

2020 **WAW**



WASHINGTON
ARBITRATION WEEK

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1ST EDITION



Tuesday, December 1st

Draft Guidelines on States' Defenses and Prevention of Investment Arbitration (4:00pm – 5:30pm)

In May 2018, Singapore hosted the “Investment Arbitration and Trans-Pacific Transactions Conference” organized by the Section of International Law of the American Bar Association in cooperation with various international entities. In attendance were investment arbitration practitioners and former and current government officials who have served as counsel of respondent States in investment claims, as well as investors, arbitrators, academics, and officials of international arbitration centers and international organizations.

The conference included panels on (i) the experience of States in the prevention of investment treaty disputes and the means to improve a State's readiness for investment arbitration; (ii) the choice of arbitration rules for the resolution of investment disputes; (iii) preliminary and jurisdictional objections; (iv) regulatory powers and defenses on the merits concerning expropriation and fair and equitable treatment; (v) issues of quantum as part of a State's defense strategy; (vi) defense models for States in investment arbitration; (vii) State representation in international arbitration and matters of public international law; and (viii) discussions on best practices and guidelines for the prevention and defense of investment disputes.

At the Singapore Conference, an earlier version of the Draft Guidelines for the Prevention of Investment Disputes and Defense in Investment Arbitration (Draft Guidelines) was circulated for comments among the participants.

Former government officials who have served as counsel for States in investment arbitrations, practitioners, and damages experts have provided comments on the Draft Guidelines during the past two years. These comments have been considered in the subsequent revisions to the Draft Guidelines.

This Panel will focus on the current version of the Draft Guidelines to further facilitate the discussion to include views of former and current government officials with experience as counsel in investment arbitrations, and private practitioners who have represented States. The objective of this Panel is to continue a dialogue that would lead to a set of best practices and non-binding actions that States may take to: (1) prevent investment disputes, and (2) improve their readiness and defenses in investment arbitration.

Speakers

Nicole C. Thornton

As Chief of Investment Arbitration in the Office of the Legal Adviser at the U.S. Department of State, Ms. Thornton leads the team of attorneys responsible for defending U.S. interests in ISDS cases brought under the investment chapters of U.S. free trade agreements and U.S. investment agreements. Among other responsibilities, she oversees the preparation and filing of non-disputing Party submissions before ISDS tribunals on behalf of the United States. She also works on State-State arbitrations, including those that may arise under U.S. investment agreements, and before the Iran-U.S. Claims Tribunal where Ms. Thornton has led several teams defending U.S. interests.

Ricardo Ampuero Llerena



Ricardo Ampuero Llerena is President of the Special Commission that represents the Republic of Peru in International Investment Disputes. This inter-agency Commission is in charge of coordinating the legal defense of the State in all stages of investor-State disputes. Previously, he has served as Legal Advisor and Technical Secretary of the Special Commission. He holds a Law Degree from Universidad Peruana de Ciencias Aplicadas, and a Master in Law (LLM) from Columbia University, where he attended as a Fulbright Scholar.

Speakers

Cindy Rayo Zapata

Cindy Rayo is General Director of International Trade for Services and Investment at the Ministry of Economy in Mexico. Cindy focuses her practice on investor- State arbitration and international trade. She has acted as counsel and represented the Mexican government in numerous investment treaty arbitrations, including cases under the NAFTA, ICSID and UNCITRAL arbitration rules. She has participated as a trade and investment negotiator of Mexico in numerous investment treaties and international trade agreements.



Chester Brown



Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School, Australia, and he is also a Barrister at 7 Wentworth Selborne Chambers, Sydney. He practices, teaches and researches in the fields of public international law, international arbitration, international investment law, international trade law, and general commercial matters. Chester is currently acting as counsel in a number of investment treaty claims, in which he represents claimants as well as respondent States.

Speakers

Adam Douglas

Adam Douglas is Senior Counsel and Deputy Direction with Global Affairs Canada in its Trade Law Bureau. His practice focuses on public international law, investor-State arbitration, and trade and investment policy. Mr. Douglas has public and private sector experience in international arbitration proceedings conducted before panels administered by ICSID, PCA and ad hoc tribunals under various arbitration rules. He has represented the Government of Canada in more than a dozen investor-State arbitrations in the areas of oil and gas, energy regulation, telecommunications, pharmaceuticals, and transportation. He also advises the government during the negotiation of free trade agreements and foreign investment protection agreements, and instructs government ministries on Canada's trade and investment obligations in relation to potential claims. Mr. Douglas teaches a graduate course on investment arbitration and litigation strategy at the University of Ottawa.

Moderator

José Antonio Rivas



José Antonio Rivas is a Founding Partner of Xstrategy in Washington D.C. and Chair of its Arbitration and International Law practice. He works as international counsel in investment disputes, serves as arbitrator in international and domestic arbitrations, and provides advice in public international law and investment law to sovereign clients, state companies, and investors. He is adjunct professor of Investment Treaty Arbitration, Public International Law and ICJ Landmark Judgements at Georgetown University. Before joining private practice, José Antonio served as Director of Foreign Investment at the Colombian Ministry of Trade. He is also a former Counsel at ICSID.



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