

## NCCR Trade Regulation Brown Bag Series

Joost Pauwelyn, Professor of International Law, Graduate Institute Geneva

### BASEBALL ARBITRATION TO RESOLVE INTERNATIONAL LAW DISPUTES: NUDGING STATES TO 'STEP UP TO THE PLATE'

**Tuesday, 14 March 2017, 12.30 – 13.30**

Anna Nussbaum Auditorium, World Trade Institute, University of Bern  
Hallerstrasse 6, 3012 Bern, Switzerland

#### Abstract

States and international tribunals are in a love-hate relationship. States need third-party adjudication to settle at least some of their disputes, and monitor increasingly vague commitments. At the same time, when international tribunals make decisions they often upset states or are blamed for over-reach, providing states with little opportunity to engage in “legislative correction”. The existence of compulsory dispute settlement, with a black or white outcome on what states cannot do, may also have a chilling effect on states positively settling their differences or negotiating new rules. Fixes to this tension traditionally involve proposals to either (i) exit from international tribunals altogether or increase state control over tribunals (with the risk of undermining tribunal independence), or (ii) make international tribunals more like domestic courts with public law type guarantees in respect of appointment, transparency and consistency.

This paper assesses a concrete proposal that goes in a different direction. It preserves a crucial role for neutral, third-party adjudication but puts more responsibility on states to work out positive solutions themselves: baseball or final offer arbitration (FOA) where disputing parties each offer an answer to the dispute and the adjudicator’s task is strictly limited to picking one or the other answer. When carefully calibrated, FOA can enhance both efficiency and

accuracy. FOA facilitates, rather than chills, settlement and long-term cooperation, and puts states rather than tribunals in the driving seat. FOA reduces sovereignty costs and may unlock state consent to arbitration where traditionally it is lacking. In this variety of ways, FOA nudges states to “step up to the plate”.

#### Biography of the Speaker

Joost Pauwelyn is Professor of International Law at the Graduate Institute of International and Development Studies in Geneva and Co-Director of the Institute’s Centre for Trade and Economic Integration. He is also the Murase Visiting Professor of Law at Georgetown Law Center in Washington DC and leads the [www.tradelab.org](http://www.tradelab.org) network of legal clinics on international economic law. Before joining the Graduate Institute, Joost was a tenured professor at Duke Law School. He advises governments and non-state actors on dispute settlement under the WTO, and on FTAs and investor-state arbitration. Joost received degrees from the Universities of Namur and Leuven, Belgium as well as Oxford University, and holds a doctorate from the University of Neuchâtel. He is on the roster of WTO panellists and serves as an arbitrator under Free Trade Agreements and the Energy Charter Treaty. He is a Member of the ICSID Panel of Conciliators.

**Participation is free of charge, no registration is needed.  
We warmly welcome you to join our seminar at the World Trade Institute!**

NCCR Trade Regulation Brown Bag Seminars are 30-minute presentations, given by external or in-house researchers. The presentations are followed by a 30-minute Q&A session. The Brown Bag concept comes from the US; it means that people bring their own lunch and eat it during the presentation.