

FIFTH ANNUAL

INVESTMENT TREATY ARBITRATION CONFERENCE: A DEBATE AND DISCUSSION

THE FUTURE OF ICSID

5 APRIL 2011

RENAISSANCE MAYFLOWER HOTEL, WASHINGTON, D.C.

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∞ All working sessions will take place in the **Colonial Room** ∞

SCHEDULE:

- 8:30 9:00 Registration Coffee and Tea upon arrival
- 9:00 9:15 Opening Remarks by Conference Co-Chairs Ian A. Laird and Todd Weiler

9:15 – 10:45 SESSION I - The Inherent Authority of an ICSID Tribunal – What is the Limit?

The fundamental basis of ICSID arbitration is the consent between the parties embodied in the Convention and other instruments of consent, such as international investment agreements or arbitration clauses. However, in the absence of specific consent, tribunals frequently take upon themselves wide powers of authority to conduct an ICSID arbitration. What are the limits of this "inherent" authority? And, is there a principled basis that can be identified to support it?

Moderator: Tim Nelson, Skadden, Arps, Slate, Meagher & Flom LLP

Authors: Martins Paparinskis, Post Doctoral Fellow, Oxford University; Constantinos Salonidis, Foley Hoag LLP

- Panelists: Antonio Parra, Former Secretary General of ICCA; Wendy Miles, Wilmer Cutler Pickering Hale and Dorr LLP; Nigel Blackaby, Freshfields Bruckhaus Deringer LLP; Mara Senn, Arnold & Porter LLP
- 10:45 11:00 Coffee/Tea Break

11:00 - 12:30 SESSION II - "Investment" under the ICSID Convention - Have We Moved Beyond Salini?

The proper interpretation of the term "investment" under the ICSID Convention and applicable international investment agreements has been the battleground for heated debate about the jurisdiction of ICSID tribunals in recent arbitral awards. The tension between state sovereignty and rule of law manifests itself in the conflict over such definitions and will continue to be a point of contention for novices and experts alike.

Moderator: Michael Nolan, Milbank, Tweed, Hadley & McCloy LLP

Authors: Joshua Fellenbaum, Mannheimer Swartling; Sungjin Kang, Cleary Gottlieb Steen & Hamilton LLP

 Panelists:
 Stanimir Alexandrov, Sidley Austin LLP;
 Catherine M. Amirfar, Debevoise & Plimpton LLP;

 Federico Ortino, Kings College London;
 Miriam Harwood, Curtis, Mallet-Prevost, Colt & Mosle LLP

12:30 – 13:45 Lunch - will be served in the Senate Room

Luncheon Speaker: Meg Kinnear, Secretary General, ICSID

13:45 – 15:15 SESSION III - Compliance and Enforcement of Awards – Is There Really a Practical Difference between ICSID and *ad hoc* Arbitration?

One of the many benefits of ICSID arbitration has been its delocalized review and enforcement mechanism. However, as certain member states have resisted compliance, some commentators have questioned whether the enforcement of ICSID awards is for practical purposes different from *ad hoc* arbitration. Our authors and panelists provide their critical analysis on this key issues.

Moderator: Baiju Vasani, Crowell & Moring LLP

Authors: Freya Baetens, Associate Professor of Law, University of Leiden; Sylvia Tonova, White and Case, LLP

- Panelists: Margrete Stevens, King & Spalding; Philippe Pinsolle, Shearman & Sterling LLP; Chris Gibson, Suffolk University Law School; Marco E. Schnabl, Skadden, Arps, Slate, Meagher & Flom LLP; Borzu Sabahi, Fulbright & Jaworski LLP
- 15:15 15:30 Coffee/Tea Break

15:30 – 17:00 SESSION IV - Appeal versus Annulment: Is the ICSID Annulment Process Working or Is it Now Time for an Appellate Mechanism?

The decisions of recent ICSID ad hoc Annulment Committees, such as in Sempra v. Argentina, have revived questions concerning the exact scope of the standard of review exercised by those Committees. If thestandard of review is moving to one closer to an appeal standard, should ICSID itself not revive its efforts to an open appeal mechanism? Arguments are presented by our authors and panelists as to whether now is the time for a change at ICSID regarding the review of arbitral awards.

Moderator: Jeffrey Rosenthal, Cleary Gottlieb Steen & Hamilton LLP

Authors: Silvia Marchili, King & Spalding; Claire Stockford, Crowell & Moring LLP

 Panelists:
 Gonzalo Flores, Senior Counsel, ICSID;
 John Fellas, Hughes, Hubbard & Reed LLP;

 Sabine Konrad, K&L Gates LLP;
 Oscar Garibaldi, Covington & Burling LLP

17:00 - 18:00 Cocktail Reception

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LUNCHEON SPEAKER:

Meg KINNEAR is the Secretary-General of the International Centre for Settlement of Investment disputes (ICSID). The former Senior General Counsel and Director General of the Trade Law Bureau of Canada, a joint legal unit of the Department of Justice and of Foreign Affairs and International Trade of Canada, Ms. Kinnear was responsible for the conduct of all international investment and trade litigation involving Canada. She was also responsible for legal support for investment and trade treaty negotiations and for the implementation of such treaties.

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JOHN CROOK teaches arbitration at George Washington University Law School and has been an arbitrator on the Eritrea-Ethiopia Claims Commission and under NAFTA. He was a United States Agent at the Iran-US Claims Tribunal and helped to create the United Nations Compensation. He has appeared in several ICJ cases and written extensively on dispute settlement. Mr. Crook was recently nominated as vice-president of the ASIL.

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GONZALO FLORES serves as Senior Counsel at the International Centre for Settlement of Investment Disputes (ICSID), the World Bank Group's organization that provides facilities for the conciliation and arbitration of investment disputes between States and foreign nationals. In this capacity, Mr. Flores has served as Secretary of the Tribunal in numerous ICSID and UNCITRAL arbitral proceedings.

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ANTONIO PARRA is the Honorary Secretary General of the International Council for Commercial Arbitration (ICCA). He served as the Secretary General of ICCA from 2004 to 2010. Currently a consultant with the World Bank, he was previously with the International Centre for Settlement of Investment Disputes (ICSID) serving as Senior Counsel, Legal Adviser and Deputy Secretary-General. At the World Bank and ICSID, he took part in the preparation of the Convention Establishing the Multilateral Investment Guarantee Agency and the formulation of the World Bank Guidelines on the Treatment of Foreign Direct Investment.

PHILIPPE PINSOLLE is a Partner in Shearman & Sterling's International Arbitration Group. He has acted as Counsel in more than 120 international arbitrations, with a particular focus on investor-State arbitrations and commercial disputes involving industries such as oil and gas, energy, construction and defense. Mr. Pinsolle regularly acts as chairman, sole arbitrator and party appointed arbitrator in ad hoc and institutional international arbitrations.

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SYLVIA TONOVA is an Attorney in the Washington, D.C. office of White & Case and practices with the International Arbitration and Litigation Groups. She concentrates her practice on the representation of sovereign States and private clients in investment treaty and commercial arbitration matters. She successfully represented Bulgaria in Plama Consortium Limited v Republic of Bulgaria before the International Centre for Settlement of Investment Disputes (ICSID) in an arbitration of a dispute arising under the Energy Charter Treaty.

BAIJU S. VASANI is a Partner in the Washington, D.C. and London offices of Crowell & Moring's International Dispute Resolution Group. He focuses his practice exclusively on international investment and commercial arbitration covering various industries. He has counseled the Republic of Korea in relation to international dispute resolution under its current and future bilateral and multilateral treaties.

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