CHAPTER 3

INTERPRETATION CLAUSES

I. WORKING METHOD

True to its objectives, the Working Group on International Contracts looked at interpretation clauses in international commercial contracts from the perspective of international contract draftsmen. On the basis of discussions and analyses of sample clauses provided by its members\(^1\) working

\(^1\) Also, the following interpretation clauses contained in international instruments may be mentioned:

- Clauses 1, 2 and 36 of the Client/Consultant Model Services Agreement—The White Book, FIDIC, Lausanne, second edition, 1991; Conditions of Contract for Electrical and Mechanical Works—The Yellow Book, FIDIC, Lausanne, 3rd edition 1988 (clauses 1.1–1.3 and 5.1–5.4); Conditions of Contract for Works of Civil Engineering Construction—The Red Book, FIDIC, Lausanne, 4th 1989 (clauses 1.1–1.4 and 5.1–5.2);
- Guide to the use of FIDIC’s Sub-Consultancy and Joint Venture (Consortium) Agreements, FIDIC, Lausanne, 1994 (clauses 1.1–1.2 and 2.3–2.5 of the Sub-Consultancy Agreement and clauses 1.1–1.2, 11 and 21 of the Joint
in legal or contract departments of companies or working in private practice, general trends and problems regarding these clauses were observed.

An analytical way of describing interpretation clauses is used since this has the advantage that the various elements of these clauses are emphasized and are given extensive attention. The disadvantage is that these elements are too much isolated from one another and that their intrinsic links are insufficiently stressed. To fully understand interpretation clauses, one should seek an overall perspective including their various elements, their context, the applicable law and the factual background of the circumstances in which these clauses have been or are to be used. The analytical approach also has the disadvantage that the breaking down of interpretation clauses into 12 different categories (see Section III) may pay insufficient attention to their inter-relationships. The analytical method has, however, the advantage that the various interpretation mechanisms are better identified and described by emphasizing their different features. However, this approach isolates the various aspects of interpretation clauses from one another and, therefore, sketches only an incomplete picture since many interpretation clauses bring together various elements. For that reason, the examples cited hereafter should not be seen as sample interpretation clauses but are used only to illustrate the various elements that have been found in this study.

Attempts to classify interpretation clauses (see Section III) may create an impression that all interpretation clauses fall within one of these categories. Classification only seeks a better grasp of the wide variety of interpretation clauses that were encountered during the project and to provide an outline of the options available to contracting parties; it cannot be all-inclusive.

Some interpretation clauses in international commercial contracts tend to be standardized to a large extent; their contents and wordings are often similar. Such clauses may be characterized as *boilerplate clauses* that are copied from one contract to another not only within the same company or law firm but also across the legal profession and across borders. The degree

Venture (Consortium Agreement); Conditions of Subcontract for works of Civil Engineering Construction, FIDIC, Lausanne, 1994, 1st edition (clauses 1.1–1.4, 3.1 and 3.4); Conditions of Contract for Design—Build and Turnkey—The Orange Book, FIDIC, Lausanne, 1st edition, 1995 (clauses 1.1–1.6). In relation to the FIDIC Conditions, one should also note the publication by FIDIC at the end of 1999 of four new standard forms of contract: (1) the Short Form of Contract; (2) Conditions of Contract for EPC ("Engineer, Procure, Construct") Turnkey Projects; (3) Conditions of Contract for Plant and Design-Build; and (4) Conditions of Contract for Construction (Lausanne, FIDIC, 1st edition, 1999). Some provisions of the old FIDIC conditions are cited in this chapter as examples only.