

Sydney Law School Conference

International Investment Treaty Law and Arbitration: *Evolution and Revolution in Substance and Procedure*

19-20 February 2010
University of Sydney Law School

This major conference explores controversial issues in contemporary investment treaty law and practice, including emerging issues in the nature of investment treaties, evolving jurisprudential trends, and intersections with international commercial arbitration, trade regulation, environmental issues and foreign investment in Asia. The program includes four plenary sessions and 14 concurrent panels with over 60 presentations from an exciting mix of senior and up-and-coming experts drawn from universities, government and private practice.

Keynote Speaker

Professor Philippe Sands QC, University College London; Matrix Chambers, London

Distinguished Speakers

Sir Franklin Berman QC KCMG, Essex Court Chambers, London
Professor M Sornarajah, National University of Singapore

Sydney Law School

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THE UNIVERSITY OF
SYDNEY

International Investment Treaty Law and Arbitration: Evolution and Revolution in Substance and Procedure

Day 1: Friday 19 February

8.30am	Registration opens Arrival tea and coffee	11.00am - 12.30pm	Panel 3: Foreign Investment and Asia Prabhash Ranjan, PhD Candidate, King's College, London and Amrita Biswas, National University of Juridical Sciences, Kolkata, India; <i>Non-Precluded Measures in Indian Investment Agreements and Regulatory Discretion</i>
9.00 - 9.15am	Welcome and Conference Opening <i>Conference Opening</i> : Kate Miles, Sydney Law School <i>Acknowledgement of Country</i>	Seminar Room 107	Dr Simon Butt, Sydney Law School; <i>Foreign Investment in Indonesia: The problem of Legal Uncertainty</i>
Auditorium LT101	<i>Dean's Welcome</i> : Professor Gillian Triggs, Sydney Law School	Concurrent Sessions (ctd)	Sita Sitaresmi, Former Treaty Negotiator, Government of Indonesia; <i>Incorporation of Agreement on Services into Bilateral Investment Treaties</i>
9.15 - 10.30am	Keynote Address Professor Philippe Sands QC, University College London; Matrix Chambers, London; <i>Conflict and Conflicts: Challenges and Prospects for Investment Treaty Arbitration</i> <i>Chair</i> : Professor Gillian Triggs, Sydney Law School		Associate Professor Vivienne Bath, Sydney Law School; <i>The Quandary for Chinese Regulators — Controlling the Flow of Investment into and out of China</i> <i>Chair</i> : Associate Professor Luke Nottage, Sydney Law School
10.30 - 11.00am	Morning Tea	12.30 - 1.30pm	Lunch
11.00am - 12.30pm	Panel 1: Emerging Trends in Investment Treaty Law and Arbitration Professor Duncan French, University of Sheffield, United Kingdom; <i>The European Union as a Global Investment Partner: Law, Policy and Rhetoric in the Attainment of Development Assistance and Market Liberalisation</i> Kate Miles, Sydney Law School; <i>International Investment Law and Non-Investment Issues: Engaging with Cross-Cutting Fields</i> Daniel Kalderimis, Principal, Chapman Tripp, Wellington, New Zealand; <i>Investment Treaty Arbitration as Global Administrative Law — What this Might Mean in Practice</i> Dr Alex Mills, University of Cambridge, United Kingdom; <i>The Uncertain Status of International Investment Law</i> <i>Chair</i> : Dr Caroline Foster, University of Auckland	1.30 - 3.00pm	Evolution in Investment Law and Arbitration Marie-Claire Cordonier Segger, Senior Director, Sustainable Prosperity; Director, Centre for International Sustainable Development Law (CISDL); Fellow, Lauterpacht Centre for International Law, University of Cambridge; <i>Sustainable Development in Modern International Trade & Investment Regimes</i> David Williams QC, Bankside Chambers, Auckland; Essex Court Chambers, London; <i>The Effects of Illegality in Investment Treaty Arbitration</i> Gabriel Bottini, Department of International Affairs, Office of the Attorney-General, Republic of Argentina; <i>Revisiting Ambatielos: Status Quo of the MFN Debate</i> <i>Chair</i> : Associate Professor Chester Brown, Sydney Law School; Essex Court Chambers, London
Concurrent Sessions		Plenary Session	
Seminar Room 100		Auditorium LT101	
	Panel 2: Procedural Developments in Investor-State Arbitration Assistant Professor Tony Cole, University of Warwick, United Kingdom; <i>When Is a Forum 'More Favourable': The Use of MFN Clauses to Found a Tribunal's Jurisdiction</i> Dr Christina Knahr, University of Vienna, Austria; <i>The New Rules on Participation of Non-Disputing Parties in ICSID Arbitration — Blessing or Curse?</i> Judith Levine, Legal Counsel, Permanent Court of Arbitration, The Hague, The Netherlands; <i>Navigating the Parallel Universe of Investor-State Arbitrations under the UNCITRAL Rules</i> Richard Braddock, Principal Legal Officer, Office of International Law, Attorney-General's Department, Canberra; <i>Recent Developments in Australia's Approach to ISDS</i> <i>Chair</i> : Malcolm Holmes QC, Wentworth Chambers, Sydney; 20 Essex Street Chambers, London	3.00 - 3.30pm	Afternoon Tea
Seminar Room 102		3.30 - 5.00pm	Panel 1: Practice and Procedure Professor Loukas Mistelis, Queen Mary College, University of London; <i>Independence and Impartiality in Investment Arbitration</i> Associate Professor Romesh Weeramantry, City University, Hong Kong; <i>Investor-State Dispute Resolution: The Scope of "Amount of Compensation" Disputes</i> Lucy Martinez, Freshfields Bruckhaus Deringer, New York; <i>The Dark Side of Investor-State Arbitration: Fraud, Corruption, Abuse of Process and Other Improprieties by Claimants</i> Dr Sergio Puig, Counsel, ICSID, The World Bank Group, Washington DC; <i>The Role of Procedure in the Development of Substantive Law: The Case of Chapter Eleven of NAFTA</i> <i>Chair</i> : Matthew Skinner, Partner, Allens Arthur Robinson, Sydney
		Concurrent Sessions	
		Seminar Room 100	

3.30 -
5.00pm

Concurrent
Sessions
(ctd)

Seminar
Room 102

Panel 2: Investment and Host State Needs

Lauge Skovgaard Poulsen, London School of Economics, United Kingdom; *Bilateral Investment Treaties and Political Risk Insurance: What is the Evidence?*

Jose Antonio Rivas Campo, Arnold & Porter LLP, Washington DC (*provisional acceptance*); *Colombia's Model BIT: A Balanced Treaty from OECD to NAFTA Standards*

Fiona Marshall, International Institute for Sustainable Development, Geneva; *A Quest for Legitimacy: Proposals for Institutional Reform of Investor-State Arbitration*

Chair: Emeritus Professor Ivan Shearer, Sydney Law School

Seminar
Room 107

Panel 3: Political Economy and Conceptual Frameworks

Martins Paporinskis, Hauser Research Scholar, New York University; *Investment Protection Law and Systemic Integration of Custom and Treaty*

PD Dr Marc Bungenberg, Acting Professor, Erlangen-Nuremberg University, Germany; *European Union Investment Politics After Lisbon*

Jonathan Bonnitcha, University of Oxford, United Kingdom; *A Framework for Understanding the Political Economy of Investment Treaty Interpretation*

Chair: Dr Andrew Lang; London School of Economics

Seminar
Room 105

Panel 4: International Commercial Arbitration and Investor-State Arbitration

Mark Mangan, Freshfields Bruckhaus Deringer LLP, London; *The Fusion of the Practice of International Commercial Arbitration and Investor-State Arbitration*

Associate Professor Luke Nottage, Sydney Law School; *International Investment and Commercial Arbitration in Australia and Japan: Shared Challenges, Somewhat Different Solutions?*

Dr Sam Luttrell, Allens Arthur Robinson, Perth, Australia; *Bias Challenges in Investor-State Arbitration: Lessons from International Commercial Arbitration*

Chair: Björn Gehle, Special Counsel, Clayton Utz, Sydney

5.15pm &
5.30pm

Coaches leave Sydney Law School for the Cocktail Dinner Function at the Museum of Contemporary Art, Circular Quay

Cocktail Dinner Function for Delegates

A cocktail dinner function for conference delegates will be held on the Quay Terrace of the Museum of Contemporary Art, located right on the waterfront at Sydney's iconic Circular Quay.

Time: 6-10pm, Friday 19 February

Venue: Museum of Contemporary Art,
Circular Quay

Transport to the Museum via coach is included in the ticket price.

****Please note, the dinner function is for delegates that have pre-registered their attendance only****

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CLEAR THINKING

International Investment Treaty Law and Arbitration: *Evolution and Revolution in Substance and Procedure*

Day 2: Saturday 20 February

8.30am	Registration opens Arrival tea and coffee	11.00am - 12.30pm	Panel 3: Investment, Sustainable Development and Environmental Protection Antony Crockett, Clifford Chance LLP, Singapore; <i>Stabilisation Clauses and Sustainable Development: Drafting for the Future</i> Dr Kyla Tienhaara, Australian National University, Canberra; <i>Pesticides, Precaution and the Politics of NAFTA Chapter 11</i> Associate Professor Anastasia Telesetsky, University of Idaho, United States; <i>A New Investment Deal: Renegotiating Bilateral Investment Treaties to Protect Environmental Commitments</i> Max Bonnell, Partner, Mallesons Stephen Jaques, Sydney; Adjunct Professor, University of Sydney; <i>Protecting Investments and Protecting the Environment: Can Emissions Trading Schemes Create Liability under BITs?</i> <i>Chair:</i> Dr Tim Stephens, Sydney Law School
9.00 - 10.30am	Plenary Session: Directions in Investment Treaty Practice Dr Gavan Griffith QC, Essex Court Chambers, London; Former Solicitor-General, Australia, and Dr Christopher Staker, 39 Essex St Chambers, London; <i>Critical Reflections on the ICSID Annulment Regime</i> Professor Andrew Newcombe, University of Victoria, Canada; <i>Investor Misconduct: Admissibility, Jurisdiction or Merits?</i> Dr A Rohan Perera PC, UN International Law Commission, Senior Advisor, International Legal Affairs, Ministry of Foreign Affairs, Sri Lanka; <i>Contemporary Issues Pertaining to the Scope of Application of the Most-Favoured-Nation Clause in Bilateral Investment Treaties</i> <i>Chair:</i> Professor Andrea Bjorklund, UC Davis School of Law, United States	Concurrent Sessions (ctd) Seminar Room 107 Seminar Room 102	Panel 4: Investor-State Arbitration: Issues in Practice Associate Professor Susan Franck, Washington & Lee University, Lexington, Virginia; <i>Costs of Investment Arbitration</i> Rocío Digón, Weil, Gotshal & Manges, New York; <i>The Relationship Between the BIT as Lex Specialis and the ICSID Convention</i> Professor Tatsuya Nakamura, Kokushikan University, Japan; Japanese Commercial Arbitration Association; <i>Determination of the Substantive Law Applicable to Disputes in Investment Arbitration</i> Andrew Stephenson, Partner, Clayton Utz, Melbourne; <i>Problems Surrounding the Enforcement of Rights and the Role of Investment Treaties</i> <i>Chair:</i> Georgia Quick, Partner, Blake Dawson
10.30 - 11.00am	Morning Tea	12.30 - 1.30pm	Lunch
11.00am - 12.30pm	Panel 1: Issues in Substantive International Investment Law Associate Professor Chester Brown, Sydney Law School; Essex Court Chambers, London; <i>Questions of Interpretation Concerning the Obligation to Accord Fair and Equitable Treatment</i> Nick Gallus, Counsel, Department of Foreign Affairs and International Trade, Canada; <i>The Circumstances of the Host State and BIT Minimum Standards of Treatment</i> Avidan Kent, University of Cambridge, United Kingdom and Alexandra Harrington, McGill University, Montreal, Canada; <i>The Plea of Necessity under International Customary Law: A Critical Review in Light of Recent International Investment Cases</i> Luke Eric Peterson, Editor, Investment Arbitration Reporter, New York; <i>BITs and Freedom of Expression</i> <i>Chair:</i> Efraim Chalamish, Global Fellow, New York University School of Law	1.30 - 3.00pm	Panel 1: Contextualising International Investment Law Dr Emma Aisbett, Australian National University, Canberra; <i>International Investment Agreements and Regulatory Takings — A View from Economics</i> Suzanne A Spears, Wilmer Cutler Pickering Hale and Dorr LLP, London; <i>Sustainable Investment and Sustainable Development: Two Sides of the Same Coin?</i> Assistant Professor Julian Davis Mortenson, Michigan Law School, United States; <i>Subverting the Grand Bargain: ICSID's Travaux and the Domain of International Investment Law</i> Emma Truswell, University of Sydney; <i>FDI and Freshwater: Right or Commodity?</i> <i>Chair:</i> Dr Jacqueline Mowbray, Sydney Law School
Concurrent Sessions		Concurrent Sessions	
Seminar Room 100		Seminar Room 100	
	Panel 2: Investment, Trade and Intellectual Property Andrew Battison, Allen & Overy LLP, Singapore; <i>What Does WTO Practice Have to Teach Investment Treaty Arbitration on the Question of National Treatment?</i> Dr Henning Grosse Ruse-Khan, Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich, Germany; <i>Protecting Intellectual Property under BITs, FTAs, and TRIPS: Conflicting Regimes or Mutual Coherence?</i> Dr Markus W Gehring, University of Cambridge, United Kingdom; <i>International Trade Regulation and International Investment Agreements</i> Dr Brett G Williams, Sydney Law School; <i>Reflections on the Different Historical Origins of Remedies in Trade Law and Investment Law</i> <i>Chair:</i> Dr Simon Butt, Sydney Law School		
Auditorium LT101			
Seminar Room 102			

1.30 -
3.00pm

Panel 2: Investment Treaty Arbitration and the Domestic Sphere: Issues of Jurisdiction and Admissibility

Professor Andrea Bjorklund, UC Davis School of Law, California; *The Role of Sub-National Governments in Investment Law*

Crina Baltag, Queen Mary College, University of London; *Dual Nationality and the Energy Charter Treaty: Is there a Jurisdictional Bar?*

Michele Potestà, University of Milan, Italy; *Interpretation of Consent to ICSID Arbitration Contained in Domestic Investment Laws*

Professor Richard Garnett, University of Melbourne; *National Courts, Arbitration and Investment Treaties*

Chair: Malcolm Holmes QC, Wentworth Chambers, Sydney; 20 Essex Street Chambers, London

Concurrent Sessions (ctd)

Seminar Room 102

Seminar Room 107

Panel 3: Investment Disputes and Asia

Gordon Smith, Partner, Kennedys, Singapore; *Chinese Bilateral Investment Treaties: Restrictions on International Arbitration*

Govert Coppens, University of Leuven, Belgium; *ICSID's Notion of 'Investment' at a Crossroads: Any Role for Development? A Critical Analysis of the Malaysian Historical Salvors Cases*

Dr Nils Eliasson, Mannheimer Swartling, Hong Kong, China; *Procedural Developments in Light of the Award on Jurisdiction in the Case of Mr Tza Yap Shum v The Republic of Peru*

Chair: Dr Salim Farrar, Sydney Law School

3.00 -
3.30pm

Afternoon Tea

3.30 -
5.00pm

**Distinguished Speakers:
Evolution and Revolution in Investment Treaty Law?**

Professor M Sornarajah, National University of Singapore

Sir Franklin Berman KCMG QC, Essex Court Chambers, London

Chair: Professor Gillian Triggs, Sydney Law School

Auditorium LT101

5.00 -
5.15pm

Conference closing remarks

Chief Justice James Spigelman, Supreme Court of NSW

Chair: Associate Professor Luke Nottage, Sydney Law School

Auditorium LT101

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