Reforming International Investment Arbitration: an Introduction

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For over a decade, investor-state dispute settlement (ISDS) has suffered a so-called legitimacy crisis.¹ Critics have argued that ISDS is pro-investor, biased against developing countries, beset by incoherent jurisprudence and plagued by a lack of transparency and excessive costs and compensation.² While the

1 Amongst the first scholarly critiques was Susan D. Franck's, "The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law through Inconsistent Decisions," 73 *Fordham Law Review* (2005), 107. For an analysis of the trajectory of the debate, see Malcolm Langford and Daniel Behn, "Managing Backlash: The Evolving Investment Treaty Arbitrator?," 29(2) *European Journal of International Law* (2018), 551–580.

2 See e.g. Gus Van Harten, "Arbitrator Behaviour in Asymmetrical Adjudication: An Empirical Study of Investment Treaty Arbitration", 50 *Osgoode Hall Law Journal* (2012), 211, 251; Zachary Douglas, "The MFN Clause in Investment Arbitration: Treaty Interpretation off the Rails", 2 *Journal of International Dispute Settlement* (2011), 97; George Kahale, "Is Investor-State Arbitration Broken?," 7 *TDM* (2012), www.transnational-dispute-management.com, accessed 31 October 2019.

system has its defenders,³ ISDS continues to attract controversy.⁴ Nine out of ten of the over 2,600 international investment agreements⁵ permit arbitral claims by foreign investors against states, and the number of cases has surged to well over one thousand with a significant number challenging directly the regulatory powers of states. Thus, while ISDS has emerged as a clear dispute resolution tool of choice, it has also become a lightning rod for critique.⁶

The initial response of states to this ISDS phenomenon was a patchwork of scattered unilateral, bilateral and plurilateral reforms.⁷ Initiatives have ranged from denouncing the ICSID Convention and terminating investment treaties to the development of new model treaties, the replacement of arbitration with a court system⁸ and substantive reform of existing treaties;⁹ while ICSID and other arbitral centers have revised their procedural rules.¹⁰ However, in

3 James Fry, "International Human Rights Law in Investment Arbitration: Evidence of International Law's Unity", 18 *Duke Journal of International and Comparative Law* (2007), 77. The regime also has clear support from various states.

4 "The arbitration game: governments are souring on treaties to protect foreign investors", *The Economist*, 11 October 2014.

5 Mostly bilateral agreements, but some plurilateral ones. About 90% of the investment treaties available and coded on UNCTAD up to 2017 include ISDS (see UNCTAD Investment Policy Hub (www.investmentpolicy.unctad.org/); see also Joachim Pohl, Kekeletso Mashigo and Alexis Nohen, "Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey", OECD Working Papers on International Investment, 2012/02 (2012) (96% of the 1,660 bilateral investment treaties surveyed contain ISDS language)).

6 See the PITAD database: pitad.org. Daniel Behn, Malcolm Langford, Ole Kristian Fauchald, Runar Lie, Maxim Usynin, Taylor St. John, Laura Létourneau-Tremblay, Tarald Berge and Tori Loven Kirkebø, *PITAD Investment Law and Arbitration Database: Version 1.0*, Pluricourts Centre of Excellence, University of Oslo (31 January 2019).

7 Taylor St. John, *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences* (OUP, 2018), Ch. 8; Malcolm Langford, Daniel Behn and Ole Kristian Fauchald, "Backlash and State Strategies in International Investment Law", in Tanja Aalberts and Thomas Gammeltoft-Hansen (eds.), *The Changing Practices of International Law* (CUP, 2018), 70–102.

8 E.g., Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

9 E.g., NAFTA 2.0 (United States-Mexico-Canada Agreement (USMCA)). The Energy Charter Treaty (ECT) has recently initiated a new process to modify the ECT according to the mandate of its state contracting parties.

10 ICSID has initiated a number of processes over the past decade to reform rules applying in ICSID disputes and a rules amendment process is occurring at the moment of writing. Other arbitral institutions (principally the ICC and SCC) have modified or added rules to allow for better administration of ISDS disputes.

late 2017, reform processes moved into a higher gear.¹¹ The United Nations Commission on International Trade Law's (UNCITRAL) Working Group III was tasked by states to reform ISDS, and was given a broad mandate to address the legitimacy, real and perceived, of the current regime.¹²

How states, in a highly-decentralized regime, could agree on a multilateral reform process is a bit of a puzzle. Arguably, it was the result of a perfect storm. The reasons are partly substantive: developed and developing countries now shared a common set of concerns about the conduct of ISDS – a result of an ever-widening range of states facing claims, and particularly those claims challenging key policies in Western states.¹³ However, it is also a matter of timing, technocracy, politics and message framing. UNCITRAL Working Group III (WGIII) was open for a new mandate; the UNCITRAL Secretariat laid the groundwork through a series of scoping studies; the European Union (EU) reasoned that its campaign for an investment court might be better housed in a multilateral setting; and UNCITRAL could boast that it had just set up a model for multilateral reform of ISDS through the new Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration.

Whatever the reason, the mandate is distinct but also limited. First, unlike most UNCITRAL reform processes, the process is to be “government-led” with experts to play observer and advisory roles. Secondly, reform is to be problem-driven rather than determined by solutions arrived at in advance. This is clear from the wording of the staggered mandate. The Working Group has proceeded in three phases: “identify and consider concerns regarding ISDS”; consider “whether reform was desirable”; and “develop any relevant solutions to be recommended to the Commission”. Thirdly, noting that the criticism about investor-state arbitration is often polarized, UNCITRAL highlighted that its work “should not be undertaken based on mere perceptions, but on facts”.¹⁴

11 The process emerged formally in 2016 when the UNCITRAL Commission requested the UNCITRAL Secretariat to review how its background work on possible ISDS reform might best be carried forward: UN Doc. No. A/CN.9/890. See discussion of history in Malcolm Langford, Daniel Behn, Gabrielle Kaufman-Kohler and Michele Potesta, “UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions – An Introduction”, 21 *Journal of World Investment and Trade* (2020).

12 United Nations Commission on International Trade Law (UNCITRAL), “Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session (Vienna, 27 November–1 December 2017)”, UN Doc. No. A/CN.9/930/Rev.1 (19 December 2017).

13 For example, five new cases were filed against Spain at ICSID in 2019, see ICSID Secretariat, *The ICSID Caseload Statistics*, vol. 2 (2019), 24.

14 UNCITRAL, “Report of the United Nations Commission on International Trade Law”, Fiftieth session (3–21 July 2017), UN Doc. No. A/72/17 (2017), para. 245.

This has opened the space for stakeholders from academia to civil society and practitioners to play a key role in providing evidence rather than advocating particular positions, although with some notable exceptions.

Yet, while the problem-centric model makes the reform process considerably open-ended, it is crucially limited in one aspect. The mandate is limited to *procedural* reforms (“regarding ISDS”) rather than the underlying substantive rules found in investment treaties. This carve-out has attracted critique from some states and civil society organizations. They allege that the core concerns with the system cannot be addressed without accompanying substantive reform of the underlying rules as well.¹⁵ However, addressing the substance of treaties proved a bridge too far for the Working Group. No sufficient consensus exists amongst states on whether there are common problems with the underlying investment treaties. Moreover, only a fragile consensus existed initially for wide-ranging procedural reforms – with considerable opposition to the process from states such as the United States, Russia, Japan and Israel – and there were pragmatic concerns about the feasibility of addressing the cornucopia of diverse investment treaties within the confines of a single working group. Interestingly though, as the process has advanced, the boundary between substantive and procedural reform is not always clearly visible¹⁶ and some proposed procedural reforms will perforce have substantive implications.¹⁷

The core of the reform process is thus how to address the peculiarities that have emerged from the combination of substantive investor rights under international law with a particular form of international dispute settlement – arbitration, where the state of the claimant-investor does not appear in the proceeding and the host state’s actions are largely limited to defending claims as a respondent. This is the status quo in ISDS, and while slightly different in form depending on the arbitral institution hosting the arbitration, the arbitrators selected, and the investment treaty that is to be applied, it possesses a fundamental structure. ISDS arbitrations, with the exception of a tiny handful of cases, all flow one-way and are stacked on each side with a single category of litigant: a foreign investor on the claimant side and a state hosting the investment on the respondent side. ISDS arbitrations are also *ad hoc* (in the sense that there is no centralized institutional authority) and one-off (they are constituted to resolve a particular dispute). The tribunal is composed of

15 Anthea Roberts and Taylor St. John, “UNCITRAL and ISDS Reforms: Agenda-Widening and Paradigm-Shifting”, *EJIL: Talk!*, 20 September 2019.

16 Malcolm Langford and Anthea Roberts, “UNCITRAL and ISDS Reform: Hastening Slowly”, *EJIL: Talk!*, 29 April 2019.

17 E.g., Lise Johnson, Lisa Sachs, Brooke Güven and Jesse Coleman, *Clearing the Path: Withdrawal of Consent and Termination as Next Steps for Reforming International Investment Law*, CCSI Policy Paper, April 2018.

arbitrators, not judges; and these arbitrators are appointed by the parties to the dispute, are only vested with decision-making authority over a single dispute, and are applying default rules on transparency that, while far from completely opaque, are not comparable to a fully public system of adjudication, which must also meet demands for transparency, representativeness and diversity.¹⁸ While investor-state arbitration was initially applauded in its early days – as a solution to many problems experienced in resolving foreign investment disputes with sovereigns (especially those related to access to domestic courts), it has struggled to maintain its legitimacy and partly its effectiveness as it has expanded and its public law dimensions have become more visible.

During its November 2018 meeting in Vienna, WGIII identified six issues to be addressed by the reform process in its first stage of work: (1) excessive legal costs; (2) duration of proceedings; (3) legal consistency; (4) decisional correctness; (5) arbitral diversity; and (6) arbitral independence and impartiality.¹⁹ A challenge for WGIII in those early meetings was in assessing whether the identified concerns about ISDS were well-founded and serious enough to justify systemic reforms. Nonetheless, in April 2019, WGIII met in New York and agreed that reform was necessary.²⁰ Moreover, several other issues have emerged in the process such as third-party funding, prevention of investment disputes and calculation of damages.²¹

Reform has thus become the operative word in relation to ISDS and its future; and the process has begun to gather some speed.²² However, an open question persists on what reform of the status quo will look like, and, even more importantly, whether the replacement will work. In agreeing to pursue reform of ISDS, participating states agreed to focus on discussing, elaborating and developing multiple potential reform solutions simultaneously, as opposed to sequentially.²³ While all of the reform possibilities are not all on the table yet, many of them are, and early in the October 2019 session in Vienna they coalesced into a programme of future work.

18 Although an attempt has been made with transparency: United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the “Mauritius Transparency Convention”).

19 UNCITRAL, “Possible reform of investor-State dispute settlement (ISDS)”, UN Doc. No. A/CN.9/WG.III/ WP.149 (5 September 2018).

20 UNCITRAL, “Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-seventh session (New York, 1–5 April 2019)”, UN Doc. No. A/CN.9/970 (9 April 2019).

21 Malcolm Langford, “UNCITRAL and Investment Arbitration Reform: A Little More Action”, *Kluwer Arbitration Blog*, 21 October 2019.

22 Julian Arato, “ISDS Reform: Working Group III Gets Down to Brass Tacks”, *International Litigation Blog*, 22 October 2019.

23 UNCITRAL, *supra* note 19, paras. 81–82.

The proposals range from the transformative, which require major structural overhauls, to small tweaks to the status quo. *Structural* proposals so far include an appellate mechanism, a multilateral investment court, a court plus an appellate mechanism and an advisory centre for developing states;²⁴ while *non-structural* options include “other potential solutions”,²⁵ such as a code of conduct for arbitrators, restricting reflective loss claims for shareholders, regulating third-party funding and expanding the possibility for counter-claims, together with a range of hybrid proposals to increase state control of treaty interpretation, new mechanisms for selection of arbitrators, and alternative dispute resolution.²⁶ However, while the number of general models are often condensed into a few base features (i.e., a court, a court and appellate mechanism, ISDS plus appellate mechanism, state-state arbitration, a better ISDS, and no ISDS), the details and options that must be considered in order to construct each of these different models are both numerous and complex. Thus, states and scholars have also begun to identify how a single reform package might encompass all of the proposed reforms, a so-called Multilateral Convention on Procedural Reform, that would permit states to opt-in for their preferred options and accept bilateral obligations concerning investment disputes when their choices are matched by other states.²⁷

Another challenge facing WGIII is the geopolitical dynamics and the divergent ideology within the UNCITRAL process. States have been neatly categorized as one of three types – incrementalists, systemic reformers, or paradigm-shifters,²⁸ and their relative support and engagement determines the speed and substance of the reform process. For the *incrementalists*, the options for reform are not so different from the manner in which modifications to the system have already occurred: from within, through de-centralised and largely informal processes – led by those in the arbitration community – that adapt and modify existing practices in light of the problems identified. *Systemic* reformers maintain that they can accept a world in which some form of ISDS exists, but only if there is a systemic overhaul to many of the features

24 With a discussion as to whether this should be open to small- and medium-sized investors.

25 UNCITRAL, *supra* note 19.

26 UNCITRAL, “Possible reform of investor-State dispute settlement (ISDS)”, UN Doc. No. A/CN.9/WG.III/WP.166 (30 July 2019).

27 See Anthea Roberts and Taylor St. John, “UNCITRAL and ISDS Reform: Visualising a Flexible Framework”, *EJIL: Talk!*, 24 October 2019; Stephan W. Schill and Geraldo Vidigal, “Designing Investment Dispute Settlement à la Carte: Insights from Comparative Institutional Design Analysis”, 18 *Law and Practice of International Courts and Tribunals* (2019).

28 Anthea Roberts, “Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration”, 112 *American Journal of International Law* (2018).

that are central to how ISDS currently operates. The EU's proposal for a multilateral court of first instance and appellate review is a key example, and is virtually identical to the investment court system that the EU is using as a non-negotiable component in its recent regional trade and investment treaties, including in its recent trade agreement with Canada. However, systemic reformers such as China are currently restricting themselves to proposing adding an appellate mechanism on top of a standard or somewhat reformed version of ISDS, stopping short of seeking to abolish arbitration under investment treaties.²⁹ The principal aims of *paradigm-shifters* would not stop short at abolishing arbitration, elimination of ISDS may be the goal. A minority of states, with South Africa and Brazil being the most visible, would accept models that may only allow access to some form of arbitration after the exhaustion of local remedies, or a form of arbitration that removes any direct right of action by investors to initiate claims, such as a system of state espousal under a state-state dispute settlement mechanism.

Given the large spectrum of views on what problems require reform and what reforms best address the most problems, states have identified the need for objective, ideologically neutral, and data-driven research and working methods that can provide input into the process. One result is that the UNCITRAL Secretariat is tasked with synthesizing existing research, discussing options, and most likely providing core treaty text. Another is that all observers have been invited to contribute research on all topics. In addition, the ISDS Academic Forum, of which the editors of this symposium are members, received a specific request in April 2019 to provide research on the topic of selection and appointment of adjudicators.

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This Special Issue of *The Law and Practice of International Courts and Tribunals* grew out of these research demands. It contains selected papers from the first major conference of the ISDS Academic Forum, which was held at the University of Oslo on 31 January–1 February 2019.³⁰

The ISDS Academic Forum was formed in late 2017 to “exchange views, explore issues and options, test ideas and solutions, and make a constructive contribution to the ongoing discussions on possible reform of ISDS, in particular

29 UNCITRAL, “Possible reform of investor-State dispute settlement (ISDS) – Submission from the Government of China”, UN Doc. No. A/CN.9/WG.III/WP.177 (19 July 2019).

30 A second collection of papers from the conference will be published in the *Journal of World Investment and Trade*.

the discussions in the context of UNCITRAL's Working Group III (WGIII).³¹ The membership of almost one hundred scholars is quite diverse and all members are required to publicly disclose all engagements in arbitral practice. In addition to generating research, the group has also prepared language glossaries for states on ISDS, hosted side events at UNCITRAL, provided ongoing analysis of the process, and facilitated members' participation as observers in the various sessions.

The contributions to the present Special Issue offer in-depth analysis on some of the concerns identified and reform options proposed by WGIII in its work on reforming ISDS. Each of the articles is presented in the spirit of providing research-driven guidance that can inform the discussions and debates on reforming ISDS. By examining some of the concerns identified in ISDS – including their underlying causes – the contributions suggest the most appropriate reform alternative or direction.

The Special Issue begins with three contributions that assess specific issues related to systemic reforms. The first article, by *Stephan W. Schill* and *Geraldo Vidigal*, investigates the possibility of a comprehensive systemic change by assessing the feasibility of designing investment dispute settlement “à la carte” with a Multilateral Investment Court (MIC) coexisting with other modes of dispute resolution.³² Drawing on comparative institutional design analysis – analyzing the experiences from international dispute settlement more generally – the authors argue that a model of “dispute settlement à la carte” would preserve the ability of states to choose their preferred means of adjudication, while enhancing legal certainty and coherence in investment dispute settlement. Such a Multilateral Institution for Dispute Settlement on Investment (MIDSI) is envisioned as a permanent body whose members are elected by a multilateral assembly of states parties to the MIDSI Agreement – participation in the institution itself would be independent from submission to the jurisdiction of any dispute settlement options it offers. This multilateral institutional framework would allow participants to make use of their preferred mode of dispute settlement, but still provide the structure for multilateral cooperation in respect of the settlement of investment disputes and potentially also in shaping the future of the international investment regime on substance.

31 Website of the ISDS Academic Forum: <http://bit.ly/isds-academic-forum>.

32 Stephan W. Schill and Geraldo Vidigal, “Designing Investment Dispute Settlement à la Carte: Insights from Comparative Institutional Design Analysis”, 18 *Law and Practice of International Courts and Tribunals* (2019), 314.

The second piece, by *Wolfgang Alschner*, addresses the issue of the “correctness” of arbitral decisions, a central concern in the current efforts to reform investor-state arbitration.³³ The article empirically evaluates the effectiveness of the three existing ISDS correction mechanisms that can guide future tribunals in not repeating past mistakes. The mechanisms analyzed include review by annulment committees, domestic courts, or treaty parties through authoritative interpretations. Alschner shows empirically that annulled or set-aside decisions continue to be cited by later tribunals and that authoritative interpretations are disregarded. This conclusion serves as an important warning that past arbitral “mistakes” (which might also be perceived as “incorrect” decisions to use the unfortunate nomenclature of UNCITRAL) are repeated and continue to shape the development of investment law. As policy remedies, Alschner thus proposes a more explicit shepardization of awards, tighter rules on what counts as precedent, and broader institutional reforms as possible solutions to improve arbitral decision-making.

Addressing concerns related to arbitral independence and impartiality,³⁴ as well as the striking absence of geographic and gender diversity,³⁵ *James Devaney* proposes, in the third piece of the symposium, the creation of an independent panel for the scrutiny of investment arbitrators (IPSIA).³⁶ Such a panel would address some of the criticisms levelled at ISDS more generally, without removing completely the role that parties currently play, by suggesting eligible candidates for selection as arbitrator. IPSIA could be tasked to scrutinize suggested candidates and facilitate the appointment of the highest-qualified individuals to investment arbitral tribunals. Aligning more towards a model of improvement of ISDS, the article further discusses the procedures to

33 Wolfgang Alschner, “Correctness of Investment Awards: Why Wrong Decisions Don’t Die”, 18 *Law and Practice of International Courts and Tribunals* (2019), 345. UNCITRAL, “Possible reform of investor-State dispute settlement (ISDS): Consistency and related matters”, UN Doc. No. A/CN.9/WG.III/WP.150 (28 August 2018); see also Anna De Luca, Mark Feldman, Martins Paporinskis and Catharine Titi, “Responding to Incorrect ISDS Decision-Making: Policy Options”, 21(1) *Journal of World Investment and Trade* (2020).

34 Chiara Giorgetti, Steven Ratner, Jeffrey Dunoff, Shotaro Hamamoto, Luke Nottage, Stephan Schill and Michael Waibel, “Independence and Impartiality in Investment Dispute Settlement: Assessing Challenges and Reform Options”, 21(1) *Journal of World Investment and Trade* (2020).

35 Andrea K. Bjorklund, Daniel Behn, Susan Franck, Chiara Giorgetti, Won Kidane, Arnaud de Nanteuil and Emilia Onyema, “The Diversity Deficit in International Investment Arbitration”, 21(1) *Journal of World Investment and Trade* (2020).

36 James Devaney, “An Independent Panel for the Scrutiny of Investment Arbitrators: An Idea Whose Time has Come?”, 18 *Law and Practice of International Courts and Tribunals* (2019), 369.

appoint members of the panel, propose and scrutinize candidates, as well as the advisory nature of the panel.

Next, *Szilárd Gáspár-Szilágyi* investigates the role of domestic courts in investor-state disputes in the context of proposed possible paradigmatic changes to ISDS.³⁷ More specifically, he examines whether investors rely on the domestic courts of the host state prior to initiating a claim; and if they do, what are some of the reasons explaining such reliance, including whether or not such reliance is a worthwhile pursuit for foreign investors at all. He argues that his findings should help UNCITRAL WGIII conceptualize the meaning of “investor-state dispute” by realizing that domestic proceedings are also part of the larger concept of ISDS. ISDS occurs on multiple levels, in various forms, before multiple fora. The relationship between domestic and international methods of ISDS should therefore inform the reform discussion. The article concludes by analyzing a “complementary model” of ISDS reform where investors would be required to resort to domestic courts first before any international proceeding. Such an approach might resonate for states like South Africa³⁸ and Indonesia.³⁹

The Special Issue concludes with an historical examination of the origins of the backlash that has led to the current initiative to reform ISDS. *Georgios Dimitropoulos* explains that that backlash arose from the rising tensions originating from certain historical path-dependencies in the field.⁴⁰ By tracing the historical roots, he identifies three main tensions: contractualism vs. unilateralism; economic rationality vs. political rationality; flat world view vs. diverse world view. Dimitropoulos suggests that two main lessons may be learned by identifying and understanding these historical tensions. First, the reform discussion needs to be informed by the study of systems of domestic investment law and policy; and, second, the reform discussion should move beyond its procedural confines, and include reform of substantive law as well.

37 Szilárd Gáspár-Szilágyi, “Let us Not Forget about the Role of Domestic Courts in Settling Investor-State Disputes”, 18 *Law and Practice of International Courts and Tribunals* (2019), 389.

38 UNCITRAL, “Possible reform of Investor-State dispute settlement (ISDS) – Submission from the Government of South Africa”, UN Doc. No. A/CN.9/WG.III/WP.176 (17 July 2019), paras. 43–46.

39 UNCITRAL, “Possible reform of Investor-State dispute settlement (ISDS) – Comments from the Government of Indonesia”, UN Doc. No. A/CN.9/WG.III/WP.156 (9 November 2018), paras. 11–12.

40 Georgios Dimitropoulos, “The Conditions for Reform: A Typology of ‘Backlash’ and Lessons for Reform in International Investment Law and Arbitration”, 18 *Law and Practice of International Courts and Tribunals* (2019), 416.

The existing scholarship on ISDS has provided the basis for identifying, investigating and assessing many of the concerns with the current system. Moreover, scholars have engaged actively in the process, seeking to provide research on specific issues, insight into the causal mechanisms that produce arbitral awards that allegedly lack consistency, coherence and/or correctness, and the causes of a continued lack of diversity in ISDS, and suggesting and evaluating possible reform options, such as the selection and appointment of adjudicators, third-party funding and a code of conduct.⁴¹

Yet, UNCITRAL-centric research has its challenges: policy options can be assessed and explained, but the key and intertwined choices rest with the states; empirical data has limitations and is not available on all aspects of ISDS (e.g., third-party funding); and the legal and quantitative modelling of future scenarios is complicated by the number of proposals and the need to synthesize the lessons of multiple international courts and arbitral tribunals. Equally demanding for scholars engaged in the process is maintaining their own neutrality: distinguishing between their normative, doctrinal and empirical perspectives and managing their different hats. Some scholars are engaged as experts on state, civil society, practitioner and investor delegations to UNCITRAL WGIII and some also act as arbitrators, counsel and state advisors in ISDS. Yet, the possible beauty of the UNCITRAL WGIII is that it has provided, on one hand, a clear receptacle for integrating scholarly research into public policy and, on the other hand, a forum for scholarly accountability given the open, transparent and multi-stakeholder nature of the process.

UNCITRAL WGIII's attempt to wrest reform out of a complex system with diverse political views and interests is notable. It is the editors' hope that the contributions selected for this Special Issue assist states' delegates, policy advisers and all stakeholders in the process of ISDS reform by providing and explaining new ideas and shedding the light on – and possibly challenging – old ones.

41 See for example: <https://www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/>.