

Reforming International Investment Arbitration

1- 2 February 2019, Professorboligen, Karl Johans gate 47. Oslo

Hosted by the
ISDS Academic Forum

with

Pluricourts Centre for Excellence (LEGINVEST) and Forum for Law & Social Science
Faculty of Law, University of Oslo
& the Geneva Center for International Dispute Settlement (CIDS)

Background

A range of international reform processes have commenced in order to redress critiques of Investor-State Dispute Settlement (ISDS). The most prominent is currently occurring within UNCITRAL's Working Group III. In early 2018, the ISDS Academic Forum was established under auspices of the CIDS in order to make a constructive and research-based contribution to these discussions. This workshop in Oslo will provide an opportunity for the Academic Forum's working groups to present draft papers on six issues that have triggered criticism: (1) legal costs; (2) duration of proceedings; (3) legal consistency; (4) decisional correctness; (5) arbitral diversity; and (6) arbitral independence and impartiality. An open call for papers will be also sent out for extra contributions from Academic Forum members or other scholars on these topics. The workshop will also include a public session on the reform process; while closed sessions will be open to Forum members and a limited number of academic observers.

FRIDAY 1 FEBRUARY 2019

9:00-10:45 Opening Session (Public)

Welcome: Daniel Behn, Associate Professor, Pluricourts, University of Oslo and Lecturer, University of Liverpool

Chair: Malcolm Langford, Professor of Public Law & Affiliate, Pluricourts, University of Oslo

Opening Speeches:

Gabrielle Kaufmann-Kohler, President, International Council for Commercial Arbitration and Professor Emerita, Geneva University Law School, CIDS Geneva

Comment: What's wrong with investment arbitration?

Maria Laura Marceddu, Visiting Lecturer, International Investment Law, King's College London

Comment: Investment Dispute Settlement à la Carte within a Multilateral Institution

Stephan Schill and Geraldo Vidigal, Professor of International and Economic Law and Governance at the Faculty of Law of the University of Amsterdam

11:00-12:30 Session 1: Excessive costs & recoverability of cost awards

Welcome to Pluricourts: Geir Ulfstein, Co-Director, Pluricourts Centre of Excellence, University of Oslo

Chair: Stephan Schill, Professor of International and Economic Law and Governance at the Faculty of Law of the University of Amsterdam

Working group paper: Excessive costs & recoverability of cost awards

Gabriel Bottini, Professor of Public International Law, University of Buenos Aires

The Defense Burden in International Investment Treaty Arbitration? An Empirical Assessment of Costs and Capacity

Ana Maria Daza Vargas, Lecturer in International Law, University of Edinburgh

13:15-14:30 Session 2: Excessive duration of proceedings

Chair: Catherine Kessedjian, Professor emerita of the University Panthéon-Assas Paris II

Working group paper: Excessive duration of proceedings

Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London

Empirical perspectives on duration of proceedings

Malcolm Langford, Professor of Public Law, University of Oslo

Co-opting Domestic Courts as Investment Courts

Szilárd Gáspár-Szilágyi, Postdoctoral Fellow, Pluricourts Centre of Excellence, University of Oslo

14:45-16:00 Session 3: Consistency & coherence in legal interpretation

Chair: Gabrielle Kaufmann-Kohler, Professor, Geneva University, CIDS

Working group paper: Consistency & coherence in legal interpretation

Chester Brown, Professor of International Law & International Arbitration, University of Sydney

Federico Ortino, Reader in International Economic Law, King's College London

Empirical perspectives on consistency and coherence

Sergio Puig, Associate Professor of Law, University of Arizona, and *Anton Strezhnev*, Post-doctoral fellow, University of Pennsylvania Law School

Comment: Seeking Consistency in the Application of the Contributory Fault Doctrine in Investment Arbitration

Jean-Michel Marcoux, Postdoctoral Fellow, McGill University, Faculty of Law

16:30-17:45 Session 4: Incorrectness of the decisions

Chair: George Bermann, Professor of Law, Columbia Law School

Working group paper: Incorrectness of the decisions

Mark Feldman, Professor of Law, Peking University School of Transnational Law

Empirical perspectives on incorrectness of decisions

Wolfgang Alschner, Assistant Professor, University of Ottawa

19:00 Dinner

SATURDAY 2 FEBRUARY 2019

9:00-10:15 Session 5: Lack of diversity among ISDS adjudicators

Chair: *Catherine Rogers*, Professor, Penn State Law

Working group paper: Lack of diversity among ISDS adjudicators

Andrea Bjorklund, L. Yves Fortier Chair in International Arbitration and International Commercial Law, McGill University

Empirical perspectives on diversity

Taylor St John, Lecturer in International Relations, University of St Andrews

Diversity, Ideology and Compliance in International Law

Sergio Puig Associate Professor of Law, University of Arizona

Comment: The persistent lack of diversity among ISDS adjudicators within the proposed Investment Court System proposed by the European Union

Juliana S. Soria, Trinity College Dublin

10:30 – 12:00 Session 6: Lack of independence, impartiality & neutrality

Chair: *Michele Potestà*, Senior Researcher, Geneva Center for International Dispute Settlement (CIDS)

Working group paper: Lack of independence, impartiality & neutrality

Steven Ratner, *University of Michigan Law School*

Empirical perspectives on independence, impartiality & neutrality

Daniel Behn, Lecturer in Law, University of Liverpool & Associate Professor, University of Oslo

A Common Ethics Code for International Arbitrators?

Chiara Giorgetti, Professor, Richmond Law School

An Appointments Panel for Investment Arbitrators: An Idea whose time has come?

James Devaney, Lecturer in Law, University of Glasgow

12:30-14:00 Conclusions and way forward

Chair: *Ole Kristian Fauchald*, Professor and Coordinator, LEGINVEST, Pluricourts Centre of Excellence

Building legitimacy of international dispute resolution: Comparative Lessons

Mikael Madsen, Director, *iCourts Centre of Excellence*, *University of Copenhagen*

Designing new international institutions: Normative and Comparative lessons

Andreas Føllesdal, Co-Director, *Pluricourts Centre of Excellence*

Theresa Squatrito, Lecturer in Political Science, *University of Liverpool*

Steven Ratner, *University of Michigan Law School*

Way forward

Gabrielle Kaufmann-Kohler, Professor, Geneva University, CIDS

Michele Potestà, Senior Researcher, CIDS