



Centre for International Trade  
and Economic Laws



UNIVERSITY OF  
PORTSMOUTH



## **SOUTH ASIA INTERNATIONAL ECONOMIC LAW NETWORK (SAIELN)**

### **DISCUSSION SESSION**

**DECEMBER 19, 2017, 4:00 PM**

Classroom No. 2, NTH Complex, A2, Shaheed Jeet Singh Marg, Qutab Institutional Area,  
New Delhi 110067

### **War Against ISDS: Rebellion Without a Cause or Lost Battle?**

Of late, Investor-State Dispute Settlement (ISDS) has become one of the most controversial topics in international economic relations. While the volume of ISDS disputes has exploded in recent years with an overall number of known treaty-based arbitrations reaching 767, the nature of these investor-state disputes has also evolved. Investors do not hesitate to challenge regulatory measures of host countries relating to national policies for health, environment, energy production and security. Developed countries are also targeted with 29% of the total disputes in 2016 (45% in 2015!) being challenges against developed economies. In addition, intra-EU disputes accounted for about one quarter of the investment arbitrations initiated in 2016, down from one third in the three preceding years, but still at a significant level for countries new to ISDS which are used to initiating disputes rather than responding to them. Lastly, two thirds of investment arbitrations, in 2016, were brought under Bilateral Investment Treaties, most of them dating back to the 1980s and 1990s. As both developing and developed countries are sued by powerful businesses, their autonomy to regulate investment liberalization comes increasingly, under pressure. In addition, the latest rendered awards have reached astronomical sums with, for instance, a 2014 award amounting to USD 50 billion in the three closely related *Yukos* cases — the highest known award in investment arbitration.

The fact that states could be sued by corporations elsewhere than in a domestic framework had always triggered attention, but the recent use and probably abuses of the ISDS system have generated a wave of global criticism in not only developing, but also developed countries. Reform proposals including those put forward by the European Union in favour of the creation of a world investment court are now debated globally.

In this general context, and continuing from the previous discussions by SAIELN on ISDS in South Asia, this discussion session proposes to address the current global ISDS crisis and reforms discussion from a variety of perspectives breaching the public/private law gap and paving the way for a suitable and possibly new ISDS system in South Asia and India, in particular.



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## Programme

**Chair:** Prof. (Dr.) James Nedumpara, Head and Professor, Centre for International Trade and Investment Law, Indian Institute of Foreign Trade; Co-Chair, SAIELN

**General Introduction:** Prof. (Dr.) Leila Choukroune, Professor of International Law Director of the University Thematic Area in Democratic Citizenship, Portsmouth University (UK); Co-Chair, SAIELN

### Panellists:

- **Shri. Chanchal Chand Sarkar**, Director, International Investment Agreement Section, Department of Economic Affairs, Ministry of Finance, Government of India
- **Dr. Amitendu Palit**, Senior Research Fellow (Trade and Economic Policy), Institute of South Asian Studies, Singapore
- **Dr. Sai Ramani Garimella**, Assistant Professor, Law School, South Asian University, New Delhi
- **Dr. Prabhash Ranjan**, Assistant Professor, Law School, South Asian University, New Delhi
- **Mr. Harsh Hiroo Gursahani**, Associate, PLR Chambers (International Trade and Investment Team), New Delhi

**Vote of Thanks:** Mr. Sandeep Thomas, Centre for Trade and Investment Law

**Floor Discussion**

**Tea & Coffee**