



CUSTOM AND INTERNATIONAL INVESTMENT LAW

***THE CONFERENCE ON CUSTOM AND INTERNATIONAL INVESTMENT LAW WILL BE HELD AT
THE AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, 23-24 SEPTEMBER 2020.***

*Organizers: Universidad Externado de Colombia; TRICI-Law (University of Groningen);
Universität Tübingen; American University Washington College of Law.*

Call for Papers

The Organizing Committee of the Conference “Custom and International Investment Law” is pleased to invite to the Conference, which will hold six thematic panels, an expert roundtable and feature several keynote speakers (with invited experts and speakers, *inter alia* a former judge of International Court of Justice and arbitrators). Scholars and practitioners interested in presenting during the Conference are encouraged to send their proposals.

In selecting speakers, the Organizing Committee will consider the quality of the proposed papers. Each paper will be double-blind peer reviewed. Also, the speakers are requested to submit their paper before the Conference (deadline 1st September 2020). Submitting the papers on that date is a precondition in order to be considered for the prepared publication. Authors of papers, which will be selected for publications, will be given time (until 1st November) to prepare the final version of their article/chapter.

The Conference's subject is "Custom and International Investment Law". The connection between customary international law (CIL) and International Investment Law has never been more pronounced. Despite this, several areas and topics that highlight this inter-connection remain woefully under-analyzed and consistently overlooked. The present Conference aims at addressing this *lacuna*. The event will bring together leading academics, international judges/arbitrators and other practitioners, to discuss the most pertinent issues relating to the interaction between CIL and International Investment Law, both from a theoretical and a practical perspective. Within this framework, six main thematic issues will be discussed. Therefore, we invite **submissions of proposals** engaging with any aspect that falls under the purview of these thematic issues as a dimension of the overarching theme of the conference. The Organizers welcome proposals addressing one of the following issues, which set out exemplary but not exhaustive questions that may be addressed in the presentation and paper:

Thematic Issue 1: *Importance and Evolution of CIL in International Investment Law.* How has the evolution of international investment law affected our understanding of CIL? How and to what extent does CIL remain relevant for the contemporary problems with which international investment law is faced? What can we learn from the practice of the mixed-claims commissions (Mexico/Venezuela, Versailles Treaty commissions, etc.) regarding the emergence and development of customary rules of investment law? How did/do 19th and 20th century customary investment law rules (or the fact of their absence) influence or impact the emergence of the present-day ISDS and investment treaty regime? How would the investment regime look like today if at certain points in time a customary rule (e.g.: NIEO) had emerged, while in fact it didn't (counter-factual thinking)?

Thematic Issue 2: *Interpretation of CIL in International Investment Law.* Despite the importance of CIL in International Investment Law, both as primary and secondary rules, an

area that has been relatively untouched has been that of interpretation of CIL. Investment tribunals do not merely identify the content of CIL rules through the classical doctrine of State practice and *opinio juris*, but quite often achieve this content-determination through a process of interpretation that resembles quite closely that of treaty interpretation. The point of this thematic issue will be to explore this method of content-determination of CIL, and investigate the interpretative practices of CIL that are characteristic of International Investment Law. For instance, are we dealing with rules of interpretation, or just merely principles of logic, when we discuss interpretation of CIL in international investment law? How similar are these rules/principles to treaty interpretation (i.e. do we use teleological, systemic, or other methods known in treaty interpretation)? Have the rules of interpretation themselves been interpreted by investment tribunals?

Thematic Issue 3: *State Responsibility and Wrongfulness in International Investment Law.*

Within this thematic issue, the relevant issues are how the customary rules on State responsibility are applied in international investment law. Several sub-sets of rules on State responsibility raise intriguing questions within the scope of international investment law, circumstances precluding wrongfulness, most notably countermeasures and state of necessity, being the most prominent of these. How do investment arbitration tribunals apply and interpret the customary rules of state responsibility? How do domestic courts, ruling on challenges to investment arbitration awards, apply and interpret the customary rules of state responsibility? Is there a noticeable difference between the practice of arbitral tribunals and domestic courts? Do arbitral tribunals/domestic courts follow and ICJ practice and the ILC commentary or do they significantly deviate from them? If so, do they do so across the board or only regarding specific rules and specific topics? Has there been a change in the practice since the adoption of the 2001 ILC Articles?

Thematic Issue 4: *State Responsibility and Compensation.* Despite the fact that state responsibility and standards of compensation are a critical issue in contemporary investment arbitration there is still a great degree of uncertainty surrounding these topics. This is further exacerbated by the fact that a clear understanding of their normative status and interplay is crucial not only to the adopted litigation strategy, but also to the decision of whether to pursue litigation of a dispute at all. Within this thematic issue, we aim to examine a number of critical

issues. Should the standards of compensation be perceived as reflecting CIL? Are the established methods of valuation, if any, norms of CIL? How do courts arrive at these standards, through an evaluation of state practice and *opinio juris* or through an interpretative exercise of a more general pre-existing CIL rule? Given the criticism of PCIJ and ICJ judgments on investment law (see, for instance, the debate on whether the PCIJ really applied CIL in the *Chorzów Factory case*) what is truly the content of the contemporary principles for damages and compensation that stem from CIL? In sum, which of the following are the methods that are applied in investment law? Are they an assertion, an application or an interpretation of existing CIL rules? Or are they perhaps something entirely new and beyond custom or even beyond law?

Thematic Issue 5: *CIL and Execution and Annulment Proceedings Before Domestic Courts.*

The role of CIL in execution and annulment proceedings in domestic courts is the focal point of this thematic issue. Examining the practice of national courts and regional or country specific differences with respect to their approach to CIL and investment law will yield interesting results. For example, how do domestic courts interpret and apply CIL in execution and annulment proceedings? What different patterns exist and what are the reasons for such divergences (or convergences) of the national approaches? What is the approach of domestic courts to the elements of custom under international law? Are there differences discernible with regard to specific issue areas or with regard to specific countries?

Thematic Issue 6: *TWAIL, CIL and International Investment Law.*

The questions to be asked within this thematic issue are: What lessons that can be learned from the Third World Approaches to International Law (TWAIL), e.g. which customary norms derive from the times of gunboat diplomacy and how has their continued relevance shaped the investment regime as it stands today? What are the regional differences regarding their approach to CIL and what can we learn from the diverse practice of various continents (in opposition to the Western-centric prevailing attitude)? For example, is there a regional Latin American CIL of relevance for international investment law and arbitration?

Application process

To submit a proposal, please send an email to the following address custom.investment.conference@gmail.com, attaching an abstract of max. 800 words, together with a CV (no more than 2 pages) in a single document (.pdf format).

Publication:

A selected number of papers presented during the Conference are intended to be included in an edited volume published by a renowned Publisher. To be considered for the planned publication the participants should send their paper (or at least a very advanced draft thereof) to the organizers before or on 1st September 2020. Selected applicants whose contributions will be included in the book will be informed shortly after the end of the Conference, and should send their final version of the chapter no later than 1st November 2020. More information will be provided in due course.

Should the quality and interest in publication in the edited volume exceed the capacity of an edited volume, the option will be offered to publish some of the papers that will not feature in the book in a special issue on *Investment and Custom* in a well-respected international law journal.

Please take into account the following timetable:

1 April 2020 – Closing date for the submission of abstracts and CV

20 April 2020 – Applicants will be informed of the results of the selection process

1 September 2020 - Closing date for the submission of a paper.

23/24 September 2020 – the Conference

1 November 2020 – final date to submit an article/chapter for publication (to be confirmed with editors)

The participants of the Conference should register on the provided website, however, we are happy to inform that the Conference will have no registration fee for all participants.

For any questions and/or clarifications, please contact:
custom.investment.conference@gmail.com

We also invite potential sponsors, if interested, to contact the Organizers of the Conference at the above email.

Organizers, Venue & Date: The Conference is co-organised by the Universidad Externado de Colombia, the TRICI-Law project of the University of Groningen, the University of Tübingen and the American University Washington College of Law. It will be held in Washington DC on 23-24 September 2020 at the premises of the Washington College of Law.

Organizing Committee consist of: Horacio Grigera Naón (American University Washington College of Law), Jose Manuel Alvarez Zarate (Universidad de Externado), Panos Merkouris (University of Groningen), Andreas Kulick (Universität Tübingen) & Maciej Żenkiewicz (Universidad de Externado).