



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