Part I

Investor-State Arbitration
Overview of Investor-State Arbitration Articles

Gabrielle Kaufmann-Kohler
University of Geneva
Lévy-Kaufmann-Kohler
Geneva, Switzerland

The awakening of international investment arbitration from an almost dormant area to one of the liveliest fields of international dispute resolution today has not gone unnoticed, and this colloquium is testament to this trend.

The proceedings of this session deal with topics on investment arbitration, which are at the forefront of new developments and thus of major present interest to practitioners and academics. They include a discussion of the latest trends in the new generation of bilateral investment treaties (BITs), the ever-present subject of interim measures, the intervention of the non-disputing State party in arbitration proceedings, and the evolution of case law in the area of expropriation. Some of the world’s best-known specialists in the field were invited to review these topics.

John Beechey, president elect of the ICC and head of the Arbitration Department of Clifford Chance, along with his co-author, Antony Crockett of Clifford Chance, elaborate on the new generation of BITs—whether and how they differ from the “old” ones, whether there are any new trends and, if so, in what direction they are evolving.

Two aspects are particularly striking about the new BITs. The first one is the influence that arbitral awards have exercised on the drafting of the new treaties. It is particularly noteworthy in light of the present debate about the influence of earlier arbitral awards on later awards or, in other words, about the precedential value of arbitral decisions. If the latter influence—of awards on awards—is still questioned, the former—one of awards on treaties—appears well established.

The second striking aspect of the new treaties is the increasing emphasis placed on public interest, which is visible in substantive and procedural matters as well. From a procedural viewpoint, the treaties now tend to make provision for the transparency of the arbitration proceedings as a means of protecting public interest, which they did not do before. As a matter of substance, several treaties now expressly stipulate that measures akin to expropriation, such as regulatory takings, do not qualify as expropriation nor are they entitled to reparation if taken in the public interest. By