The 3rd Annual Singapore International Investment Arbitration Conference

12 December 2012
Shangri-La Hotel
Singapore

CONFERENCE REPORT

CONTENTS

1. INTRODUCTION

1.1 The 3rd Annual Singapore International Investment Arbitration Conference was held on 12 December 2012 at the Shangri-La Hotel in Singapore. Organised by the Centre for International Law (CIL) at the National University of Singapore (NUS), it offered delegates the opportunity to meet and learn from leading academics and private practitioners in the field of investment treaty arbitration and to consider certain issues that may be affecting its growth, effectiveness and even its continuance as an international legal remedy.

1.2 The Conference formed part of the 2012 *Singapore International Arbitration Academy*, a 3-week intensive programme organized by (CIL) . The Academy's programme canvassed many aspects of international commercial arbitration and investment arbitration. Designed to build public and private sector capacity in these fields, its participants came from Asia and beyond. The Conference was scheduled in the Academy's third week, when the focus shifted from commercial arbitration to arbitration in public international law. More information on the Academy can be found [insert link].

1.3 The 2012 Conference was the third in a series of international investment arbitration conferences organised by CIL. It stems from a concerted effort by CIL to develop greater private and public sector depth and skill in international investment arbitration.

1.4 The first conference, held on 20 January 2010, focused on the limits to international jurisdiction, corruption, treatment of precedent in investment arbitration and how the principles of state responsibility are interpreted and applied by tribunals in investment state

arbitration.[1] The second conference, held on 31 May 2011, focused on the impact of financial crises on the interpretation of investment treaty provisions and on the "policy space" of a State.[2]

1.5 The 2012 Conference's theme was: "Can Investment Treaty Arbitration be Improved?" This theme was selected because of the experience that investors and states alike have had with international claims brought under such treaties and the view in many quarters that the system needs to be improved in various respects. It is a particularly important question for ASEAN Member States, which are in the process of evaluating the interaction of their domestic regulatory system with a wider investment regime (and its attendant dispute resolution mechanism).

1.6 This theme was explored in four sessions:

a. Can investment treaty arbitration be improved and if so, in what ways?

b. Should the institution of party-appointed arbitrators be done away with?

c. Is predictability and consistency of arbitral decision-making important? Is it attainable?

d. Are BITs and FTAs drafted with sufficient clarity to give guidance to tribunals?

1 More information about the 1st conference held on 20 January 2010 can be found on the CIL website at http://cil.nus.edu.sg/programmes-and-activities/past-events/conference-on-international-investment-arbitration/.

2 More information about the 2nd conference held on 31 May 2011 can be found on the CIL website at http://cil.nus.edu.sg/programmes-and-activities/past-events/international-conference-international-investment-agreements-iias-and-financial-crises/

1.7 This Report is a Report on the Proceedings of the Conference and will highlight the relevant issues raised in each session as well as the accompanying discussion.

1.8 The full programme of the Conference is attached at Appendix 1, and the profiles of the speakers at the Conference can be found at Appendix 2.

2. SESSION 1: Can investment treaty arbitration be improved and if so, in what ways?

2.1 The panel for this session considered not only the more challenging areas of practice in the field of investment treaty arbitration, but its very existence, and considered whether it even ought to be dismantled as well as suggestions for its improvement. The panel consisted of Professor M. Sornarajah from the NUS Faculty of Law, Mr. Daniel M. Price from Daniel M. Price PLLC in Washington D.C. and Prof. Philippe Sands, Q.C., from University of London and Matrix Chambers, London.

2.2 One panelist suggested that there were inherent inadequacies in the system of investment treaty arbitration which will result in its eventual collapse. He argued that there was now a stark division between the original intent of Bilateral Investment Treaties (BITs) and their impact on states such as to raise serious doubts about their utility particularly to developing countries. More than one panelist suggested that the standards of protection under the BITs have been expanded beyond what was intended by most states. This was variously attributed to the unexpectedly expansive interpretation of certain treaty provisions and the phenomenon of treaty shopping, where investors have structured their operations in such a way as to either gain standing to bring a claim or to gain the protection of a BIT with favourable protection. In one panelist's view, the cumulative effect of this phenomenon is a tendency towards an unacceptable and unexpected erosion of state sovereignty.

2.3 The other panelists, while agreeing that there were issues within the current investor-state arbitration regime which should be addressed, argued that it should be bolstered rather than dismantled. They suggested that the goal of the early BITs, that of increasing the flow and exchange of investment, continues to be met to a certain extent and with positive results for states and investors. The construction of an international means for resolving investment disputes parallels the emerging significance of individuals with rights in public international law and it is a salutary development, but one which requires a serious

look at who is entrusted to decide the disputes and how tribunals are constituted and govern themselves.

2.4 The issue, according to one panelist, was that of increasing legitimacy within the system. This did not relate to the drafting of the treaties, but who were appointed to interpret them. He asserted there were clear examples of arbitrators settling upon an interpretation far removed from what was intended by the drafter. In addition, he cited troubling examples of arbitrators who had adopted different interpretations on the same provision in separate cases. The panelist suggested that in addition to stricter rules on arbitrator conflicts, an appellate mechanism should be introduced into the system – a mechanism similar to the World Trade Organisation Appellate Body.

2.5 A related issue, according to one speaker, was that of double-hatting; the practice of arbitrators continuing to practice as counsel at the same time. The panelist suggested that the revolving door of counsel and arbitrators should be stopped. Arguments that there was a dearth of arbitrators, or it did not raise any significant concerns, were not persuasive.

2.6 Lastly, one panelist emphasized the importance of responsible advocacy in ensuring the effectiveness and legitimacy of this system. From the perspective of states, such responsible advocacy involves putting forth an interpretation of a provision of a treaty which is in accordance with the intention of the parties at the time it was concluded. From the perspective of counsel, they play a role in weeding out frivolous claims. Counsel will quickly be aware of whether a case is actually meritorious, and should consider advising the client of the same.

3. SESSION 2: Should the institution of party-appointed arbitrators be done away with?

3.1 This session considered an issue which has recently come to the fore: the debate as to whether the institution of party-appointed arbitrators should be maintained in the investor-state arbitration field. There are calls to modify the system of selection of tribunal members in favour of other mechanisms of appointment. Those who challenge this proposition suggest that a party's ability to appoint its arbitrator is a seminal principle of party autonomy which must be maintained. This session considered the arguments for and against this proposition.

3.2 The panel consisted of Dr. Sabine Konrad from McDermott Will & Emery LLP, Frankfurt, Mr. John Savage from King & Spalding LLP, Singapore, and Mr. Peter Turner from Freshfields Bruckhaus Derringer LLP, Paris. The panel ran the session in the form of a debate, with one panelist for the proposition, another against, and the third panelist acting as moderator.

3.3 The moderator began by highlighting the major considerations posed by the question. One concern, as noted above, was with the recognition and maintenance of party autonomy. Another, on the other hand, was the concern that the system's legitimacy was being eroded by party-appointed arbitrators. In this connection, the issue of double-hatting arose (i.e., lawyers acting as both counsel and arbitrators in investment treaty arbitration) and how this had the tendency to raise questions of conflict of interest.

3.4 The moderator also posed the question of whether parties, when choosing arbitrators, should be concerned about the views expressed by the potential nominee on the issues in the case (expressed more generally in other cases or contexts). The moderator suggested that, in his view, this was warranted. It was part of the ethical duty of counsel in his or her representation of the client to take such matters into consideration. The moderator explained that this does not affect the

legitimacy of the process if we assume (as we should more often than not) that arbitrators carry out their role with objectivity and diligence.

3.5 In this connection, the moderator suggested that the focus of each panelist's submission should be this: "Which option (party-appointed or institution-appointed) will ensure more neutrality and minimize conflicts in the process of electing arbitrators?"

3.6 The motion's proponent argued that the reality of international arbitration demonstrates that party-appointed arbitrators are often not as impartial as the chair of the tribunal. While the role of an arbitrator should be to ensure that the case is fully considered by all members of the tribunal, the prevailing view of the parties who appoint arbitrators is that their nomination will ensure that the tribunal understands the appointing party's case in full and some expect the party-appointed arbitrator to advocate their interests within the tribunal.

3.7 The uncertainty of roles, in the proponent's submission, was unacceptable. This was especially the case when arbitration rules are in agreement on one point: that all members of an arbitral tribunal should be independent of the party that appointed the member and impartial. There can be no duty on a particular arbitrator to ensure that a party's case is understood in its entirety. This demonstrates the disconnect between the law and practice and a realignment was called for.

3.8 The proponent suggested the stakes are higher, and the public interest in ensuring the impartiality of the arbitrator more imperative, in international investment arbitration than is the case in commercial arbitration. Ensuring impartiality in this context was made more difficult by the small pool of qualified arbitrators available in this field. This made the case for eliminating the institution of party-appointed arbitrators even stronger and the appointment process should be conferred on disinterested institutions. The proponent cited the examples of the London Court of International Arbitration (LCIA) and

the International Chamber of Commerce (ICC), which have started the practice in multi-party cases of eliminating the option of party-appointments if the agreement of the parties does not explicitly provide for it.

3.9 The proponent added that the system could be replaced by one where an institution provides a list of names of arbitrators suitable for the nature of the case, from which the parties could choose, or a list of arbitrators nominated by states and investors from which the institution has the sole power to appoint.

3.10 Replacing the system would provide the following benefits:

a. Tribunals will be perceived as having greater legitimacy than they do at present;

b. Tribunal decisions will be more coherent (with likely fewer dissents);

c. Proceedings will unfold more smoothly because there will be less likelihood of interruption by arbitrator challenge or dissent, and more expeditious constitution of the tribunal;

d. An element of quality control will be introduced because in the existing system of party appointments, some parties, particularly inexperienced parties, make poor appointments; and

e. It will promote diversity as institutions will give younger arbitrators more opportunity.

3.11 The moderator responded to several of the arguments by questioning whether it is correct to presume that institutions are beyond reproach in their appointments.

3.12 The panelist opposing the motion argued that in the system of institution-appointed arbitrators, one party will be disadvantaged. This was in contrast to the proponent's position that institution-

appointed arbitrators will level the playing field between each party. The panelist alluded to the nature of the investment-state arbitration regime, and how party autonomy was meant to adjust the imbalance of power which otherwise existed between two disparate parties. Any move to threaten party autonomy would set the system decades back. This view, in the panelist's submission, was supported by the fact that main proponents of this change seemed to be states.

3.13 The panelist also argued that institutions are subject to the influence of "arbitration mafias". In fact, since names listed by institutions are proposed by states, it would seem that the institution appointments would be biased towards the state or the "establishment".

3.14 Addressing the proponent's arguments regarding the promotion of diversity of arbitrators, the panelist suggested that the attractiveness of this will depend on one's conception of 'diversity'. Parties may not have agreed to an institution's notion of 'diversity'. From the political point of view, inserting an investment treaty arbitration mechanism into an international treaty will be a harder sell when parties do not have the ability to appoint an arbitrator.

3.15 The panelist challenged the characterization of double-hatting as negative, arguing to the contrary that it can show the independence of the arbitrator. It ensures independence because the arbitrator is making a living not only from one particular group of repeat appointers or one institution, but from a number of different sources. The panelist added that it promotes humility and practicality because the arbitrator has been at the receiving end as a counsel, thus having a better understanding of the consequences of the tribunal's actions towards the parties as compared to a tribunal comprising arbitrators who are distant from practice.

4. SESSION 3: Is predictability and consistency of arbitral decision-making important? If so, is it attainable?

4.1 This subject addresses the deep divisions in the approaches taken by tribunals on a number of areas of jurisdiction and substantive law in investor-state arbitration jurisprudence. The panel considered this phenomenon and ways to encourage and maintain consistency. Members of the panel were Mr. Mark S. McNeill of Shearman & Sterling LLP, Paris, Professor Andrew Newcombe of the University of Victoria Faculty of Law, Dr Jurgen Kurtz from the University of Melbourne Law School and Associate Professor Michael Ewing-Chow from the Centre for International Law and NUS Faculty of Law.

4.2 The moderator began by highlighting the characteristics of a good legal regime - the consistency and soundness of its substantive rules, the sound interpretation of these rules and its effective enforcement. Predictability, which was defined as agreement, harmony, and compatibility, should exist in arbitration but when various arbitral awards in investment treaty arbitration are examined, deep conflicts in the jurisprudence can be observed, and this is axiomatic of the present situation.

4.3 One panelist observed that an issue of particular concern was the lack of uniformity in several areas of substantive law in investor-state arbitration jurisprudence. The panelist suggested that the cause of this is partly historical; a multilateral investment agreement was not feasible, and bilateral investment agreements have emerged. Such agreements, however, are not uniformly drafted and differ in small and sometimes large ways. This renders it difficult to achieve consistency of interpretation.

4.4 Another panelist suggested that it cannot be said that the process has the objective of achieving predictability or consistency. This was because international investment treaties were negotiated over decades by different pairings or groupings of states with diverse intentions.

Consequently, the same principles of treaty interpretation to similarly-worded text can and has resulted in different results. That this is and should be the case is confirmed explicitly in some treaties. The example cited was that of whether a most-favoured nation provision encompasses dispute resolution.

4.5 One panelist observed that while there were different schools of thought regarding the interpretation, the reality suggests that a *jurisprudence constante* could and in some areas is emerging from the growing body of arbitral decisions under international investment treaties. The panelist discussed several proposals to achieve greater consistency and coherence – a multilateral agreement on investment with a standing tribunal, appellate mechanisms (as contemplated, for example, in Article 28(10) of the 2012 US Model BIT), the use of binding interpretive statements by states, official interpretations by states and rulings on claims that are manifestly without merit.

4.6 In that connection, one panelist suggested that the answer may be found in the interpretation of the text. Arbitral tribunals have interpreted the same or similar texts differently. For this reason, there is a need to recalibrate such interpretations. For example, in the WTO, there is a single institution that assists panels, namely the WTO Secretariat. The Secretariat consists of legal experts who support the panelists and the Appellate Body Members. Therefore, reliable secretariat can ensure greater consistency of the decisions.

4.7 One panelist argued that there should be a push for states to draft treaties in the future with due attention to *jurisprudence constante*. In this sense, arbitrators should welcome the possibility of applying Article 31(a) and (b) of the Vienna Convention on the Law of Treaties - by asking the parties to identify the interpretation intended, and taking into account any agreement or joint statement by the state parties.

4.8 In conclusion, more than one panelist stated that consistency and predictability could not be resolved jurisprudentially by tribunals, but had to involve external sources of support.

5. SESSION 4: Are BITs and FTAs drafted with sufficient clarity to give guidance to tribunals?

5.1 Many investment treaties are drafted in simple and general terms. This form of drafting confers significant discretion on tribunals to determine the scope and content of the substantive obligations. The question addressed by this panel was whether treaty drafters have attained a sufficient degree of clarity or whether the process could be improved by negotiating more detailed treaty texts. The panel consisted of Associate Professor Mark Feldman of the Peking University School of Transnational Law in Shenzhen, China, and Bernard Hanotiau of Hanotiau & Van den Berg, Brussels.

5.2 One panelist observed that tribunals are often faced with difficulties in interpreting the text and provisions of BITs and Free Trade Agreements (FTAs) and attributed this to the fact that these agreements were not drafted with sufficient guidance to the interpreter because of the vagueness and "boiler plate" nature of the provisions. The result is inconsistent interpretations, and this creates uncertainty and damages the legitimate expectations of investors and States.

5.3 The panelist suggested several approaches which states or tribunals, as the case may be, could consider adopting to resolve this issue. The first involved the use of an interpretative note. An example was the NAFTA Interpretative Note which specifies the standard of Fair and Equitable Treatment to be applied. The second was the proposal to replace investor-state arbitration with a mechanism requiring the claims to be brought before a permanent judicial body, such as the International Court of Justice. The third, somewhat related, was the proposal to create a system of appeal or an appellate body which could focus on establishing a coherent body of law and correct specific errors in specific cases.

5.4 Finally, the panelist suggested that states could improve drafting by incorporating in the process a sound analysis of the existing flaws in interpretation and resolving such flaws going forward.

5.5 The other panelist noted that there were sharply divergent approaches to achieving clarity and precision in the drafting of BITs. The more words used did not necessarily result in increased clarity in the expression of the BIT. Moreover, the same words could result in different interpretations depending on the approach adopted by the tribunal. For example, in the context of the fair and equitable treatment standard, one tribunal could find that it is a 'blanket protection', another tribunal could identify specific rules guiding the content of the standard and another might incorporate an evolving body of law.

5.6 The panelist suggested there were several other approaches in drafting BITs that could preserve sufficient room for sovereign regulatory power and discretion – the insertion of footnotes to express the parties' intention, insertion of sub-clauses to deal with particular factual circumstances such as financial crises, and specifying the interaction intended between the literal reading of the provision and custom.

5.7 The panelist observed that the drafting process is crucial and, as such, should be where improvements are made towards resolving this issue.

APPENDIX 1: Conference Programme

The 3rd Annual Singapore International Investment Arbitration Conference
Wednesday, 12 December 2012
Azalea Room, Shangri-La Singapore

CAN INVESTMENT TREATY ARBITRATION BE IMPROVED?

9:00am - 9:15am

WELCOME CEREMONY

9:15am - 10:30am

SESSION 1: Can investment treaty arbitration be improved and if so, in what ways?

This is a general introductory session in which experts in the field will cover some of the more challenging areas of practice and discuss whether it needs to be improved, and if so, how.

Panellists

M Sornarajah, Faculty of Law, National University of Singapore, Singapore

Daniel M. Price, Daniel M. Price PLLC, Washington, D.C., USA
Philippe Sands, Q.C., Matrix Chambers, London, UK

10:30am – 10:45am Morning Refreshment Break

10:45am - 12:00nn

SESSION 2: Should the institution of party-appointed arbitrators be done away with?

An issue which has come to the fore, particularly in the last year, has been a debate as to whether the institution of party-appointed arbitrators should be maintained in the investor-state arbitration field. Some experienced arbitrators maintain that the selection of tribunal members should be changed in favour of other more institutional mechanisms of appointment; others have argued that this is an important feature of party autonomy that should be maintained. This session will discuss the arguments for and against the appointment of arbitrators by disputing parties.

Panellists

Sabine Konrad, McDermott Will & Emery LLP, Frankfurt, Germany

John Savage, King & Spalding LLP, Singapore

Peter Turner, Freshfields, Paris, France

12:00nn - 1:15pm Lunch @ Gardenia Room

1:15pm - 3:00pm

SESSION 3: Is predictability and consistency of arbitral decision-making important? Is it attainable?

Investor-state arbitration jurisprudence contains a number of areas of substantive law on which there have been deep divisions in the approaches taken by tribunals. This raises questions as to the predictability and consistency of arbitral decision-making and its impact on claims. This panel will discuss this issue and consider ways to encourage and maintain consistency.

Panellists

Mark S. McNeill, Shearman & Sterling LLP, Paris, France

Andrew Newcombe, University of Victoria, Canada

Jürgen Kurtz, University of Melbourne Law School, Australia

Michael Ewing-Chow, Centre for International Law, National University of Singapore

3:00pm – 3:15pm Afternoon Refreshment Break

3:15pm - 4:30pm

SESSION 4: Are BITs and FTAs drafted with sufficient clarity to give guidance to tribunals?

Many investment treaties are drafted in relatively simple and general terms. This form of drafting tends to confer discretion on tribunals to determine the scope and content of the substantive obligations. A number of recent treaties have been drafted with more precision and have addressed such specific questions as prudential measures taken by states in relation to financial services. The question to be addressed by this panel will be whether the drafters of treaties have attained a sufficient degree of clarity or whether the process could be improved by more detailed treaty texts.

Panellists

Mark Feldman, Peking University School of Transnational Law, Shenzhen, China

Bernard Hanotiau, Hanotiau & van den Berg, Brussels, Belgium

4:30pm - 5:00pm

CLOSING : Wrap up "open floor discussion" and close of day

5:00pm – 6:00pm

Drinks reception sponsored by Investor-State LAWGUIDE™

APPENDIX 2: Speakers' Profiles

WELCOME ADDRESS SPEAKER

John Christopher THOMAS Q. C.
Centre for International Law
National University of Singapore, Singapore

3Mr John Christopher Thomas QC has acted as counsel or legal advisor in GATT, Canada-U.S. Free Trade Agreement, WTO, and NAFTA disputes, having acted both for private industry interested in the outcome of a particular dispute, and directly for governments (both as complainants and as respondents). He has acted as a Canada-U.S. Free Trade Agreement panelist, a GATT panelist, and argued the first State-to-State dispute to arise under the Canada-U.S. Free Trade Agreement. He has appeared in proceedings before NAFTA and WTO Panels and the WTO Appellate Body. He is Senior Principal Research Fellow at the Centre for International Law at the National University of Singapore.

Mr Thomas has appeared as counsel in many investor-State disputes, judicial review applications involving investor-State arbitration awards, and has acted as an arbitrator or is currently acting as an arbitrator in many investment treaty claims. He has also acted as an arbitrator, including as presiding arbitrator, in various other arbitral fora, ranging from LCIA commercial arbitration to dispute settlement proceedings under Canada's Agreement on Internal Trade (AIT).

PROFILE OF PANELISTS *(According to Surnames)*

Michael Ewing-Chow, Head, Trade Law & Policy, Centre for International Law

Michael **Ewing-Chow** is an Associate Professor and WTO Chair at the Faculty of Law, NUS as well as the Head, Trade/Investment Law & Policy at CIL, NUS. He has been a Fellow at NYU. He has First Class Honours degree in law from NUS and a Masters from Harvard Law School. Michael worked in Allen & Gledhill before joining NUS. He then started the first World Trade Law course in Singapore and was involved in the negotiations for some of Singapore's early FTAs. He has been a consultant to the Singapore Government, the ADB, ASEAN, UNCTAD, the World Bank and the WTO. Michael has advised government officials in Asia and Latin America on trade and investment law as well as corporate governance. He also assisted the Singapore Company Law Reform and Frameworks Committee in 2001 with a major overhaul of corporate law and in 2008 was appointed to a Working Group of the Steering Committee to review of the Companies Act. Michael also volunteers with NGOs and co-founded aidha, an NGO which provides financial education and microfinance opportunities for domestic migrant workers. For his work, he was the awarded the Social Entrepreneur of the Year 2007. He has received several Teaching Excellence Awards and was awarded the Inspiring Mentor Award in 2009.

Mark Feldman, Peking University School of Transnational Law, Shenzhen, China

Mark **Feldman** is Assistant Professor of Law at the Peking University School of Transnational Law. He previously served as Chief of NAFTA/CAFTA-DR Arbitration in the Office of the Legal Adviser at the U.S. Department of State. As Chief, Mark represented the United States as a Respondent or Non-Disputing Party in more than a dozen investor-State disputes and provided legal counsel supporting the negotiation of U.S. BITs and investment chapters of FTAs. Mark's government experience also includes service as a law clerk to Judge Eric L. Clay on the U.S. Court of Appeals for the Sixth Circuit and as a Peace Corps Volunteer in Lesotho during

South Africa's transition to democracy. In the private sector, Mark practiced law for several years at Covington & Burling. Mark holds a B.A. from the University of Wisconsin, where he was elected to Phi Beta Kappa, and a J.D. from Columbia Law School, where he was a James Kent Scholar, Harlan Fiske Stone Scholar, and recipient of the Parker School Certificate in International and Comparative Law.

Bernard Hanotiau, Hanotiau & van den Berg, Brussels, Belgium

Bernard **Hanotiau** is a member of the panel of arbitrators of, or receives appointments as arbitrator by, the International Chamber of Commerce (ICC, Paris), the London Court of International Arbitration (LCIA), ICSID, the American Arbitration Association (AAA), the Stockholm Chamber of Commerce, SIAC (Singapore), HKIAC (Hong Kong), CIETAC (Beijing), BAC (Beijing), the Japan Commercial Arbitration Association, KLRCA (Kuala Lumpur), KCAB (Seoul), the Permanent Court of International Arbitration (PCA, The Hague), WIPO (Geneva), Cepani (Belgium), the Nederlands Arbitrage Instituut (NAI), the Geneva Chamber of Commerce, the Dubai International Arbitration Center (DIAC), the Danish Institute of Arbitration, the Cairo Center of Arbitration, the French Arbitration Association, the French-German Chamber of Commerce (Paris), IATA (Geneva), the Court of Arbitration for Sport (CAS, Lausanne). He is also frequently appointed as arbitrator in UNCITRAL and other *ad hoc* arbitration cases.

Sabine Konrad, McDermott Will & Emery LLP, Frankfurt, Germany

Dr. Sabine Konrad is a partner in the law firm of McDermott Will & Emery LLP and is based in the Firm's Frankfurt office. She focuses her practice on international dispute resolution, with an emphasis on commercial international arbitration and public international law. Sabine has advised investors and governments in matters of investment protection. She also has experience representing clients in a broad range of industries, including energy and infrastructure. In 2007, Sabine was designated by the Government of the Federal Republic of Germany to the Panel of Arbitrators of the World Bank's International Center for Settlement of Investment Disputes (ICSID). She also founded the Frankfurt International Arbitration Moot Court, the leading moot court internally in the investment treaty field. In 2005, Sabine was involved in setting up the Frankfurt International Arbitration Center, a cooperation facility of ICSID for investment treaty arbitrations in Germany. Sabine is a fellow of the Chartered Institute of Arbitrators, a member of the American Society of International Law, the British Institute of International and Comparative Law, the International Law Association, the Working Group on Investment Protection Law of the German Branch of the ILA, the London Court of International Arbitration, the Swiss Arbitration Association, the Austrian Arbitration Association and is a member of the Steering Committee of the Alumni and Friends of School of International Arbitration of the University of London. Sabine is admitted to the Landgericht/Amtsgericht Frankfurt Bar.

Jürgen Kurtz, Director, International Investment Law Research Programme, University of Melbourne

Jürgen **Kurtz** is an Associate Professor and Director of the International Investment Law Research Programme of the Institute for International Law and the Humanities at the University of Melbourne, Australia. Jürgen researches and teaches in the various strands of international economic law, including the jurisprudence of the World Trade Organization and that of investor-state arbitral tribunals.

He has held research fellowships at the Jean Monnet Center for International and Regional Economic Law and Justice at New York University (as an Emile Noël Fellow), the University of Michigan Law School (as Grotius Fellow) and at the Academy of International Law in The Hague. He is the convenor of the General Course on International Investment Law at the Academy of International Trade and Investment Law in Macau. In 2010, Jürgen joined the Global Faculty at the Centre for Transnational Legal Studies in London, Universidade Católica Portuguesa in Lisbon, Bocconi University in Milan and was appointed Fernand Braudel Senior Fellow at the European University Institute in Florence.

Mark S. McNeill, Shearman & Sterling LLP, Paris, France

Mark **McNeill** is a partner in Shearman & Sterling's International Arbitration Group in Paris. He specializes in international investment arbitration and international commercial arbitration. He has advised corporate clients and governments in dozens of international arbitrations before the ICSID, the ICC and other arbitral institutions, as well as in *ad hoc* arbitrations under the UNCITRAL Rules, with a focus on investment, construction, joint venture and intellectual property disputes. Prior to joining Shearman & Sterling in Paris, Mark spent four years at the U.S. State Department where he represented the United States in investor-State arbitrations under the investment chapter of the North American Free Trade Agreement (NAFTA), and participated in the drafting of the United States' bilateral investment treaties and investment chapters of free trade agreements. Mark is admitted to the New York and Paris bars. He is currently Co-Chair of the International Investment and Development Committee of the American Bar Association's Section of International Law, and has served as the Vice-Chair of the Section's International Arbitration Committee. He was an Adjunct Professor at the American University Washington College of Law, teaching International Investment Law and Arbitration. Mark speaks English, Japanese and French. He holds a J.D. from New York University School of Law an M.A. from the School of Advanced

International Studies of Johns Hopkins University (with a specialization in international law), and a B.A. from Colgate University.

Andrew Newcombe, University of Victoria, Canada

Andrew **Newcombe** is Associate Professor, Faculty of Law, University of Victoria, British Columbia, Canada and teaches international arbitration, international investment law, international trade law and commercial law. Prior to joining the Faculty in 2002, he worked in the International Arbitration and Public International Law groups of Freshfields Bruckhaus Deringer in Paris. His research focuses on investment treaty law and arbitration. He is the co-author of *Law and Practice of Investment Treaties: Standards of Treatment* (Kluwer, 2009) and co-editor of *Sustainable Development in World Investment Law* (Kluwer, 2011). He created and operates ita (italaw.com), a research website focused on investment treaty arbitration. Andrew is Associate Editor (Case & Comment) for the ICSID Review—Foreign Investment Law Journal. In addition to his academic work, Professor Newcombe acts as counsel and arbitrator in international arbitrations.

Daniel M. Price, Daniel M. Price PLLC, Washington, D.C., USA

Daniel M. **Price** serves as arbitrator and counsel in major international treaty and commercial disputes. He has spent more than 30 years in private law practice and government service. He has extensive experience in disputes arising under bilateral investment treaties and free trade agreements, including NAFTA and the WTO. He has served as counsel for both company and government parties as well as arbitrator. He has also negotiated both inter-governmental and commercial agreements. He was a partner with Sidley Austin LLP, having founded and chaired the firm's 60-member International Trade & Dispute Resolution group. He currently serves on the Board of Directors of the American Arbitration Association and, by Presidential appointment, on the Panel of Arbitrators of the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

Philippe Sands Q.C., Matrix Chambers, London, UK

Philippe Sands QC is Professor of Law and Director of the Centre for International Courts and Tribunals at University College London. He is a practising barrister and co-founder of Matrix Chambers, acting in cases before the English courts and international courts and tribunals, including the International Court of Justice. He sits as an arbitrator at the Court of Arbitration for Sport, the International Centre for the Settlement of Investment Disputes and the Permanent Court of Arbitration. He is the author of *Lawless World* (2005) and *Torture Team* (2008), has written several academic books on international law, and contributes regularly to the New York Review of Books, Vanity Fair and The Guardian. He is a vice president of the Hay Festival, a member of the board of the Tricycle Theatre, and a member of the advisory board of Wilton Park and of the appeal board Bingham Centre for the Rule of Law.

John Savage, King & Spalding LLP, Singapore

John **Savage** is a partner in King & Spalding's International Arbitration group, and leads the firm's arbitration practice in Asia. He has represented governments, corporations and high-net-worth individuals in over 120 international arbitrations around the world, including many corporate, construction, energy and investment treaty disputes. In addition to his work as counsel, Mr. Savage has been appointed chairman of the tribunal, sole arbitrator and co-arbitrator in around 20 international arbitrations. He is a director of the Singapore International Arbitration Centre and a member of its Executive Committee. He serves as the expert adviser to the Singapore Government Delegation to the UNCITRAL Working Group on Arbitration. Mr. Savage is the co-editor of "Fouchard, Gaillard, Goldman on International Commercial Arbitration" (Kluwer 1999), and the co-author of "International Arbitration and Mediation: A Practical Guide" (Kluwer 2010). He is the author of many other articles and publications and a frequent speaker on international arbitration. Most recently, Mr. Savage was ranked in the first tier of

international arbitration practitioners by both Chambers Asia-Pacific 2012 and Chambers Singapore 2012. Who's Who Legal, Commercial Arbitration, 2012 recognised him as "one of the finest practitioners in Asia". He is admitted to practice law in England & Wales and in Paris, France.

M Sornarajah, Faculty of Law, National University of Singapore, Singapore

M **Sornarajah** is CJ Koh Professor of Law at the National University of Singapore. He has taught courses on International Commercial Arbitration, Foreign Investment Arbitration, International Investment Law and Public International Law at leading universities in the United States, United Kingdom, Australia, China and Sri Lanka. He is also the Tunku Abdul Rahman Professor of International Law at the University of Malaya. He is admitted to practice law in England and Wales, Singapore and Sri Lanka. He is a member of the advisory boards of the International and Comparative Law Quarterly, the Indian Journal of International Law and several other international law journals.

Peter Turner, Freshfields, Paris, France

Peter brings more than 15 years' experience and wide-ranging expertise to international arbitration. He has acted as counsel and sat as arbitrator in more than 100 international arbitrations, under both ad hoc and institutional rules. He also takes part in ADR (alternative dispute resolution) proceedings. In the past ten years Peter has specialised in investor-state arbitrations. His expertise, analytical skills and attention to detail have earned him key mandates from clients in sectors ranging from energy and investment banking, to mining and agro-industry. He excels at getting to know his clients' businesses, and as a result has a good understanding of their issues and concerns. Peter is a consummate advocate and has represented clients in more than 20 witness hearings before arbitral tribunals.