CENTRE FOR INTERNATIONAL LAW
Seminar

CIL

15 September 2011, Thursday, 2.00PM – 3.30PM
Executive Seminar Room, NUS Bukit Timah Campus, Block B, Level 3

ICSID INVESTMENT TREATY ARBITRATION AFTER 20 YEARS OF INTENSE USE:
Is there a need for greater institutional support, including appellate review of arbitral awards?

SPEAKER **J Christopher Thomas QC**

J. CHRISTOPHER THOMAS, Q.C. is a lawyer and Chartered Arbitrator who has practiced for many years in the field of international trade and commercial law with emphasis on trade and investment regulation and dispute settlement. He has been counsel in many international disputes, in domestic administrative law procedures (anti-dumping and countervailing duty cases), and in contentious proceedings before the superior courts of Canada. He now acts primarily as an arbitrator in international investment, trade and commercial disputes. He is Editor of Investor-State LawGuide, an on-line research database which is being launched in February 2011. He was appointed Queen's Counsel in 2002 and has been designated a Chartered Arbitrator by the ADR Institute of Canada.

INTRODUCTION

In 1965, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention") was opened for signature and, after having been ratified by 20 states, entered into force on 14 October 1966. Since that time, the Convention has been ratified by many states, including Singapore, but for the first twenty-five years of its existence the International Centre for Settlement of Investment Disputes was hardly used at all as a mechanism for the settlement of investment disputes.

Arbitration under the ICSID Convention was influenced by the thinking underlying the 1959 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Disputes would be settled by an ad hoc tribunal operating within the framework of the Convention and awards would be subjected to limited review in an "annulment process", the grounds for review being narrowly circumscribed.

The first few disputes arose out of contracts between investors and host States in which an ICSID arbitration clause had been included. These were few and far between. The real impetus for ICSID arbitration came not from such contracts, but from the inclusion of ICSID arbitration as a means of resolving disputes arising out of bilateral investment treaties (BITs) and other treaties that included investment protection chapters. Rather than relying upon the States party to the treaty to enforce their obligations, such treaties typically confer a private right of action upon investors. Instead of having to submit disputes with the host State to its local courts, the investor/claimant can instead elevate the dispute to the international level and have the State's measures judged for their consistency with international rather than domestic law standards. These disputes often centre on issues of public law and regulation rather than contract law,

Treaty claims began to be filed in the 1990s and the pace of filings has grown as many investor/claimants have received substantial awards of money damages. ICSID's caseload has grown considerably and is now substantial. This area of legal practice, which was essentially non-existent in 1995, has exploded as major law firms around the world have begun to see treaty arbitration as a key means for protecting their clients' interests.

The combined effect of the ICSID Convention with BITs is has led to a profound shift in decision-making power which has catapulted investors and States alike into a new era of dispute settlement, the outlines of which were only dimly perceptible in the 1990s, let alone the early 1960s when the ICSID Convention was created. The shape of this new world is now more clearly visible and it raises important issues of national and international legal policy.

These issues will be explored in the seminar with a particular focus on the arguments in favour and against the idea that ICSID, after almost 50 years of its existence, should move towards greater institutional support of tribunals and the possibility of appellate review of awards for *error* of law.

FREE ADMISSION **Please register by emailing Ms Geraldine Ng at cilnwfg@nus.edu.sg**