

CALL FOR PAPERS

Journal of World Investment & Trade

Special Issue on

**The Latin American Challenge to the
Current System of Investor-State Dispute Settlement**

Edited by Dr Katia Fach and Dr Catharine Titi

(*JWI&T* Editor-in-Chief: Dr Stephan Schill)

Since the time that the Calvo doctrine held sway, Latin America's ambivalent relationship to investor-state dispute settlement has not ceased to elicit discussions and debates and generate a string of scholarly writings. Recently the region's multiple responses to investment arbitrations, termination of a number of investment treaties and, in the case of three countries, denunciation of the Convention of the International Centre for Settlement of Investment Disputes have continued to fuel the debate. And the latter is on the point of taking yet a new turn. In November 2014, the Working Group on Responsible Dispute Investment Settlement of the Union of South American Nations (UNASUR) settled on a constitutive treaty that, if successful, will create Latin America's own dispute resolution centre for investment disputes. The provisionally-called *UNASUR Centro de solución de controversias en materia de inversiones* (UNASUR Investment Arbitration Centre) brings together the twelve UNASUR member states (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela) and the Working Group aspires to have it operational in the next couple of years. More recently, in March and April 2015, Brazil, the region's biggest economy, concluded its two first cooperation and facilitation investment agreements (CFIA), investment treaties of a *sui generis* kind, that focus on investment facilitation and dispute prevention and bar access to investor-state dispute settlement.

These and other innovative features of the Latin American take on investment arbitration raise numerous questions and challenges for the region but also for the entire

system of international investment protections. The Special Issue of the *Journal of World Investment & Trade* will aim to deal with some of the themes relating to the creation of the Centre and these other innovative aspects of the current and future Latin American approach to the reform of investment dispute settlement. The following are just some topics that the Special Issue will aim to address:

A new investment arbitration system in the offing. The UNASUR Investment Arbitration Centre aims to establish an arbitration procedure with nuclear differences from investment arbitration system as we know it – e.g. reinforcement of transparency of proceedings; increased respect for States’ sovereign rights; strict controls regarding arbitrator conduct and neutrality; establishment of an appeals mechanism with a system of precedent. Although traditional institutions of investment arbitration will not be taken as a reference, newer trends that are being sketched in new generation investment agreements outside Latin America may be taken into account. Simultaneously, the Special Issue will explore how to reconcile the functioning of the UNASUR Centre with the investment framework previously set in place by UNASUR members – e.g., BITs, treaties, national laws or contracts giving access to investment arbitration. Attention will also be given to the UNASUR Centre’s relationship with other pre-existing regional institutions that have the legal power to resolve investment disputes in Latin America. Additionally, the relationship between the UNASUR Centre and national courts is a crucial facet for the strengthening of the new Centre worldwide.

Scepticism vis-à-vis the UNASUR Centre. The Special Issue will also examine the scepticism that the UNASUR Centre has generated among various foreign legal commentators. It is feared that its operation will scorn international standards in favour of regional ones, which could lead to increased instability in the region and to investment and welfare decrease. An interesting sub-facet of this issue is the negative reaction that the UNASUR Centre has created amongst Latin American scholars and public authorities in ‘ICSID-friendly’ countries in the region. From a more general approach, the Special Issue will also reflect on the perspectives of success of this innovative project and also on the legal and socio-political factors that may influence the Centre’s success or failure.

UNASUR Centre and other regional initiatives. The Special Issue is interested in parallels that can be drawn between the prospective UNASUR Centre and other regional projects, e.g. in Asia or Africa, but also in Latin America. Many initiatives are undertaken, a few succeed – e.g. the Andean Community’s common regime on intellectual property – but many fail. The Special Issue will explore the lessons to be drawn from the success but also from the failure of regional projects and where the UNASUR Centre stands in this context. Another aspect of this question is how a regional arbitration centre may succeed in reforming investment arbitration while placed outside the traditional context (e.g. ICSID).

Novel Latin American approaches to investment dispute settlement. Besides the UNASUR Centre's innovative suggestions for investment dispute resolution, the Special Issue is also keen on exploring other novel or ground-breaking aspects of Latin American investment arbitration. Improved institutional governance, thematic agendas and dispute prevention, as evidenced in the Brazilian model, are a first example. Peru's State Coordination and Response System for International Investment Disputes (*Sistema de de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión*), an internal dispute management system and a special mechanism geared at avoiding investment treaty liability, is another. Additionally, participation of Latin American states in the Trans-Pacific Partnership Agreement constitutes a further element that can shape investment arbitration tendencies in the area. The Special Issue invites submissions especially focused on the systems and mechanisms, more than on individual countries.

Investment arbitration and the rule of law in Latin America. The UNASUR Working Group on Responsible Dispute Investment Settlement has recently stated that peace in this complex region requires not only the absence of armed conflicts, but also the ability to resolve economic disputes through legal and democratic means, maintaining 'institutionalism'. Whereas investment tribunals will often lack jurisdiction to pronounce on issues relating to the general economic effects of national legislation and regulation, arbitral jurisprudence has conceptualised the fair and equitable treatment (FET) as a means of ensuring rule-of-law-like standards for foreign investors. Consolidation of the rule of law is also closely associated with the protection of human rights. The Special Issue will discuss the different legal tools that will be made available in investment dispute resolution in order to protect human rights in the region – e.g. *amicus curiae*, code of conduct for arbitrators, additional ADR mechanisms, ombudsmen. The analysis in this context will take into account the Inter-American Human Rights System and propose legal mechanisms of effective coordination.

Submission of proposals

The Journal of World Investment & Trade (JWIT) is a double-blind peer-reviewed journal that focuses on the legal aspects of foreign investment relations in a broad sense. This encompasses, among others, the law of bilateral, multilateral, regional and sectoral investment treaties, investor-state dispute settlement, and domestic law relating to foreign investment. The Journal is open to doctrinal analysis as well as theoretical, conceptual, and interdisciplinary approaches, including law and economics analysis, empirical analysis, historical analysis, political science analysis, or normative analysis.

The Special Issue 'The Latin American Challenge to the Current System of Investor-State Dispute Settlement' will use current developments and the proposed design of UNASUR's investment dispute settlement centre, as an example of the Latin American 'challenge' to investment arbitration and place it within the wider context of reform of investor-state dispute settlement as evidenced elsewhere in the

world. It will prioritise critical and theoretical (rather than descriptive) approaches that will guarantee a scientific interest in the volume long after its publication date.

The guest editors of this *Journal of World Investment & Trade* Special Issue are **Katia Fach**¹ (*University of Zaragoza, Spain*) and **Catharine Titi**² (*University Panthéon-Assas, France*).

Scholars, IIA negotiators and experienced practitioners are invited to submit cutting-edge proposals that go beyond the state of the law to this call for papers for the *Journal of World Investment & Trade*.

Extended abstracts – minimum of 1000 words – or unpublished full papers should be submitted to both editors (katiafachgomez@gmail.com and cathy_titi@hotmail.com), along with the author's name, affiliation, a CV that includes a list of relevant publications, and the author's contact details.

All submissions and finalised papers must be written in English. Submission for the Special Issue is incompatible with parallel submission to a different publication.

Timeline:

The deadline for the submission of proposals is **30 June 2015**.

Successful applicants will be informed by **31 July 2015**.

The deadline for the submission of the finalised papers for accepted proposals is **30 November 2015**.

Intended publication is in the first half of **2016**.

Finalised papers will be between 7,000-10,000 words (including footnotes) and must comply with the *Journal of World Investment & Trade* style guide which can be accessed here http://www.brill.com/files/brill.nl/specific/authors_instructions/JWIT.pdf.

¹ <http://orcid.org/0000-0001-8060-7133>.

² <http://cred.u-paris2.fr/node/160>.