The Present and Future Role of Investment Treaty Arbitration in Adjudicating Environmental Disputes

PluriCourts Symposium
Domus Media, Faculty of Law
Oslo, 5 and 6 November 2015

Thursday, November 5

9:00 – 9:15 Welcome and introduction to the symposium
Geir Ulfstein, Ole Kristian Fauchald, Christina Voigt and Daniel Behn, University of Oslo

9:15 – 10:30 Reforming future international investment treaties
Chair and discussant: Freya Baetens, University of Leiden
Building better investment agreements? Assessing the impact of EU investment law on sustainable development, the green economy and climate change
Markus Gehring and Sean Stephenson, CISDL Canada

Integrating environmental impact assessments into international investment agreements: promoting conflict or cooperation?
Graham Mayeda, University of Ottawa

10:30 – 10:45 Coffee break

10:45 – 12:30 Legal and interpretative tools available to investment tribunals in adjudicating environmental disputes
Chair and discussant: Caroline Foster, University of Auckland
Interpreting WTO-style environmental exceptions in investment treaties: assumptions and reality
Amelia Keene, Associate Legal Officer ICJ

Could the precautionary principle be an answer?
Hamideh Barmakhshad, University of Dundee
International investment law and the environment: using the WTO experience as a lodestar
Markus Wagner, University of Miami

12:30 – 1:30
Lunch

1:30 – 2:45
A view from practice: litigating environmental disputes before arbitral tribunals
Chair and discussant: Mads Andenas, University of Oslo

Environmental policies: a shield or a sword in investment arbitration?
Jeffrey Sullivan, Allen and Overy

Proving your case: the role of fact and expert evidence in environmental disputes before international tribunals
Robert Kirkness, Freshfields

2:45 – 3:00
Coffee break

3:00 – 5:00
Expert roundtable on the role of investment treaty arbitration in adjudicating environmental disputes
Moderators: Daniel Behn, Ole Kristian Fauchald and Christina Voigt, University of Oslo

Caroline Foster, University of Auckland
Andrea Bjorklund, McGill University
Stephan Schill, University of Amsterdam
Jorge Vinuales, University of Cambridge
Freya Baetens, University of Leiden
Markus Gehring, University of Cambridge

7:00
Dinner
Friday, November 6

9:00 – 10:45  The role of arbitrators in adjudicating environmental disputes
Chair and discussant: Jorge Vinuales, University of Cambridge

Greening the international investment regime: the role of arbitrators
Daniel Behn and Malcolm Langford, University of Oslo

Qualitative comparative analysis (QCA) of investment treaty arbitrations with an environmental component
Tamar Meshel, University of Toronto and Max Planck Institute Luxembourg

Should future IIAs demand a specific ‘green expertise’ from the arbitrators?
Katia Fach Gómez, University of Zaragoza

10:45 – 11:00  Coffee break

11:00 – 12:00  A debate on the ‘publicness’ of investment treaty arbitration
Moderator: Christina Voigt, University of Oslo

A new stratosphere? Investment treaty arbitration as internationalized public law
Caroline Foster, University of Auckland

Discussant: Stephan Schill, University of Amsterdam

12:00 – 1:00  Lunch

1:00 – 2:15  Procedural issues in resolving environmental disputes before arbitral tribunals
Chair and discussant: Markus Gehring, University of Cambridge

Procedural innovations in the adjudication of environmental disputes: the experience of the PCA
Martin Doe and Nicola Peart, Legal Counsel PCA

A case for adjudicating environmental rights of host state’s local population before an international investment court
Lorena Martínez Hernández, Universitat Rovira I Virgili
2:15 – 2:30
Coffee break

2:30 – 3:45
Interpretive issues in resolving environmental disputes before arbitral tribunals
Chair and discussant: Andrea Bjorklund, McGill University

The fluid nature of water rights in investment arbitration
Ana-Maria Daza, University of Edinburgh

Fair and equitable treatment, deference and legitimacy in investment treaty arbitration: the applicable standard of review under NAFTA’s article 1105
Emily Stein, Uppsala University

3:45 – 4:00
Coffee break

4:00 – 5:00
Recent and pending disputes with an environmental component
Chair and discussant: Ole Kristian Fauchald, University of Oslo

Protecting or harming the environment? Allard v Barbados and the European renewable energy disputes
Maksim Usynin and Daniel Behn, University of Oslo

The Bilcon decision: environmental review processes and threats of regulatory chill
Laura Letourneau-Tremblay, University of Oslo

5:00 – 5:15
Wrapping-up
Daniel Behn, Ole Kristian Fauchald and Christina Voigt, University of Oslo