



FINAL PROGRAM

Symposium on Transparency and Consistency in International Investment Law: Is There a Need for a Review Mechanism?

April 4, 2006

Columbia University, Alfred Lerner Hall, Satow Room

**Columbia University
Columbia Program on International Investment*
Center on Global Legal Problems**

**Sorbonne University
Pantheon-Sorbonne
Centre d'Etudes et de Recherches de Droit International**

**Sponsored by
Mark and Gail Appel**

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OVERVIEW

The number of bilateral investment treaties had risen to 2,392 at the end of 2004; in addition, an increasing number of bilateral and regional free trade agreements contain investment clauses. The expansion of the treaty network and the diversified nature of treaty practices have two major consequences: the growth of investor-State litigation and the lack of coherence between awards rendered by different tribunals, in different contexts and based on different treaties, while still purporting to interpret similar concepts.

By the end of 2005, the number of investor-State arbitrations under international investment agreements (IIAs) had reached at least 219. Of these, 132 were brought before ICSID, the rest before other arbitration fora. More than two-thirds of these cases were filed since the beginning of 2002, virtually all initiated by investors. They involve 61 governments, including 37 of developing countries. Awards can amount to several hundred millions of dollars, and the costs of arbitration can be substantial. Recent IIAs of the US include language calling for the establishment of a review mechanism.

What explains this growth of investment disputes? What are the principal issues to which this development gives rise? In particular, is there a problem of transparency and consistency in international investment law and, if so, how can it be addressed?

This one-day Symposium addresses these and related questions. Chatham House rules apply.

The papers, once presented at the Symposium and finalized, will be published.

The Symposium rapporteur is Christopher Brummer, Assistant Professor of Law, Vanderbilt Law School, and Associate, Cravath, Swaine & Moore LLP.

Monday, 3 April

19:00 **Dinner** at Bistro Ten 18, organized with the
 Alliance Program



Tuesday, 4 April

8:30-9:00 **Breakfast**

9:00-9:10 **Welcome:** David Schizer, Dean and Lucy G. Moses Professor of Law, Columbia
 Law School

9:10-9:30 **Opening**

 “The rise of investment disputes”, Karl P. Sauvant, Executive Director, Columbia Program
 on International Investment

 “The multifaceted nature of international investment law”, Rainer Geiger, Deputy Director,
 Financial and Enterprise Affairs Division, OECD, and Associate Professor of International
 Law, Sorbonne University

9:30-13:00 **Session One: Investment disputes and recent trends in international investment
 agreements**

 Chair: Jose Alvarez, Hamilton Fish Professor of Law and Diplomacy, Columbia University,
 and Director, Center on Global Legal Problems

1. “Are there significant differences in the substantive provisions of international
 investment agreements and in their interpretation?” Patrick Juillard, Professor of
 International Law, Sorbonne University
2. “Explanations for the increased recourse to treaty-based investment dispute
 settlement: resolving the struggle of life against form?” Jeswald W. Salacuse,
 Henry J. Braker Professor of Law, The Fletcher School of Law and Diplomacy, Tufts
 University
3. “What are the principal challenges arising from international investment disputes?”
 Susan Franck, Assistant Professor of Law, University of Nebraska College of Law

Commentators: Giorgio Sacerdoti, Member, WTO Appellate Body
 Professor of International Law and European Law, Bocconi
 University

 Anna Joubin-Bret, Senior Legal Advisor, International Investment
 Agreements Section, UNCTAD

Discussion

13:00-14:30 **Lunch**, co-sponsored by Oceana Publications

Luncheon address: “Provisions in the new generation of U.S. investment agreements to achieve transparency and coherence in investor-state dispute settlement”,
Michael K. Tracton, Investment Negotiator, Office of International Affairs, Department of State, Washington, D.C.

15:00-17:50 **Session Two: Promoting transparency and consistency**

Chair: Rainer Geiger, Deputy Director, Financial and Enterprise Affairs Division, OECD, and Associate Professor of International Law, Sorbonne University

4. “The role of transparency, third-party participation, due process and the publication of awards”, Hugo Perezcano Diaz, General Counsel for Trade Negotiations, Secretariat of the Economy, Mexico
5. “Recourse against arbitration awards”, Emmanuel Gaillard, Professor, University of Paris XII; Partner, Shearman & Sterling, Paris
6. “Options to establish an appellate mechanism for investment disputes”, Barton Legum, Counsel, Debevoise & Plimpton, Paris

Commentators: George A. Bermann, Jean Monnet Professor of EU Law & Walter Gelhorn Professor of Law, Columbia Law School

Howard Mann, Senior International Law Advisor, International Institute for Sustainable Development

Katia Yannaca-Small, Advisor on International Investment Law, OECD

Discussion

17:50-18:00 **Conclusions and closing:**

“Policy implications”, Rainer Geiger, Deputy Director, Financial and Enterprise Division, OECD, and Associate Professor, International Law, Sorbonne University

“Implications for the future of international investment law”, Jose Alvarez, Hamilton Fish Professor of Law and Diplomacy, Columbia University, and Director, Center on Global Legal Problems

Background material:

ICSID, “Suggested changes to the ICSID rules and regulations”, Working Paper of the ICSID Secretariat, May 12, 2005, mimeo.

ICSID, “Possible improvements of the framework for ICSID arbitration”, ICSID Secretariat Discussion Paper, October 22, 2004, mimeo.

IISD, “IISD Model International Agreement on Investment for Sustainable Development: negotiators' handbook” (2005), http://www.iisd.org/pdf/2005/investment_model_int_handbook.pdf.

OECD, “Improving the system of investor-State dispute settlement: an overview” (Paris: OECD 2005), mimeo.

OECD, “International investment law: a changing landscape” (Paris: OECD, 2005), mimeo.

OECD, “Novel features in OECD countries’ recent investment agreements: an overview” (Paris: OECD 2005), mimeo.

Schreuer, Christoph, “Diversity and harmonization of treaty interpretation in investment arbitration” (2006), mimeo.

UNCTAD, “Latest developments in investor-State dispute settlement” (Geneva, UNCTAD, 2005), mimeo.

US trade agreements.