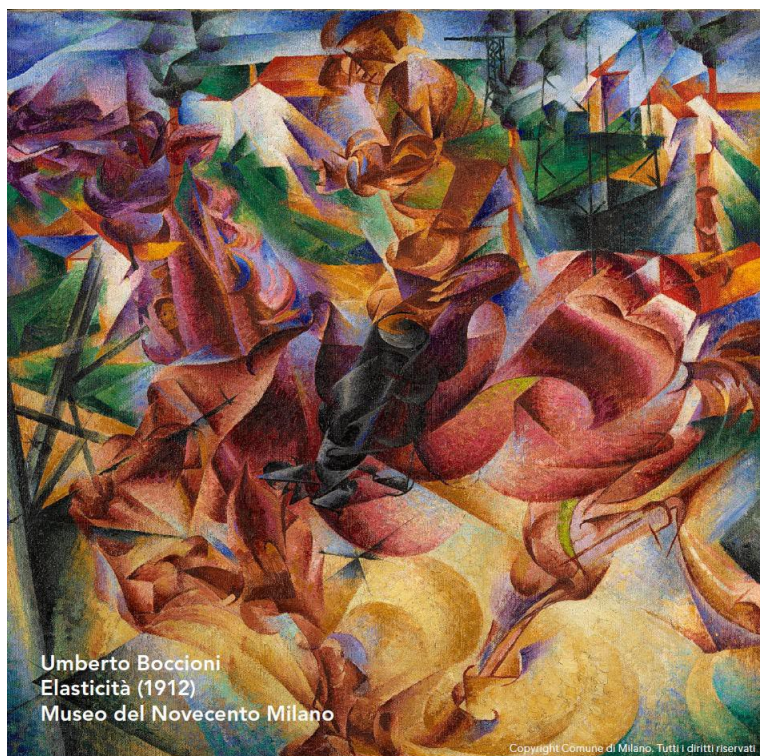


ASSESSING THE PAST, ENVISIONING THE FUTURE

**INTERNATIONAL INVESTMENT ARBITRATION
LAW & POLICY**

PROGRAM

20-21 April 2023 | Bocconi University, Milano



ORGANIZING COMMITTEE

CATHERINE A. ROGERS Convenor, Bocconi University

CHIARA GIORGETTI Richmond Law School

MASSIMO BENEDETTELLI Arblit and Bocconi University

LEONARDO BORLINI Bocconi University

CONFERENCE REPORTERS

NAZLICICEK SEMERCIOGLU, ANNA CHIARA AMATO, GIOVANNI VIGLINO PhD Students, Bocconi University

THURSDAY, 20 APRIL 2023

8:30--9:00 AM **REGISTRATION**

9:00--9:10 AM **WELCOME**

CESARE CAVALLINI Director, Bocconi Department of Legal Studies
CHIARA GIORGETTI Richmond Law School

9:10--9:25 AM **OPENING & INTRODUCTION TO KEYNOTE**

CATHERINE A. ROGERS Bocconi University

9:25--10:00 AM **KEYNOTE ADDRESS: ASSESSING THE PAST, ENVISIONING THE FUTURE**

MEG KINNEAR Secretary-General of the International Centre for the Settlement of Investment Disputes (ICSID)

10:00--11:30 AM **OPENING ROUNDTABLE: ASSESSING THE PAST – LOOKING TO THE FUTURE: A 360 DEGREE VIEW OF INVESTMENT ARBITRATION FROM STAKEHOLDERS**

Calls for reform of investment arbitration come from virtually every corner, the States, the investors, various segments of civil society, and both legal representatives who advise States and private parties. While there is general consensus about the need for reform, there is little consensus about the substance of needed reforms. Proposals for reform have ranged from the creation of a permanent court to resolve international investment disputes to the adoption of a Code of Conduct for arbitrators. This panel will jump-start the workshop by surveying, in a roundtable format, the views of various stakeholders regarding the current state of the investment arbitration regime and how the proposed reforms may affect the regime.

CO-CHAIRS

CHIARA GIORGETTI Richmond Law School
MICHELE POTESTÀ Lévy Kaufmann-Kohler

PARTICIPANTS

LISE BOSMAN Permanent Court of Arbitration
MOHAMED ABDEL-WAHAB Zulficar & Partners; University of Cairo
JAROSLAV KUDRNA The Czech Republic
FERDINANDO EMANUELE Cleary Gottlieb Steen & Hamilton
FRANCESCA SALERNO Litigation at ENEL

11:30-11:45 AM **COFFEE BREAK**

11:45 AM -1:00 PM **INTERNATIONAL ARBITRATORS: EVOLVING EXPECTATIONS AND REGULATORY REACTIONS**

Few topics in ISDS reform efforts have attracted more frequent or more concentrated attention than the investment arbitrators themselves. Stakeholders have trained their sights on arbitrator qualifications, selection, disclosure, challenge, disqualification, case management and accountability. Although stakeholders share a common focus on investment arbitrators, they do not generally agree either about what the problems are or what the solutions should be. This panel will examine existing debates about investment arbitrators and how reform efforts may affect these debates.

CO-CHAIRS

CATHERINE A. ROGERS Bocconi University

ALFONSO GÓMEZ-ACEBO Cuatrecasas

PARTICIPANTS

LLUÍS PARADELL Freshfields Bruckhaus Deringer

MONIQUE SASSON Arbitra

KATIA FACH GÓMEZ University of Zaragoza

HÉLÈNE RUIZ FABRI Max Planck Institute for Procedural Law Luxembourg

1:00-2:15 PM **LUNCH**

2:15-2:20 PM **INTRODUCTION TO KEYNOTE**

CATHERINE A. ROGERS Bocconi University

2:20-2:45 PM **KEYNOTE: US COURTS AS A HAVEN FOR INTRA-EU AWARDS**

GEORGE BERMANN Columbia University

2:45-4:15 PM **THE POLITICS OF EMPIRICS: ACADEMIC RESEARCH AND PROPOSED REFORMS**

Many of the policy debates about investment arbitration are premised on empirical assumptions. While these empirical assumptions have been overlooked, an entire genre of legal scholarship has developed to test these assumptions. Empirical research regarding phenomena as complex as legal decision-making presents significant challenges, but its impact can also extend well beyond the academic community. The allure of numerical measures and the ostensible neutrality of this research makes it particularly appealing to policymakers seeking to bolster (or stave off) particular reform proposals. This

panel will explore both the potential pitfalls and utility of empirical research in investment arbitration.

CO-CHAIRS

CHRISTOPHER DRAHOZAL University of Kansas

THERESA SQUATRITO The London School of Economics and Political Science

PARTICIPANTS

STAVROS BREKOULAKIS Queen Mary, University of London

FAHIRA BRODLIJA GIZ

MARIOS TOKAS The Geneva Graduate Institute

OLE KRISTIAN FAUCHALD Pluricourts

RAHIM MOLOO Gibson Dunn & Crutcher

4:15-4:30 PM

COFFEE BREAK

4:30-5:45 PM

DIRTY CORRUPTION, LAUNDERED MONEY & BLIND EYES: OLD PROBLEMS AND THE NEED FOR NEW SOLUTIONS

Investment arbitration brings the promise that, when things go wrong with foreign investments, resulting disputes will be resolved through the rule of law. Corruption is a blight on the rule of law and is almost universally accepted as contrary to international public policy. Despite these premises, many questions remain about how arbitrators and lawyers should deal with corruption when it is implicated in an investment dispute. This panel will examine how corruption may become relevant in individual cases and how corruption affects the investment arbitration regime as a whole. The panel will also explore techniques and tools to meaningfully address the problem.

CO-CHAIRS

GIORGIO SACERDOTI Bocconi University

LAURENCE BOISSON DE CHAZOURNES University of Geneva

PARTICIPANTS

YUEMING YAN The Chinese University of Hong Kong

BRODY GREENWALD White & Case

LUCINDA LOW Steptoe & Johnson

LAURENCE SHORE BonelliErede

5:45-6:00 PM

CLOSING REMARKS

MASSIMO BENEDETTELLI Arblit and Bocconi University

APERITIVO

FRIDAY, 21 APRIL 2023

9:00-9:15 AM

WELCOME AND INTRODUCTION TO KEYNOTE

CHIARA GIORGETTI Richmond Law School

9:15-9:45 AM

KEYNOTE: THE SUCCESSES AND CHALLENGES OF REFORM

ANNA JOUBIN-BRET Secretary of the United Nations Commission on International Trade Law and Director of the International Trade Law Division in the Office of Legal Affairs of the UN Secretariat

9:45-11:15 AM

DOLLARS AND SENSE: HOW COMPETITION AND COSTS AFFECT STAKEHOLDER BEHAVIOR AND REFORM PROPOSALS

Investment arbitration is not only a regime for resolving disputes, but also a dynamic marketplace in which various stakeholders compete and collaborate to advance their interests. Institutions compete to maintain market share, arbitrators compete to be appointed, law firms compete for clients, expert witnesses compete to be appointed, third-party funders compete for funding opportunities, and, of course, parties compete to win. These dynamics necessarily affect the behavior of various stakeholders in individual cases and over time. This panel will examine those behaviors and how they may be impacted by (or resistant to) various proposed reforms.

CO-CHAIRS

ERIC DE BRABANDERE The Grotius Centre for International Legal Studies

CHRISTINA BEHARRY Foley Hoag

PARTICIPANTS

VINICIO FASCIANI Webuild

VICTORIA SAHANI Boston University

MICHELANGELO CICOGNA De Berti Jacchia Franchini Forlani

CHRISTIANE DENIGER Burford Capital

11:15-11:30 AM

COFFEE BREAK

11:30 AM-1:00 PM STATES IN THE REVOLVING DOOR: THEIR ROLES AS RESPONDENTS, CLAIMANTS, COUNTERCLAIMANTS, REGULATORS, TREATY PARTIES AND REFORMERS

The conventional view was that States are only and always Respondents reacting to claims brought against them in international investment arbitration. Today, States are understood as having a multi-faceted role as treaty parties that renegotiate terms, as reformers that implement change, as counterclaimants that seek to hold investors accountable, and perhaps as claimants, either within investment arbitration or in alternative fora. This panel will explore the different roles that States can play and assess how this can be done in practice.

CHAIR**MARIA CHIARA MALAGUTI** President, UNIDROIT**PARTICIPANTS****DYALÁ JIMÉNEZ FIGUERES** Former Minister of Foreign Trade of Costa Rica**ATTILA TANZI** University of Bologna**MAKANE MOÏSE MBENGUE** University of Geneva**JADRANKA OSREČAK** State Attorney Office of the Republic of Croatia

1:00-2:30 PM LUNCH

2:30-3:30 PM REFLECTIONS FROM THE DAYS: DUELING PERSPECTIVES

After two days of dynamic discussion and debate, two leading thinkers will sum up the issues discussed and the lessons learned from the event

ANDREA BJORKLUND McGill University & **JAMES CASTELLO** King & Spalding

3:30 PM**ARRIVEDERCI****CATHERINE A. ROGERS** Bocconi University & **CHIARA GIORGETTI** Richmond Law School

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