

# COLLOQUIUM

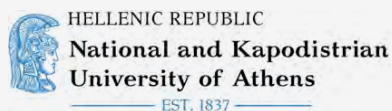
## Actors in International Investment Law: Beyond Claimants, Respondents and Arbitrators

26-27 September 2019

University Paris II  
Panthéon-Assas  
12, Place du Panthéon  
75005 Paris



Facultad de Derecho  
Universidad Zaragoza



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## Colloquium 2019

- ▶ The University Paris II Panthéon-Assas is hosting, in the context of the Investment Law Initiative, a *Colloquium* on ‘Actors in International Investment Law: Beyond Claimants, Respondents and Arbitrators’, on 26 and 27 September 2019, in Paris, France. The *Colloquium* is jointly organized by the CERSA, research centre of the French National Centre for Scientific Research (CNRS) and of the University Paris II Panthéon-Assas (France); the University of Zaragoza (Spain) and its Faculty of Law; the Athens Public International Law Center (Athens PIL) of the National and Kapodistrian University of Athens Faculty of Law (Greece). These academic and research institutions joined forces in 2016 and established the *Investment Law Initiative*, an international collaboration aimed at strengthening research and systemic analysis of international investment law. The *Colloquium* is convened by Dr Katia Fach Gómez (*University of Zaragoza, Faculty of Law*), Dr Anastasios Gourgourinis (*National and Kapodistrian University of Athens, Faculty of Law; Athens PIL*), and Dr Catharine Titi (*CNRS-CERSA, University Paris II Panthéon-Assas*).



# Thursday, 26 September 2019

8.15 / 8.45

## Registration

8.45 / 9.00

## Conference Opening

**Catharine Titi**, French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas (co-organiser)

**Katia Fach Gómez**, University of Zaragoza (co-organiser)

**Anastasios Gourgourinis**, National and Kapodistrian University of Athens (co-organiser)

9.00 / 10.00

## Opening Keynote

**Marc Bungenberg**, Saarland University  
(Title TBC)

10.00 / 11.30

## Panel 1 **Arbitral Institutions and Appointing Authorities**

### Chair (TBC)

**Sébastien Manciaux**, University of Burgundy  
— *Some Thoughts on the Independence of Party-Appointed Experts*

**Gabriele Ruscalla**, ICC International Court of Arbitration  
— *The Role of Witnesses in Assessing Violations of Non-Commercial Rights in Investor-State Arbitration*

**David Gaukrodger**, OECD  
— *Appointing Authorities (Topic TBC)*

**Patricia Shaughnessy**, Stockholm University, Ex-SCC Vice Chair  
— *Tribunal Secretaries in SCC Rules and Practice*

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## Panel 2 **Counsel**

### Chair (TBC)

**Constantinos Salonidis**, Foley Hoag  
— *The Role of Counsel for the State Party in Investment Arbitration*

**Jonathan Kabre Rimdolsom & Andreas R. Ziegler**, University of Lausanne  
— *Counsel and the Reforms of the ISDS Regime*

**Anna Mantakou**, Anna P. Mantakou Law Office  
— *Many Wish to Play but a Few Can Play Well*

**Charles T. Kotuby**, Jones Day  
— *The Role of Counsel in the Progressive Development of International Law*

**Jeremy Sharpe**, Shearman & Sterling  
— *Should States Appoint Agents in International Arbitration?*

11.30 / 12.00

**Coffee Break** ☕

12.00 / 13.30

**Panel 3** *Third-Party Funding/Funders*

**Chair José Alberro**, Cornerstone Research

**Jeffery Commission**, Burford Capital  
— (Title TBC)

**José Ángel Rueda García**, Cuatrecasas  
— *Third-Party Funding and Access to Justice in International Investment Arbitration*

**Richard (Rory) Walck**, Global Financial Analytics LLC  
— *A Quantum Expert's Perspective on Third-Party Funding*

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**Panel 4** *The Investor's Home State*

**Chair Anastasios Gourgourinis**, National and Kapodistrian University of Athens

**Tarcisio Gazzini**, University of East Anglia  
— *Beyond Protection: The Role of the Home State in Modern Investment Treaties*

**Rodrigo Polanco**, World Trade Institute  
— *Bringing Back the State into Investor-State Disputes: Recent Developments*

**Rebecca E. Khan**, De La Salle University  
— *Not a Third Party: Home State Participation as a Matter of Right in Investment Treaty Arbitration*

**Vishakha Choudhary**, Saarland University  
— *Caught in the Crossfire: Safeguarding Sovereign Interests of a 'Predecessor' Home State in the Aftermath of Unlawful State Succession*

**Carlo de Stefano**, Roma Tre University  
— *The Investor's Home State: Nationality Issues in International Investment Arbitration*

13.30 / 15.00

**Lunch Break** 

15.00 / 16.30

**Panel 5** **Scrutiny by Public Institutions**

**Chair** (TBC)

**Emanuel Castellarin**, University of Strasbourg

— *The Role of the EU's and Member States' Institutions in Screening Foreign Investment*

**Aliki-Athina Papanastasiou**, University of Cambridge

— *Media Wars: Transparency and Aggravation in International Investment Arbitration*

**Sebastià Green Martínez**, Uría Mendéndez

— (Title TBC)

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**Panel 6** **National Courts**

**Chair Photini Pazartzis**, National and Kapodistrian University of Athens (TBC)

**Aniruddha Rajput**, International Law Commission

— *National Courts as Actors in Investment Arbitration: A Paradox*

**Gustavo Prieto**, University of Turin

— *The Role of Constitutional Courts in the Reform of International Investment Law: A Comparative Analysis between Europe and Latin America*

**Ksenia Polonskaya**, Centre for International Governance Innovation

— *The Role of Domestic Courts in International Investment Law: Canadian Courts in Focus*

**Katerina Florou**, Sciences Po; DG Energy European Commission

— *A Middle Path of ISDS Reform: Strengthening the Role of National Courts in the Enforcement of Investment Arbitral Awards*

16.30 / 17.00

**Coffee Break** 

**Chair** (TBC)**Panos Merkouris**, University of Gröningen— *The Achmea Effect: Judicial Dialogue (or Discord) between the CJEU and Investment Tribunals***Fulvio Maria Palombino**, University of Napoli Federico II— *The Coherence Conundrum in Investor-State Arbitration: What Role for External Case-Law?***Ioannis Prezas**, University Paris 1 Panthéon-Sorbonne— *International Non-Investment Courts and Tribunals as Actors in International Investment Law?***Álvaro Galindo**, Dechert— *Third Party Rights: The 'Monetary Gold Standard' and its Application in International Investment Arbitration***Fernando Dias Simões**, Chinese University of Hong Kong

(Title TBC)

**Panel 8 The European Union****Chair Catharine Titi**, French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas**Luis Hinojosa**, University of Granada— *EU Changing Perspective on FDI : Achmea and CETA Opinion***Rosario Ojinaga Ruiz & Maria Lina Leiva**, Universidad de Cantabria— *EU as a Driver in the Judicialization Process of International Investment Dispute: the ISDS Reform and the EU's Judicial System***Csongor István Nagy**, University of Szeged— *The European Union as an Emerging Actor in International Investment Law: Speaking Globally, Thinking Regionally?***Ewa Żelazna**, University of Leicester— *The Impact of the Court of Justice of the European Union on the Field of International Investment Law: An EU Law Perspective***Rafael Gil Nievas**, Independent attorney and arbitrator— *A New Approach to Intra-EU ISDS***Gala Dinner****Cercle National des Armées**

8, Place Saint-Augustin, 75008 Paris



# Friday, 27 September 2019

9.00 / 10.30

## Panel 9 **International Organisations (Excluding the EU)**

**Chair** (TBC)

**Anna Joubin-Bret**, UNCITRAL

— *Norm-Making in International Investment Arbitration and the Role of UNCITRAL*

**Bruno Sousa**, Sciences Po.

— *UNCITRAL and the Governance of International Investments*

**David Collins**, City, University of London

— *The International Bar Association's Quiet Influence on the Development of International Investment Law*

**Hamed El Kady**, UNCTAD

— *UNCTAD's Perspective on Investment Facilitation for Development*

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## Panel 10 **National Governments and Treaty Negotiators**

**Chair Makane Moïse Mbengue**, University of Geneva

**Federica Cristani**, Comenius University

— *The Role of Sub-Regional Systems in Shaping International Investment Law-Making: The Case of the Visegrád Group*

**Krystle M. Baptista**, Armesto & Asociados

— *New Actors in Investment Arbitration: The Legitimate Government*

**Jansen Calamita**, National University of Singapore

— *The Challenge of Governing with Investment Treaties: Bringing the Civil Service Onside*

**Sarah Spottiswood** & **Chrysoula Mavromati**, UK Department for International Trade

— *Voices that Shape Investment Treaties: Inside, Outside and Between States*

**Carlos José Valderrama**, Sidley Austin

— *The Role of the Host State in Preventing Disputes: The Experience of Peru*

10.30 / 11.00

**Coffee Break** 



11.00 / 12.30

**Panel 11** **Academics**

**Chair** **Stephan Schill**, *University of Amsterdam*

**Loukas Mistelis**, *Queen Mary University of London*  
— *Academic Independence and Expert Opinions in ISDS*

**Thomas Schultz**, *CIDS, Geneva*, and **Niccolò Ridi**, *University of Liverpool*  
— *Empirically Mapping Arbitration Scholarship: A Scientometric Analysis*

**Franck Latty**, *University Paris Nanterre*  
— *The Teachings of the Most Highly Qualified Publicists of the Various Nations' in Investment Arbitration*

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**Panel 12** **Public Participation**

**Chair** (TBC)

**Jörg Philipp Terhechte**, *Leuphana Universität Lüneburg*  
(Title TBC)

**Karsten Nowrot** & **Emily Sipiorski**, *University of Hamburg*  
— *Towards a Republicanization of International Investment Law? Conceptualizing the Legitimatory Value of Public Participation in the Negotiation and Enforcement of International Investment Agreements*

**Kendra Magraw**, *Graduate Institute, Geneva (IHEID)*  
— *Trends and ISDS Backlash related to Non-Disputing Treaty Party Submissions*

**Jinyup Kim**, *University of Glasgow*  
— *Amicus Curiae in International Investment Arbitrations: An Instrument to Help Indigenous Peoples and Local Communities to Tackle Biopiracy*

**José Manuel García Represa**, *Dechert*  
— *Intervention of Non-Disputing Parties: Pros, Cons and Legitimacy Concerns*

12.30 / 14.00

**Lunch Break** 

14.00 / 15.30

**Panel 13** **Quantum and Other Experts**

**Chair** (TBC)

**Matthias Cazier-Darmois**, *FTI Consulting*  
— *Perspective of an Expert on Frequently Asked Questions*

**Luis Bergolla Álvarez**, *Stanford Law School*  
— *Taxonomy of Investor-State Arbitration Cases Involving Party-Appointed Quantum Experts: An Empirical Study of ICSID Awards*

**Julian Scheu**, *University of Cologne*  
— *From Hired Gun to Fouth Arbitrator: Identifying the Role of Experts in International Investment Arbitration*

**Marie Stoyanov**, Allen & Overy  
— (Topic TBC)

**Panel 14 Mediators**

**Chair Katia Fach Gómez**, University of Zaragoza

**Catharine Titi**, French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas  
— *Between Utopia and Realism: Mediation and the Settlement of Investment Disputes*

**Jack Coe**, Peperdine School of Law  
— *Concurrent Co-Mediation: Toward a More Collaborative Centre of Gravity in Investor-State Dispute Resolution*

**Peter Cameron**, University of Dundee  
— *Mediation in International Energy Disputes*

**Calliope Sudborough**, IÉSEG  
— *Mediation of Sovereign Debt Disputes*

**Phoebe Winch**, Office of International Law, Attorney-General's Department, Canberra  
— *Transparency and Confidentiality in International Investment Mediation (Title TBC)*

**Alina Leoveanu**, ICC  
— *Mediating with States under the ICC Mediation Rules*

15.30 / 16.00

**Coffee Break** 

16.00 / 17.30

**Panel 15 Hidden/Invisible Actors**

**Chair** (TBC)

**Raymundo Tullio Treves**, Max Planck Institute for Comparative Public Law and International Law  
— *Other Actors in Investment Arbitration (topic: Community Value)*

**Güneş Ünüvar**, University of Copenhagen, and **Erman Özgür**, Özgür & Ünüvar Legal Consultancy  
— *The Rise of State-Owned Enterprises (SOEs): A Return to State-to-State International Investment Protection?*

**Anastasios Gourgourinis**, National and Kapodistrian University of Athens  
— *Shadow Claimants: Beneficial Ownership in International Investment Law*

**Marina Trunk-Fedorova**, St. Petersburg State University  
— *Foreign Investments in Services and the WTO Dispute Settlement Mechanism*

**Paolo Vargiu**, University of Leicester  
— *Establishing a Dialogue among Arbitrators, Academics and Other Actors in International Investment law*

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**Panel 16** *Investment Promotion Agencies and Political Risk Insurance*

**Chair Clotilde Jourdain-Fortier**, University of Burgundy

**Aradhana Kumar-Captor**, MIGA  
— *(Topic TBC)*

**Thomas Papanastasiou**, Neapolis University Pafos  
— *The Implications of Political Risk Insurance (PRI) Policies in the Governance of Energy Projects*

17.30 / 18.30

**Closing Keynote**

**Diego Fernandez Arroyo**, Sciences Po.  
— *(Topic TBC)*

18.30 / 18.45

**Concluding Remarks by the Organisers**

**Catharine Titi**, French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas

**Katia Fach Gómez**, University of Zaragoza

**Anastasios Gourgourinis**, National and Kapodistrian University of Athens

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► **Organisers**

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Anastasios Gourgourinis (*National and Kapodistrian University of Athens*)

Catharine Titi (*French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas*)