

Call for Papers:

The Role of the State in Investor-State Arbitration

November 8, 2013

World Trade Institute (WTI) – University of Bern

SUBMISSION DEADLINE: July 15, 2013

The World Trade Institute (WTI) of the University of Bern invites the submission of papers and abstracts for its conference entitled “The Role of the State in Investor-State Arbitration”. The conference will examine the development of the concept of the “State” in a field that currently presents an increasing number of controversial disputes: Investor-State Arbitration. However, it is often unclear whether we can attribute conduct to a State or determine its rights and responsibilities.

The essence of this system is something unusual in international law, as controversies between foreign investors and host States are allegedly insulated from political and diplomatic relations between States. In return for agreeing to independent international arbitration, the Host State is assured that the State of the investor’s nationality will not espouse the claim or intervene in a factual controversy and is theoretically relieved of the pressure of having its relations with the Home State compromised.

The Host State plays a dual role in these disputes: it is a party to the arbitration – usually the respondent – the entity that through governmental, legislative or even judicial activity has allegedly breached investor’s rights; and it is also a party to the treaty creating the cause of action for the investor, a kind of agreement that increasingly includes provisions on exceptions, interpretation or even dispute settlement, where another party – usually the Home State – could have a say.

As the use of Investor-State Arbitration has increased spectacularly in recent years, this dispute resolution mechanism has progressively come under more scrutiny. Critics of this regime often point out that it allows private arbitrators to decide the legality of sovereign acts or public policies and there are concerns about “forum shopping”, high costs, transparency and fairness to third parties, lack of predictability and consistency.

Understanding what a State *is* in this context should therefore be an important object of study, but most research has been focused on the rights of the investor rather than on the analysis of the different components of a State in order to examine the State’s attribution, rights and responsibilities. On the other hand, States do not always consider the possible effects of their actions or public policies under international law.

This conference seeks to discuss some questions about the State in the context of investor-state dispute settlement. What do we refer to when we talk about the “State”? Which entities constitute the “State”? Is every act of a public agency or instrumentality attributed to the “State”? What are the implications of the State’s consent to arbitration in investment treaties? What are the effects of its denunciation? Are States bound when the awards are assigned to a third-party? What is the standard of review of the State’s actions under international law vis-à-vis domestic law? Can we apply Investor-State arbitration when the foreign investor is another State?

The conference aims to answer these questions from an interdisciplinary perspective for a better understanding of intended or unintended effects of State actions. For that purpose the present call for papers is directed to legal practitioners and academics, as well as to economists and political scientists in order to analyse the many facets of State activity.

Potential topics for the conference include:

- State as a single unity or State as a set of institutions
- State Autonomy Theory and investment arbitration
- State-Owned Enterprises or State Agencies as foreign investors
- State attribution in investment disputes
- Effects of denunciation of investment treaties
- State-State Arbitration in investment disputes
- General exceptions in Investment treaties
- States as claimants in investment disputes
- International State responsibility and investment arbitration
- The role of the Home State in investment arbitration

Please submit papers proposals on substantial, original, and unpublished research related to all aspects of the role of the State in Investor-State Arbitration, including but not limited to the topics discussed above. In addition, we encourage submissions of interdisciplinary research including research in economics and political science.

The aim is to disseminate information and to stimulate constructive scientific discussion with legal researchers, economists, political scientists, diplomats and representatives of governmental institutions regarding the consequences of State activity and the role of the State in the light of recent developments in Investor-State Arbitration. Rather than following the format of a typical panel, the discussion group will be a less structured session that will allow both experts and participants to engage in a lightly moderated but productive conversation.

Abstract submissions must be between 300-500 words in length and should be accompanied by a short resume. Please submit your documents to Shaheez Lalani (Shaheez.Lalani@wti.org)

or Rodrigo Polanco (Rodrigo.Polanco@wti.org). Papers that are selected for the conference are expected to be published as part of an edited volume on the subject.

Scholars who have their abstracts accepted are expected to have a final draft submitted by October 15, 2013. Each paper submitted should be an original that has not been published in a prior work. Authors selected for presentation of their papers at the conference are expected to submit completed papers with a maximum close to 5,000 words in length (without considering footnotes).

This conference will be the first WTI Doctoral Programme Conference, and it will be jointly organised with the International Investment Initiative (I³) of the WTI.

Important Dates

Abstract Submission Deadline: July 15, 2013

Notification of Acceptance of a Paper: August 15, 2013

Final Submission of an Accepted Paper: October 15, 2013

Conference Date: November 8, 2013

Conference Venue

The World Trade Institute (WTI) was established in 1999 and conducts advanced studies in international trade at the University of Bern in beautiful Switzerland. The Managing Director of the WTI is Prof. Thomas Cottier. The WTI combines graduate-level education, interdisciplinary research and specialised advisory services into a unique and dynamic institution.

We recruit students, researchers, faculty and employees from around the world, creating a diverse and engaging environment. Research is conducted in close collaboration with NCCR Trade Regulation. Our main objective is to push the boundaries of teaching and research in the law, economics and politics of international trade.

The organisers

- International Investment Initiative (I³)

The International Investment Initiative (I³) is the WTI's programme focussing on the economics, law and regulation of cross-border direct investment. I³ undertakes research (in the context of the NCCR Trade Regulation) on foreign direct investment (FDI) activities and impact on growth and development, presents training programmes on investment policy and promotion, advises public agencies and organisations in Switzerland, the EU and in developing countries, and promotes debate amongst stakeholders.

- The Doctoral Programme of the WTI Graduate School

Inaugurated in 2012, WTI's Doctoral Programme offers working professionals and Master's-level graduates in economics, political science and law the opportunity to further their professional and academic careers. PhD candidates benefit from a structured programme that is designed to offer them the highest level of support possible in writing their theses. This includes continuous feedback and academic guidance from our extraordinary global faculty – comprised of leading scholars and practitioners from the world's most renowned universities, policy research institutions, law firms and international organisations.

Contact

If you have any questions regarding this call for papers, please e-mail the conference conveners, Shaheeza Lalani (Shaheeza.Lalani@wti.org) or Rodrigo Polanco (Rodrigo.Polanco@wti.org).

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