

Columbia Law School

Speakers Series

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Accountability of investor-state  
dispute settlement  
as benchmark for reform

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# Current investment court projects

CETA

EU-Vietnam FTA

EU TTIP proposal

References to court in recent treaties

EU internal proposal for multilateral convention

UNCITRAL discussions



1. Related concepts: Legitimacy and transparency

2. Accountability

- Notion
- For what are investment tribunals accountable?
- Clash with judicial independence
- Compare international tribunals and national courts

3. Looking forward

*Someone* reports / is responsible to  
*someone else* for *something*

# Accountability v. judicial independence: 3 pressure points

- Appointment / selection
- Compensation
- Discipline

# International judicial body

(1) Permanent

(2) Established by law

(3) Applying international law

(4) Preexisting procedures

(5) Binding decisions





# Decision-makers on international courts

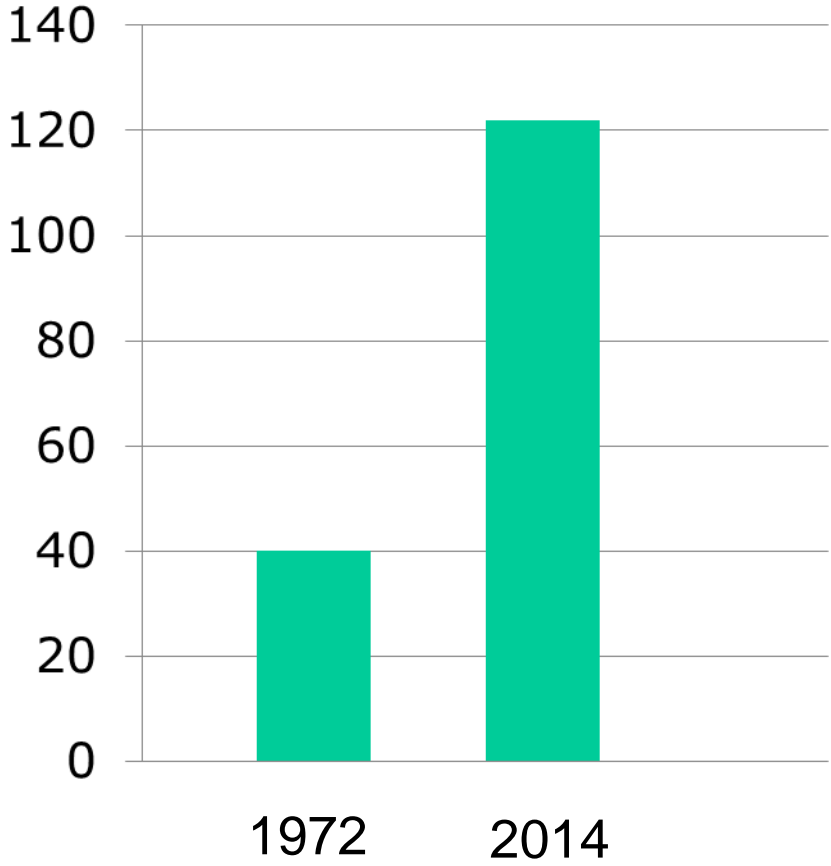
- ICJ 15-17
- ECtHR 7, 17
- ITLOS 5, 9, 11
- CJEU 5, 15
- WTO Appellate Body 3 (exchanging views with 4 others)
- IUSCT 3 or 9 (for important issues or overruling prior case)

# Decision-makers on highest national courts

US Supreme Court	9
German Bundesgerichtshof	5
French Cour de cassation	5
Swiss Supreme Court	5



# Democratic States worldwide



(Freedom House)

Objective: A dispute settlement mechanism that

- (1) Fixes **democratic accountability** deficiency
- (2) Takes account of **asymmetric nature** of investment arbitration
- (3) Preserves (as much as possible) **gains** of current system (distance/neutrality; finality; manageability)

