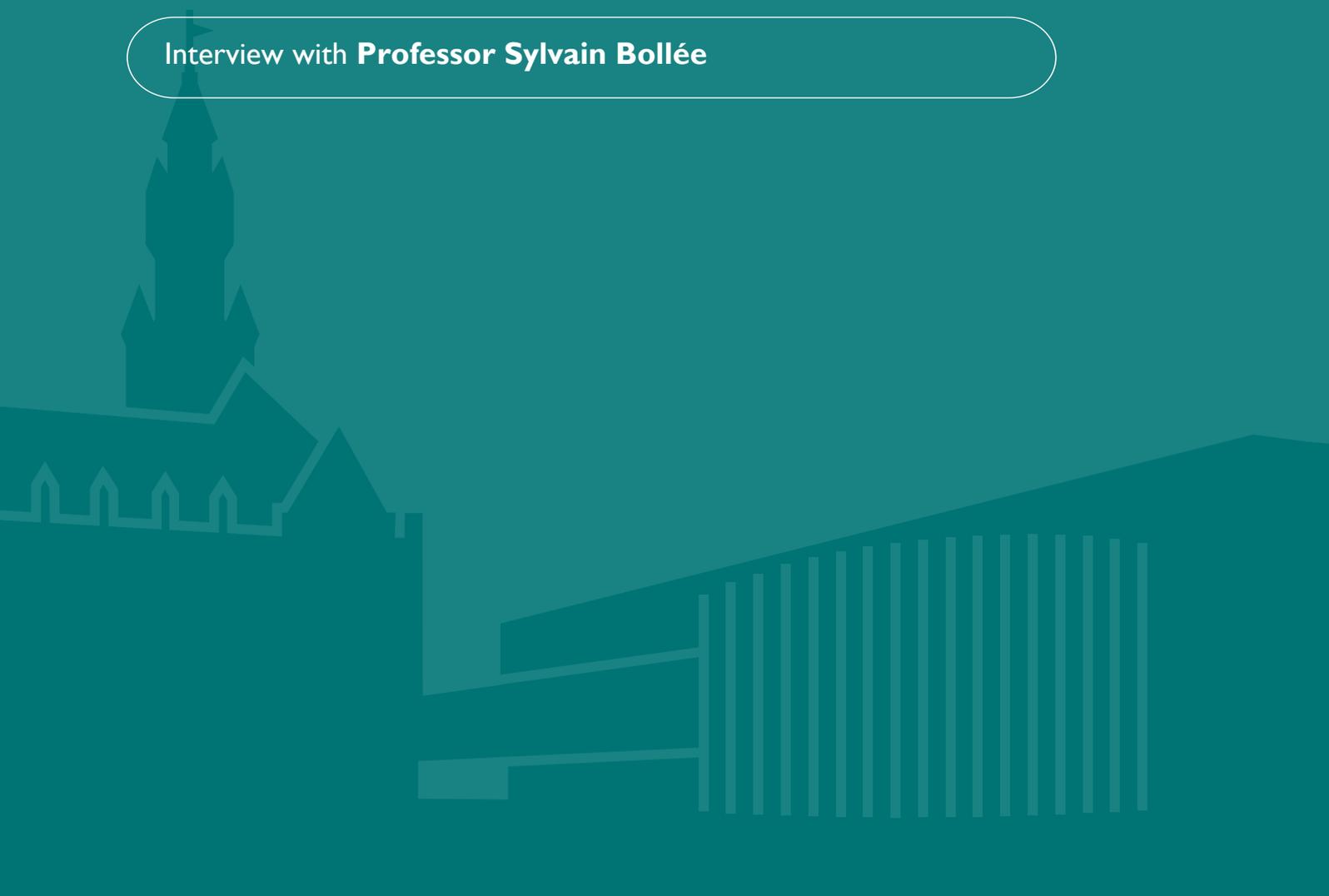




BRILL ■ NIJHOFF

Inherent powers of international arbitrators

Interview with **Professor Sylvain Bollée**



International arbitrators are increasingly making use of their "inherent powers" when taking decisions. Sylvain Bollée explores this notion in a course that he delivered to the Hague Academy of International Law. The course is now published by Brill in the *Collected Courses of The Hague Academy of International Law - Recueil des cours*.

Sylvain Bollée is a professor at the Sorbonne Law School (University of Paris 1 Panthéon-Sorbonne) where he heads the masters studies department of International, European and Comparative Law.

What was the trigger element within international arbitration that led you to explore this theme?

I started from the observation that there is a growing reliance on the notion of inherent powers in the field of international arbitration. This notion intrigued me because the words "power" and "inherent" seem, on the surface, to be contradictory: any power, in the legal sense, must logically be conferred by law. We would therefore be tempted to say that there is no power inherent in anything. In this course, I analyse the nature of the inherent powers of international arbitrators, but also their limits and their relationship with conferred powers – that is to say, those powers granted by legal standards or by the will of the parties.

Why is the study of this paradox particularly relevant today?

In 2016, the International Law Association adopted a resolution on this subject, accompanied by recommendations which followed a notable report by Filip de Ly, Luca G. Radicati di Brozolo and Mark Friedman submitted in 2014. The potential applications of the theory of inherent powers are diverse. They could allow arbitrators to respond in a suitable way to circumstances which might risk compromising their ability to fulfil their role. This means that inherent powers could prove useful in apprehending illicit practices such as corruption, or in justifying a power to review a sentence if it is subsequently discovered that this was obtained through fraud.

Can you give us a key example of international arbitration covered in this course?

In the *Hrvatska Elektroprivreda v Republic of Slovenia* ICSID case, concluded in 2015, the arbitration tribunal recognised the power to object to the appointment by a party of a new counsel, if such an appointment would create a conflict of interests which would have prevented the process from continuing before the same tribunal. The arbitrators mentioned an inherent power to take measures intended to uphold the integrity of the process.

What are the most surprising elements which came to light when studying this subject?

I would rather talk about the unsettling aspects. This course is underpinned by a dimension which is not peculiar to international arbitration, and which I find quite complex: that of the relativity of law. My focus is on the relativity which is intrinsic to any representation which covers the inherent powers of international arbitrators. It is a notion that can be understood and translated in a number of different ways. It certainly gives arbitrators flexibility and, no doubt, there is also room for a certain amount of subjectivity. Generally speaking, it can be reassuring to present the law as a set of predetermined solutions, but this view of things is at odds with reality. As key figures have shown us, the content of a legal system is only determined up to certain point. This is especially true in the case of the inherent powers of international arbitrators as the regulatory environment in which they evolve is much more complex than that of a single national legal system.