

THE INSTITUTE FOR TRANSNATIONAL ARBITRATION'S ACADEMIC COUNCIL  
*and the*  
AMERICAN SOCIETY OF INTERNATIONAL LAW

*present*

## **THE FUTURE OF ARBITRATION INVOLVING STATES**

**March 28, 2007**

The Fairmont Hotel  
Washington, D.C.

*Conference Co-Chairs*

**Prof. Roger P. Alford**, Pepperdine University School of Law, Malibu  
**Prof. Catherine A. Rogers**, Louisiana State University School of Law, Baton Rouge,  
& Università Commerciale Luigi Bocconi, Milan

*Disputes arising out of Bilateral Investment Treaties (BITs) are generally resolved through arbitration between investors and States, and occasionally through arbitration between the signatory States. The role of States in creating arbitral jurisdiction, in directly defining the substantive rights, and in participating as parties renders these arbitrations distinct from other forms of international arbitration. This conference will bring together leading scholars, arbitration specialists and policymakers to discuss the role of States in these types of disputes and various developments that portend the future for arbitration involving States more generally.*

***Registration includes buffet lunch with faculty***

8:15 Registration

9:00 **WELCOME & INTRODUCTION - Prof. Alford and Prof. Rogers**

9:10 **INVESTOR STATE ARBITRATION – ARE EXISTING ARBITRATION RULES ADEQUATE?**

Proposals have recently been made to overhaul the UNCITRAL and the ICSID arbitration rules, and these proposals have been accompanied by debate within the arbitration community about what form or format new rules should take. Along with questions about how detailed or flexible new rules should be, many challenges have also been raised with regard to specific procedures, particularly those regarding third-party access and transparency. This panel will consider the adequacy of existing rules and the challenges that lie in promulgating new rules.

Moderator: **Uche Onwuamaegbu**, Senior Counsel, International Centre for Settlement of Investment Disputes (ICSID), Washington, D.C.

Panelists: **John Crook**, Commissioner, Eritrea-Ethiopia Claims Commission, George Washington University Law School, Washington, D.C.  
**Margrete Stevens**, Consultant, King & Spalding LLP, Washington, D.C.

\* Conference papers and contributions from other arbitration specialists and experts will be published in a book, forthcoming in 2008. A draft of the table of contents for the book is located in the inside pocket of this binder.

10:05 **THE FUTURE OF BITs**

In recent years, BITs have proliferated with approximately 2,500 such treaties now in existence. Despite their popularity, there is conflicting empirical evidence and intense academic debate about whether, to what extent and in what contexts BITs actually increase the flow of foreign investment. One important recent development is that some new BITs are noticeably reducing potential liability of host states, or even eliminating direct claims by investors. This panel will consider what these trends mean for the future of BITs.

Moderator: **Arif Hyder Ali**, Co-Head International Arbitration and Public International Law Group, Crowell & Moring LLP, Washington, D.C.

Panelists: **Prof. Andrew T. Guzman**, Professor of Law, Director, International Legal Studies Program, Boalt School of Law, University of California, Berkeley  
**Andrea Menaker**, Chief of the NAFTA Arbitration Division, Office of the Legal Adviser, U.S. Department of State, Washington, D.C.  
**Anna Joubin-Bret**, Senior Legal Advisor, Division of Investment, Technology and Enterprise United Nations Conference on Trade and Development (UNCTAD), Geneva

11:00 Break

11:10 **THE FUTURE OF INTER-STATE ARBITRATION**

Inter-state arbitration has long served as a potential mechanism for resolving disputes between sovereigns. What accounts for the contemporary infrequency with which such arbitrations occur? Are there particular contexts in which inter-state arbitration provisions remain important undertakings? In light of these and other questions, this panel will examine the future of inter-state arbitration in the investment treaty setting and beyond.

Moderator: **Mark A. Clodfelter**, Assistant Legal Adviser, U.S. Department of State, Washington, D.C.

Panelists: **Prof. Benedict W. Kingsbury**, Murray and Ida Becker Professor of Law, New York University School of Law, New York  
**Prof. W. Michael Reisman**, Myres S. McDougal Professor of International Law, Yale School of Law, Connecticut

12:05 **CONCLUDING REMARKS**

**Prof. David D. Caron**,  
C. William Maxeiner Distinguished Professor of Law,  
Boalt School of Law, University of California, Berkeley,  
Chair, Institute for Transnational Arbitration  
and Vice President, American Society of International Law

12:15 **LUNCHEON** (*included in tuition*)

1:30 Adjourn