

Report on the 3rd EFILA Annual Conference on Parallel States' Obligations in Investor-State Arbitration, London 5 February 2018

By Katariina Särkänne

(Lecturer, European Law, UEF Law School, University of Eastern Finland)

The 3rd EFILA Annual Conference on Parallel States' Obligations in Investor-State Arbitration took place in London on 5 February 2018 gathering over a hundred participants to discuss the current issues of investment arbitration. The program covered issues ranging from the participation of non-disputing parties in arbitral proceedings, regulatory issues in international investment law, concentrating especially in the questions of state liability and the current cases regarding renewable energy, as well as human rights and environmental aspects in international investment law. An outstanding keynote speech was given by the Honorable *Charles N. Brower*, discussing the aspects of why the planned Investment Court System is destined to fail the investors.

The panels consisted of renowned experts in the field, and what was especially pleasant to notice – especially with EFILA taking actions in order to strengthen women's status in the arbitral practice by signing the Pledge for Equal Representation in Arbitration (www.arbitrationpledge.com/) – was the remarkably even gender distribution of the speakers. Furthermore, as this happened without any conscious endeavor from the organizers to invite especially female speakers, this can be seen as a positive sign of the status and appreciation of female experts in the field.

Panel 1: Non-disputing third parties and their influence on arbitration

The first panel of the day, chaired by *Yasmin Mohammad* (Vannin Capital), addressed the issue of the participation of non-disputing third parties in investment arbitration. Firstly, it was elaborated by *Alejandro López Ortiz* (Mayer Brown), that the right of state parties is in fact provided for in many investment treaties (such as NAFTA, several modern FTAs, UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration), and should be seen as a right of the states. The participation is, however, usually limited to the interpretation of the treaties, and does not enable the states to address any facts of the cases. There has been a wide use of the right to intervene by the states, and generally this has caused the narrowing of investors' rights (e.g. *Pope & Talbot case*¹),

¹ *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL.

but recently also the narrowing of treaty provisions (e.g. *Pac Rim* case²). There are also examples of cases where the investor's home state has intervened the proceedings (e.g. *Bear Creek* case³).

Second, the panel discussed whether there are instruments in modern investment treaties that provide states with tools to interpret the treaties. It was stated that this could be useful, but it should be remembered that it would not be as practical in bilateral settings as in multilateral. It was noted that separate submissions by states are more common, and using Central and Eastern European Countries as an example, the notable activity of the EU Commission in intervening proceedings was pointed out by *Kostadin Shirleshtov* (CMS).

Next, the panel turned to the question of whether the participation of third parties can be seen as violating the rights of the disputing parties. López Ortiz contended that this would not be a question of *rights* per se, but the participation could have some procedural implications, such as complicating the proceedings, as well as causing a practical imbalance harming the investors since states tend to side with other states. On the notion of procedural fairness, it was also pointed out, that states usually have – at least limited – access to the *travaux préparatoires* of the treaties, whereas investors do not. On the other hand, it was noted that there are some arguments based on international law that would favour the participation of third parties, such as transparency and consistent interpretation of treaties.

The panel then addressed the topic from the point of view of non-disputing parties. It was discussed whether the lack of access of non-disputing parties to the pleadings or hearings of the case can influence their rights to intervene or the way they interpret treaties. *Lise Johnson* (Columbia Center on Sustainable Development) emphasized that the third party submissions generally have to be relevant and additional, in order to be accepted, which is difficult to evaluate without having access to the pleadings. She gave an example of a case, where a third party submission was not accepted due to lack of additional input, whereas this submission would have raised the issue of human rights in the case. Johnson noted further that this is a relevant aspect because the questions of human rights might not be that often raised by the parties.

On the actual impact of the third party submissions, Johnson noted that it still remains an open question. She stated that there is some case law where the impact of third parties may be seen, but this is difficult to interpret by only reading the awards. An example of such a case is the well-known *Phillip Morris v. Uruguay*⁴. On the other hand there has been a study showing that the third party submissions have not been taken properly into consideration by tribunals.

Turning to non-disputing *private* parties, the panel next discussed whether their role is developing differently than the interventions of states. Shirleshtov referred to the recent active involvement of the EU Commission – interestingly enough discussed in relation to *private* party intervention, as

² *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12.

³ *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/2.

⁴ *Phillip Morris Brands Sàrl, Phillip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7.

noted by Mohammad – in the disputes concerning the EU Member States. He pondered the political aspect of the submissions of the Commission for example in the case of *Micula*⁵, where there had been a screening of the Bilateral Investment Treaties when Romania accessed the EU, but no questions were raised as to a conflict with EU law.

Relating to the participation of the EU, it was discussed whether the recent cases of the EU Member States under the Energy Charter Treaty had been the same if the EU had not intervened in the proceedings. Sirleshtov noted that there has been a consistent participation of the EU Commission in basically all of these cases. He also pointed out that the Member States could be considered to have been ‘in a crossfire’ for example in the state aid cases, where the illegal state aid was never notified, and the conflicts with EU law emerged only in connection with these arbitral proceedings. It was also mentioned that there is a difference between the submissions of third party states on the interpretation of the treaties and private party submissions aiming at ‘enlightening’ the tribunal, which raises the question of arbitrability.

Generally, it was noted that the non-disputing party participation should be considered from the point of view of the right of the disputing parties, and especially the effect it may have on the legitimate expectations of the parties. For example, the duration of the proceedings because every submission usually adds 2-3 months to the length of the proceedings.

In conclusion, Johnson stated that the rights and interests of the non-disputing parties should be better addressed, but also arbitrability is a good question. She hoped to see more third party participation, and also maintained that more attention should be paid on how cases impact non-disputing parties. Also Sirleshtov concluded that there is a need for third party submissions, if the submissions are provided in the interest of fairness regarding the facts and the law. López Ortiz reminded us of the importance of securing the interest of non-disputing parties, such as the states’ interest in consistent treaty interpretation. Also, the NGOs’ interest in transparency was highlighted. All in all, the access of non-disputing parties was seen as desirable and giving legitimacy to the system by enhancing transparency and consistency of the proceedings, but some issues regarding the participation remain to be addressed.

The topic brought on a vivid discussion among the audience during which various issues were addressed. Among others, the notion of equality of arms in regard to the access to *travaux préparatoires*, and the possibility of ‘an expert witness coming through the back door’ were discussed. It was noted that the equality of arms may indeed be affected, although there are some efforts made at the international level to achieve greater access to the *travaux préparatoires* also for investors.

It was furthermore discussed whether the non-disputing party submissions may lead to tribunals addressing arguments that have not been put forward by the disputing parties. It was noted that this forms a question of jurisdiction, but there is some inconsistency in the views on what the third

⁵ *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20.

parties should provide to the case. In order for the submission to be acceptable, it should bring something new to the case, but on the other hand not too new. Also, in this case the question of law and the questions of facts should be separated.

Panel 2: Investment regulation and arbitration

The second panel of the day was chaired by *Aron Skogman* (Mannheimer Swartling) and concentrated on the state liability under investment treaties. First, *Dr. Federico Ortino* (King's College London and Clifford Chance) gave an overview on the case law on state liability. He noted that regulatory change is one of the key concerns of investors and forms a top political risk for investments. Discussing how treaties have tackled regulatory change, he noted that there are two options. Firstly, 'stability in the strict sense', meaning that a treaty contains a requirement for the host state not to modify its law. The second option entails a 'softer' requirement, namely, whether or not there is a public policy interest behind the policy change. Ortino argued that both of these options can be found in investment treaties. Another way to categorize the stability clauses is whether they are general or specific.

Ortino further considered whether regulatory stability is possible through the FET standard. Some early decisions have made the link (e.g. *Occidental v. Ecuador*⁶), but that reasoning has not quite been followed later on. Regarding the early cases, Ortino argued that there is no certainty over whether or not they meant stability in the strict sense. The tribunals in *Saluka v. the Czech Republic*⁷ and *Impregilo v. Argentine Republic*⁸ rejected the FET stability link, and instead concentrated on the legitimate expectations of the investors. They required a balancing of interests between the investors' rights and the legitimate right of the state to regulate.

According to Ortino some uncertainty still remains in relation to regulatory change. For example in the *Phillip Morris v. Uruguay*⁹ legitimate expectations of the investor and legal stability were considered. Also, some treaties do have strict stability, but what remains unclear is that can there be strict stability in relation to FET.

Next *Mónica Moraleda Saceda* (Kingdom of Spain) – expressing her own personal views – addressed the recent renewable energy cases – most of them having Spain as respondent¹⁰, but also Italy¹¹, and the Czech Republic¹². As a background to the cases, Moraleda Saceda noted that all the cases concerned support schemes for renewables offering limited, proportional state aid, thereby

⁶ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11.

⁷ *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL.

⁸ *Impregilo S.p.A. v. Argentine Republic*, ICSID Case No. ARB/07/17.

⁹ *Phillip Morris v. Uruguay*, see note 4 above.

¹⁰ *Charanne and Construction Investments v. Spain*, SCC Case No. V 062/2012; *Isolux Netherlands, BV v. Kingdom of Spain*, SCC Case V2013/153; *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36.

¹¹ *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID Case No. ARB/14/3.

¹² *Mr. Jürgen Wirtgen, Mr. Stefan Wirtgen, and JSW Solar (zwei) GmbH & Co.KG v. Czech Republic*, UNCITRAL.

creating a level playing field. However, so far, in this series of cases, investors' claims have been rejected.

She further pointed out that investors did not deny the right of the states to regulate, but argued that any damage has to be compensated. The tribunals considered that there is no autonomous standard to offer stable conditions under Article 10.1. Energy Charter Treaty. Also, there were no specific commitments from the states to maintain the support scheme framework. Under these conditions, she argued, investors cannot expect that the regulatory framework would not change over time.

Moraleda Saceda also addressed the role of EU law which has been brought up in these cases, in particular, whether EU law is able to create legitimate expectations (*Blusun*), and whether EU law should be considered as international or domestic law, or as a fact (*Mr. Jürgen Wirtgen and others v. the Czech Rep.*)

Moraleda Saceda concluded by asking what will be the future trend? She stated that it seems that tribunals don't consider FET as a stabilization clause, but as a requirement for balancing investors' rights with the State's sovereign right and duty to regulate in the common interest.

Lastly, *Christophe Bondy* (Cooley) addressed the question of whether the new treaty language affirms the right of states to regulate. He used CETA as an example of the future 'model' of investment treaties, and noted three characteristics of it regarding state liability: (i) there is a reaffirmation of states' right to regulate, (ii) there are specific provisions on subsidies, and (iii) it gives a list of limitations to the FET standard. He further asked, whether there has been similar regulation earlier, and considered that the right to regulate has been provided in treaties, without there being an explicit notion of it. This can be seen for example in NAFTA, TPP and various model BITs.

Another question addressed was whether the 'CETA language' would have made any change in the Spanish renewable energy cases discussed above. Firstly, it was argued that it was possible that these cases would have been addressed under the specific language on subsidies. Secondly, it seems possible that these cases would be rejected because of the lack of legitimate expectations for subsidies.

Finally, Bondy discussed the possible changes this new treaty language could make. He stated that it could possibly reign in the effect of FET – as there still is a certain level of uncertainty regarding the scope of this standard. As an example, Bondy considered that the new treaty language could be relevant in the *Lone Pine v. Canada* case¹³. As a conclusion, Bondy stated that CETA language arguably reins in regulatory change cases by limiting the scope of arguments like 'this is not what we expected' or 'that it goes beyond reasonable regulation'.

The topic raised again several comments and questions among the audience, especially regarding the renewables cases of Spain. Questions were raised *inter alia* on the role of the EU Commission,

¹³ *Lone Pine Resources Inc. v. The Government of Canada*, ICSID Case No. UNCT/15/2.

in particular whether the Commission is aiming to prevent the enforcement of ICSID awards in the EU area, as well as the requirement of the arbitral awards to be notified by the Member States to the Commission. Also the new treaty language caused some discussion, for example concerning the ‘for greater certainty’-language. In addition, more specific treaty drafting was called for, especially because there is still some uncertainty even after the *Phillip Morris v. Uruguay* case.

Keynote speech

The keynote speech by the Honorable Charles Brower addressed the shortcomings of the proposed Investment Court System (ICS). Judge Brower argued that the project of establishing the Court is based on ‘real fake news’ – misconceptions and misapprehensions. He gave an example of a case which had been presented recently in the media in a remarkably misleading way, which has been painting a picture of investment arbitration that was not based on facts.

He then turned to discuss the phenomenon of states failing the investors, such as in relation to *Pope & Talbot*¹⁴ case. An interpretation of the FET standard by Canada in that case was considered ‘patently absurd’ by the Tribunal, but later on the NAFTA Members amended that interpretation as a binding provision to the Agreement. Judge Brower emphasized that this kind of conduct hurts States’ own investors, as they also then face worse conditions in the form of a lower level of protection.

Turning to the issue of the ICS, Judge Brower discussed the political aspects of the selection of the judges of the Court. He called the selection procedure of the judges a potential ‘political scramble’ because a limited number of judges would be selected among the EU Member States as well as the Provinces of Canada (five in each), as well as five from other countries. He also pointed out to the terms of conditions under which these judges would work, in particular a remarkably low remuneration. He argued, that this will presumably lead to a lack of diversity within the Court. Judge Brower also brought up the question of the costs of the Court and noted that this question has not been discussed much. Furthermore, he wondered, who would be willing to pay the costs of the Court that are going to be very high.

Judge Brower also referred to some peculiar aspects regarding the initiation of the Court. He noted that there has been speculation that the Public Consultation of the EU Commission¹⁵, upon which the project initially was based on, was affected by heavy, and not necessarily appropriate lobbying.¹⁶ Furthermore, the drafting phase in UNCITRAL has been showing some rather peculiar (and political,

¹⁴ *Pope & Talbot v. Canada*, see note 1 above.

¹⁵ European Commission, Press Release, *Report presented today: Consultation on investment protection in EU-US trade talks*, Strasbourg, 13 January 2015, IP/15/3201, http://europa.eu/rapid/press-release_IP-15-3201_en.htm.

¹⁶ Robin Emmott, Philip Blenkinsop: ‘Exclusive: Online protest delays EU plan to resolve U.S. trade row’. Available at: <https://www.reuters.com/article/us-eu-usa-trade/exclusive-online-protest-delays-eu-plan-to-resolve-u-s-trade-row-idUSKCNOJA0YA20141126> [last accessed 8 February 2018].

suspects Judge Brower) traits for example in the selection of the Working Group that deals with the topic.

Finally, Judge Brower appealed to the arbitration community to make its voice heard in the discussion on the ICS, and concluded his speech with the words of Franklin D. Roosevelt from his inauguration speech: *'We have nothing to fear but the fear itself'*.

Comments on the keynote speech

The keynote speech was commented upon by a panel consisting of *Cherie Blair* (Omnia Strategy), *Anja Håvedal-Ipp* (Arbitration Institute of the Stockholm Chamber of Commerce), and *Dr. Dirk Pulkowski* (Permanent Court of Arbitration), and was chaired by *Dr. Markus Burianski* (White & Case).

Håvedal-Ipp began by stating that reforms of the investment arbitration seem to be likely in the future, in one form or another, and that the change should not be opposed solely on the basis that one likes the current system. She rather demanded that the change should be supported by the arbitral community. As positive features of the current system she listed, among others, that it is a depoliticized, flexible and enforceable system, which provides for the finality of the decisions. The current system is, according to her, not perfect, but working. The ICS in turn would re-politicize the process with the judge selection, and the existing flexibility would be lost to some extent. Also, the finality would be harmed by the appeal mechanism.

Moreover, Håvedal-Ipp was concerned that the ICS as it is suggested might not be able to address the problems investment arbitration currently is claimed to have. For example, the impartiality is doubtful with the states nominating all the judges. She also questioned the efficiency and the benefit of scale, as a large part of the costs of arbitration are administrative or counselling costs, and longer proceeding times would raise these costs further. Also, the question of regulatory chill would not be affected by the establishment of the ICS, as the court would not have any influence on the material issues. Håvedal-Ipp concluded that the system seems to be drafted by people with little experience on dispute settlement, and therefore, experts of the field should facilitate the change - and try to prevent more problems being created.

Pulkowski took a look at the history and noted that investment issues have been involved in all kinds of disputes (state-state, investor-state, ad hoc etc.). In particular, the PCA's own state-state cases in its first century of operation involved several investment disputes. He supported the element of permanency in investment arbitration. Also, Pulkowski reflected on the concept of politicization and the possible political aspects of the ICS proposal.

Pulkowski stated that the present system of ISDS is an important chapter, but only a chapter in a longer line of development. The quality of justice is something that we should concentrate on, and he wondered whether an ad hoc system can safeguard this. Pulkowski also reminded us of the

importance of comparison of different options, and noted that it should be considered how well different ISDS mechanisms work.

Blair shared Judge Brower's skepticism on the ICS ever being established. She noted that the arbitral community has been too closed and discussions have been taking place mainly within their own circle, with terms that the wider audience does not understand. She demanded that the arbitration community becomes more open.

Blair noted that a central issue is that the ISDS differs from other forms of disputes. She also linked the discussion to the wider framework in which the ISDS mechanisms operates. She reminded us that the reasons why change is widely demanded should be considered. For example, she asked whether investment protection is more important than the environment or human rights. There is also a concern about the impact of awards on societies as a whole because it is feared that poor countries will have to pay awards with money that could be better used for example for education. Blair furthermore noted that free trade should not be taken as given, as it is not necessarily accepted everywhere.

From a more practical point of view, Blair noted that arbitration can be more reactive to changes than a permanent court could be. As an example of a need of fast reaction, she gave the call for more transparency in the proceedings, which she argues to have been answered relatively fast and flexible. Also, the currently more visible presence of human rights in investment arbitration is an evidence of the flexibility of the ISDS mechanism, she argued.

Moreover, Blair shared Judge Brower's concerns on the politicization of the ICS as well as the composition of the Court being biased towards older judges. She wants to see more diverse compositions of courts and tribunals. Blair concluded with the thought that 'the battle is not lost and there is a lot to battle for, and the battle should be taken where the change is happening - not in the ivory towers of academics.'

The question of the selection of the judges raised some discussion also among the audience, showing that it is an aspect of the ICS which is widely seen as problematic. It was also noted that the issues are widely discussed, but the ones whose opinions would be good to be heard, are not necessarily being that loud.

Panel 3: Human rights, environment and arbitration

The last panel of the day, chaired by *Marie Stoyanov* (Allen & Overy) covered the topic of human rights and the environment in investment arbitration. Dr. *Monique Sasson* (Macchi Celere & Gangemi) discussed the role of international law in investment arbitration. She started with the role of international law as applicable law, and referred to the *Venezuela holding v. Venezuela*¹⁷ case,

¹⁷ *Venezuela Holdings, B.V., et al (case formerly known as Mobil Corporation, Venezuela Holdings, B.V., et al.) v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27.

where it was noted that international law is the law that provides the standard, which cannot be undermined by domestic law.

Sasson referred to the *Perenco v. Ecuador*¹⁸ (counterclaim) case as paving the way for the inclusion of environmental aspects and human rights in investment arbitration. She argued this being an important step in the protection of the environment. Sasson also highlighted the importance of due diligence on human rights since investors need to know the standards they have to comply with.

As an example of interpretation of investment treaties in the light of international law, Sasson referred to *Urbaser v. Argentina*¹⁹ case in which it was stated that regardless of the status of a BIT as *lex specialis*, it has to be interpreted within the system of laws. Moreover, according to the case, private companies are not immune to the obligations of international law and they cannot engage in an activity aimed at destroying human rights.

Another example of human rights obligations being applied also to private parties is the *Bear Creek v. Peru*²⁰ case. In that case the tribunal – even though not saying that there was an obligation to take care of the population around the mining – granted to the company compensation only for the money it invested and not for future profits. It was also argued that the damages should be reduced because the claimant had not taken care of the local population.

Sasson also deliberated on the application of Article 42 ICSID Convention²¹, and asked which international law rules actually are applicable in such a case. She noted that the *travaux préparatoires* of the Convention reveal that the free applicability of international law was rejected by the parties. Finally, Sasson noted that there isn't such a wide consensus on what is acceptable regarding the protection of the environment as there is regarding the protection of human rights.

Stephen Fietta (Fietta) discussed the states' right to regulate. He started off with the question of the states' inherent right to regulate under public international law, and noted, that it is undisputable and part of the sovereignty of the states. He then turned to the question of how this right has been interpreted in the investment arbitration jurisprudence.

Fietta pointed out that it was stated in *Methanex v. United States*²² that as long as domestic measure meets international principles, there cannot be an (environmental) expropriation. There is also a requirement for non-discrimination and due process of law. In *Suez v. Argentina*²³, a need for

¹⁸ *Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/08/6.

¹⁹ *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26.

²⁰ *Bear Creek Mining v. Peru*, see note 3 above.

²¹ Article 42(1) ICSID Convention states: The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and *such rules of international law as may be applicable*. [Emphasis added.]

²² *Methanex Corporation v. United States of America*, UNCITRAL.

²³ *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19.

balancing of interests was identified. Furthermore, *Phillip Morris v. Uruguay*²⁴ presented three more conditions regarding states' right to regulate: action *bona fide*, non-discrimination and proportionality.

Following from this, Fietta noted three concepts that safeguard state's right to regulate:

- (i) the margin of appreciation²⁵,
- (ii) the fact that measures are taken in order to fulfill states' obligations²⁶; and
- (iii) investors' engagement in potentially harmful activities – noting that investors should pay attention to human rights and the protection of the environment²⁷.

Lastly, Fietta addressed some recent treaty provisions confirming states' right to regulate, such as the Argentina-Qatar BIT and the (CP)TPP. He noted that these help to tackle the legitimacy of ISDS as a whole, while they do not as significantly change the material law.

Iuliana Iancu (Hanotiau & van der Berg) discussed the new generation of investment treaties in relation to human rights and the environment. She noted that the principles that were already visible in the case law, have now been codified in the new generation investment treaties, for example in US-Chile FTA and CETA. She elaborated that the argumentation of the *Methanex*²⁸ case can be seen in the CPTPP. Also, some effects of the *Phillip Morris v. Uruguay*²⁹ case may be seen in the CPTPP as well as in the CETA. Following from this, Iancu argued, that in some fields investors should in fact expect more regulation, rather than regulatory freeze.

Next Iancu turned to soft law instruments enhancing the protection of human rights or the environment, which in many cases can be found in the preambles of the new generation investment treaties. She argued that the legal effect of these standards can be the promotion of the standards, as well as their possible relevance in some cases as a part of a defense on the merits. She further noted that the standards can be used in the evaluation of both the states' and the investors' obligations.

Overall, Iancu argued that the codification of the standards has the effect of preventing a race-to-the-bottom development in relation to human rights and environmental standards. She noted that the standards displayed in the new generation treaties are not as much an innovation, as they are a codification of existing jurisprudence.

²⁴ *Phillip Morris v. Uruguay*, see note 4 above.

²⁵ *Phillip Morris v. Uruguay*, see note 4 above, Award, 8 July 2016, ¶ 399.

²⁶ *Ibid.*, ¶ 401.

²⁷ E.g. *Ibid.*, ¶ 429-30.

²⁸ *Methanex v. America*, see note 22 above.

²⁹ *Phillip Morris v. Uruguay*, see note 4 above.

Closing remarks

In his closing remarks the Secretary General of EFILA, Professor *Nikos Lavranos*, returned to the notion of fear. Referring to demonstrations against investment arbitration, which EFILA had encountered at its first event in 2015, he emphasized the commitment of the members of the investment arbitration community and the importance of their work for the discussion on the field. He closed the conference with the thought:

‘Investment law is nothing evil, but has its place next to other fields of law. It should be analyzed on the merits of the law and not on propaganda.’

This seems so sum up well the line of thought that appeared throughout the discussions during the day: The issues of international investment law should be addressed and properly discussed, and in this, a thorough analysis and expert knowledge of the field play a crucial role.
