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DEVELOPMENT BANK
INTEGRATION AND TRADE SECTOR



Second Columbia International Investment Conference

What's Next in International Investment Law and Policy?

**Improving the International Investment
Law and Policy System**

**Columbia University, Lerner Hall, Room 555
New York, October 30-31, 2007**

PROGRAM

**Columbia Program on International Investment
Columbia Law School/Earth Institute**

**Center on Global Legal Problems
Columbia Law School**

**Integration and Trade Sector
Inter-American Development Bank (IADB)**

**In collaboration with the American Society of International Law (ASIL) and with the support of
Companhia Vale do Rio Doce (CVRD) and Mark and Gail Appel.**

Conference Sponsors

Columbia Program on International Investment Columbia Law School/Earth Institute

The Columbia Program on International Investment seeks to be a leading center for academic research and innovation on issues relating to the role of foreign direct investment in today's world economy and, in particular, the public policy and international investment law implications to which this role gives rise. It is a joint program of Columbia Law School and The Earth Institute. The Program is partly supported by the generosity of Mark and Gail Appel. For more information, see: www.cpii.columbia.edu.

Center on Global Legal Problems Columbia Law School

The Center addresses globalization's legal dimensions through diverse interdisciplinary research and scholarship. The Center supports long term research projects, such as collaborative research with professional disciplines other than law, including economics and philosophy, and other professional schools including the schools of business, journalism, public health, and international and public affairs; periodic conferences and other speaker series; associations and public policy oriented projects with other Columbia University centers and programs, including the Earth Institute, the Institute for Human Rights, the Initiative for Policy Dialogue, and the Center for International Organizations; and joint programs with international organizations such as the United Nations. For more information, see: www.law.columbia.edu/center_program/global_legal.

Integration and Trade Sector Inter-American Development Bank (IADB)

The Integration and Trade Sector leads the Inter-American Development Bank's integration, trade and investment agenda, generating and disseminating state-of-the art knowledge in this sector both within the Bank and among Latin American and Caribbean countries and ensuring that this knowledge is translated into trade and investment related Bank's operations and initiatives. The IADB is the main source of multilateral financing for economic, social and institutional development in Latin America and the Caribbean. Through loans and grants, it finances and supports sustainable economic and social development projects and strategies to reduce poverty, expand growth, increase trade and investment, promote regional integration, support private sector development and modernization of the State in Latin America and the Caribbean. For more information, see: www.iadb.org.

American Society of International Law (ASIL)

ASIL is a nonprofit, nonpartisan, educational membership organization founded in 1906 to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. The Society's 4,000 members from nearly 100 countries include attorneys, academics, corporate counsel, judges, representatives of governments and nongovernmental organizations, international civil servants, students and others interested in international law. Through meetings, publications, information services and outreach programs, ASIL advances international law scholarship and education for legal professionals as well as for broader policy-making audiences and the public. ASIL, which is headquartered in Washington DC, was chartered by the US Congress in 1950 and holds Category II Consultative Status to the Economic and Social Council of the United Nations. For more information, see: www.asil.org.

Companhia Vale do Rio Doce (CVRD), the world's second largest diversified metals and mining company, with a present-day market capitalization of US\$155 billion. Present in more than 30 countries on five continents, it is a world leader in iron ore and pellet production and export as well as a major supplier of copper, bauxite, alumina, aluminum, potash, kaolin, manganese, ferroalloys, nickel and coal. CVRD also operates large logistics systems, including railroads and ports that are integrated to its mining operations. To support its growth strategy, CVRD is conducting a global multi-commodity mineral exploration program in several countries. For more information, see: www.cvrd.com.br.

Background

International investment law and policy have developed rapidly during the past two decades, and continue to do so. This process has been characterized by the liberalization of FDI laws at the national level (out of 2,349 FDI regulatory changes between 1991 and 2005, 92% were in the direction of creating a more favorable investment climate) and, at the international level, the strengthening of protection standards for foreign investors and facilitating their operations. At the same time, though, there are signs of a backlash against FDI which, if it should occur, would be reflected in more restrictive regulatory changes. This Conference will identify some of the challenges that the international investment law and policy system is facing and discuss the way forward.

Today, international investment law consists of a complex network of international investment agreements (IIAs). Pride of place among these belongs to BITs, the number of which had reached 2,651 by the end of 2006. In addition, the number of preferential trade and investment agreements had reached 241 by the same date. In a more recent development, the number of known treaty-based investor-State dispute settlement cases had reached 258 by the end of 2006, with three-fourths of them arising in the past five years. Given that there are upwards of 80,000 multinational enterprises and upwards of 800,000 foreign affiliates, and given that most IIAs provide that, in principle and depending on specific circumstances, each of them can initiate investment disputes, the potential for a further rise of such disputes is considerable.

All this leaves a growing maze of rules and arbitral decisions to navigate, a situation not conducive to the consolidation of a coherent body of international investment law and hence the certainty that the rule of law provides.

In the light of this, this Conference seeks to ascertain, first of all, what the expectations are of key stakeholders as regards international investment law and policy. It then proceeds to examine the implications of a rise of FDI protectionism and discusses whether there may be a need to re-calibrate this system by looking at the role that clarifying key investor protection standards, corporate social responsibility, home country measures, and the special situation of developing countries can play in further developing and strengthening the current system.

This can take many forms, to be examined also during the Conference. In particular, there are the questions of how investment treaty making and dispute settlement can be improved, whether a wide-spread application of the MFN clause will increase the coherence of international investment law, what role a (re)statement of international investment law could play, and how various forms of IIAs could offer a way forward.

Participants in the Conference will be academics, as well as government officials and corporate executives. The presentations will be concise to allow plenty of time for discussions. The proceedings of the Conference will be published.

At the end of the Conference, there will be a reception hosted by OGEMID, to provide an opportunity to the members of this network – and others – to meet those with whom they are corresponding.

For those interested in participating in this Conference, please contact Maria Estenssoro at mesten1@law.columbia.edu or write to cpji@law.columbia.edu.

Program

Tuesday, 30 October 2007

08:30-09:00 Breakfast and registration

09:00-09:30 Welcome and opening

José E. Alvarez, Hamilton Fish Professor of International Law and Diplomacy and Director, Center on Global Legal Problems, Columbia Law School; and President, American Society of International Law

Antonie Estevadeordal, Manager, Integration and Trade Sector, Inter-American Development Bank

09:30-10:00 Keynote Address

Jeffrey D. Sachs, Director, Earth Institute at Columbia University; Quetelet Professor of Sustainable Development, Columbia University

10:00-10:15 Coffee/tea break

10:15-12:30 Opening Roundtable: What do key stakeholders expect from the international investment regime?

Chair: Karl P. Sauvant, Executive Director, Columbia Program on International Investment

Participants:

1. "The expectations of host developing countries", **Roberto Echandi**, Ambassador of Costa Rica to the Kingdom of Belgium, Grand Duchy of Luxembourg and the European Union
2. "The expectations of trade unions", **John Evans**, General Secretary, Trade Union Advisory Committee to the OECD
3. "The expectations of the business community", **Charles P. Heeter, Jr.**, Managing Principal, Global Public Policy, Deloitte & Touche USA LLP; Chairperson, Business and Industry Advisory Committee to the OECD
4. "The expectations of a scholar and practitioner", **Andreas F. Lowenfeld**, Herbert and Rose Rubin Professor of International Law, New York University School of Law
5. "The expectations of civil society", **Howard Mann**, Senior International Law Advisor, International Institute for Sustainable Development
6. "The expectations of emerging market multinational enterprises", **Tito Martins**, Executive Director of Corporate Affairs and Energy, CVRD

7. “The expectations of developed countries”, **Manfred Schekulin**, Director, Export and Investment Policy, Austrian Federal Ministry of Economics and Labour; Chairperson, OECD Investment Committee

12:30-13:30 Lunch

13:45-17:00 Session I: Do international investment agreements address the concerns of stakeholders?

Chair: **Katharina Pistor**, Professor, Columbia Law School

8. What are the implications of the rise of FDI protectionism?, **Karl P. Sauvant**, Executive Director, Columbia Program on International Investment

9. Do key investment protection standards need to be re-calibrated and if so, how?, **Susan Franck**, Assistant Professor of Law, University of Nebraska

10. Do the rights and responsibilities of host countries, home countries and multinational enterprises need to be re-calibrated and if so, how?, **Peter T. Muchlinski**, Professor in International Commercial Law, School of Law, School of Oriental and African Studies, University of London

Lead discussant:

Stanimir A. Alexandrov, Partner, Sidley Austin LLP

17:30-21:00 Dinner (Faculty House)

Dinner Address: “Developments in U.S. International Investment Policy”, **Daniel M. Price**, Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, National Security Council

Wednesday, 31 October 2007

08:00-08:30 Breakfast

08:30-11:30 Session II: Reforming the FDI regime: avenues to consider

Chair: **Merit E. Janow**, Professor in the Practice of International Economic Law & International Affairs, Columbia University; Member, WTO Appellate Body

11. Will most-favored-nation treatment lead to a harmonized system?, **Todd Grierson-Weiler**, Adjunct Professor, University of Calgary Law School

12. How to improve treaty making and dispute settlement?, **Thomas Wälde**, Professor of International Economic, Natural Resources and Energy Law & Jean-Monnet Chair, CEPMLP/University of Dundee

13. The pros and cons – and challenges – of a (re)statement of international investment law, **Petros C. Mavroidis**, Edwin B. Parker Professor of Foreign & Comparative Law, Columbia Law School

Lead discussant:

Mark Kantor, Arbitrator

11:30-12:00 Presentation: *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development*, **Anne Miroux**, Head, Investment Analysis Branch, DITE, UNCTAD

12:00-13:30 Lunch

Luncheon Address: “Challenges and Prospects Facing ICSID”, **Ana Palacio**, Secretary-General, International Centre for Settlement of Investment Disputes (ICSID)

13:45-16:45 Concluding Roundtable: The future of the international investment law and policy system: options for the way forward

Chair: **José E. Alvarez**, Hamilton Fish Professor of International Law and Diplomacy and Director, Center on Global Legal Problems, Columbia Law School; and President, American Society of International Law

Participants:

The **speakers of the Opening Roundtable and Sessions I and II** will be called upon to contribute their views. In addition:

The need for a multilateral approach, advisory action and the recognition of social responsibility, **Marcela Anzola Gil**, Professor, Economics Faculty, Rosario University (Bogotá, Colombia)

The changing political economy of foreign investment and its implications for the balance between hard and soft forms of regulation, **John H. Dunning**, Emeritus Professor of International Business, Reading and Rutgers Universities, and **Sarianna M. Lundan**, Associate Professor of International Business Strategy, University of Maastricht; Research Fellow, ETLA, The Research Institute of the Finnish Economy

Multilateral and regional approaches to the development of international investment law, **Rainer Geiger**, Deputy Director, Financial and Enterprise Affairs Division, OECD; Associate Professor of International Law, University of Paris 1, Panthéon- Sorbonne

The future of international investment law: a balance between the protection of investors and the States' capacity to regulate, **Brigitte Stern**, Professor, University of Paris 1, Panthéon-Sorbonne; Member, United Nations Administrative Tribunal

The need for a multilateral forum on investment rule-making, **James Zhan**, Head, Investment Policies and Capacity-Building Branch, DITE, UNCTAD

16:45-17:00 Closing

Conference Rapporteur: Andrea Bjorklund, Professor, University of California at Davis, School of Law

17:15 OGEMID reception: Hosted by **Thomas Wälde**, Professor of International Economic, Natural Resources and Energy Law & Jean-Monnet Chair, CEPMLP/University of Dundee

October 26, 2007