



Columbia Center  
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

13th Annual Columbia International Investment Conference

# Rethinking International Investment Governance: Principles for the 21st Century

September 27 - 28, 2018  
Columbia University

## PROGRAM

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The world has entered a critical moment for international economic policy. International investment is widely recognized as essential to global sustainable development, facilitating the transfer of technology, skills, capital, and jobs across borders, providing access to environmentally sound practices and offering livelihoods supported by the global economy. But mobility of capital can lead, among other things, to economic volatility, job insecurity, races to the bottom in terms of environmental, social, and fiscal policies, and governance gaps making it difficult for individuals or entities harmed by multinational enterprises to effectively secure remedies. The stakes are high, and the outcomes uncertain.

Public discontent with international investment treaties has produced major shifts in policy in some contexts, and various discussions of reform in international and regional fora. The time is ripe to ensure that international cooperation on investment is designed to meet 21st century objectives and imperatives, which are universally articulated in the Sustainable Development Goals, and to ensure that international legal and policy tools are effective at meeting and not undermining those aims. Moreover, as recent backlash against aspects of globalization has shown, it is crucial that international law and policy be acknowledged as legitimate and inclusive in the eyes of the governed.

This conference seeks to elaborate principles of a progressive investment agenda. It will reflect on the current investment regime – of the network of over 3,300 investment agreements – and the extent to which the regime aligns with or undermines such principles. We will then re-imagine investment governance, and consider the role that international cooperation could play to advance sustainable development-oriented investment.

## September 27, 2018, Thursday

9:00 – 9:30    **Registration and Breakfast**

9:30 – 9:45    *Welcome Remarks*

9:45 – 10:00    *Introductory Keynote: Minister Sigrid Kaag*, Minister for Foreign Trade and Development Cooperation, The Netherlands

10:00 – 12:00    *Session I: Investment and the SDGs: The Role of Investment Governance*

In 2015, the United Nations adopted 17 Sustainable Development Goals (SDGs), dedicated to tackling some of the world's most pressing problems. These Global Goals promote a global vision of development that is equitable, environmentally sound, fosters inclusive and peaceful societies, and seeks to realize human rights. However, while an estimated USD 3.9 trillion in investment is needed each year to achieve the globally agreed SDGs, current expenditures barely reach a third of that value, leaving a yawning USD 2.5 trillion annual investment gap. As the SDG indicators reflect, international investment, including foreign direct investment, is essential for helping to close that gap. In order to achieve the SDGs, governments need to strategically and conscientiously engage and leverage private sector resources and strengths, and govern foreign investment to ensure that private sector activities do not cause or exacerbate environmental, socio-economic, and human rights harms.

To provide a background for subsequent discussions, this first panel explores the underlying questions of why we need international investment for sustainable development, what the challenges are in governing investment, and what an effective investment agenda geared toward achievement of the SDGs looks like. In considering these questions, the panel will outline a series of substantive objectives and priorities that should guide and inform international investment governance. The panel will also begin to discuss the conference's core question of whether and how international cooperation and investment governance can help to meet sustainable development objectives.

Moderator: **Lise Johnson**, Head, Investment Law and Policy, Columbia Center on Sustainable Investment

Confirmed Panelists:

- **Joan Carling**, Co-Convenor, Indigenous Peoples' Major Group (IPMG) for Sustainable Development
- **Carlos Correa**, Executive Director, South Centre
- **Kerry Kennedy**, President, Robert F. Kennedy Human Rights

- **Iris Krebber**, Head of Agriculture, UK Department for International Development (DFID)
- **Karl Sauvart**, Senior Fellow, Columbia Center on Sustainable Investment

12:00 – 13:00 *Lunch*

13:00 – 15:00 *Session II: Evaluating the Current System I: Substantive Objectives and Priorities*

The sustainable development challenges facing the world today are daunting. Among pressing challenges are concerns around growing inequality and marginalization, the challenges of climate change, and powerful corporate interests and influence. International investment can ameliorate or exacerbate these issues, depending in large part on how it is governed. The existing body of over 3,300 international investment treaties currently constitutes a considerable piece of the legal framework governing international investment. Notably, the SDGs counsel that such instruments should support the sustainable development agenda by leaving states policy space to take relevant actions,<sup>1</sup> supporting investment flows into locations and activities that advance the SDGs, or harnessing international cooperation to address challenges that may be exacerbated by:

- The transnational nature of economic actors supported by investment treaties;
- Economic activity that increases or shifts as a result of investment treaties, and that may have a negative impact on particular populations, locations in the treaty parties, or the global commons; or
- Competition for capital that may spur “races to the bottom” in terms of fiscal, environmental, labor, or other policies.

A key rationale behind the existing agreements is that they seek to promote the flow of foreign capital by enumerating benefits for private investors and corresponding obligations for host governments based on the premise that such favorable provisions will encourage foreign investment, and that foreign investment will promote development. But, as has become increasingly evident over the past decades, these hoped-for benefits are not automatic or certain.

The objective of this panel, therefore, is to explore how those treaties affect – positively or negatively – substantive sustainable development objectives, and begin considering how we can strengthen the contributions investment governance makes to sustainable development.

Moderator: **Lisa Sachs**, Head, Investment Law and Policy, CCSI

Confirmed Panelists:

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<sup>1</sup> See e.g., Transforming Our World: The 2030 Agenda for Sustainable Development, para. 63.

- **Mavluda Sattorova**, Senior Lecturer, University of Liverpool Law School; Director of the Liverpool Economic Governance Unit (LEGU)
- **Susan Sell**, Professor, School of Regulation and Global Governance (RegNet), Australian National University
- **Sanya Reid Smith**, Legal Advisor and Senior Researcher with Third World Network
- **Kyla Tienharra**, Canada Research Chair in Economy and Environment, Queen's University
- **Lou Wells**, Herbert F. Johnson Professor Emeritus, Harvard Business School

15:00 – 15:15 *Coffee Break*

15:15 – 17:30 ***Session III: Evaluating the Current System II: Procedural Legitimacy***

The apparent backlash against globalization may not be all about globalization. Rather, and as some commentators have noted, it may arise from concerns about the design, structure, and legitimacy of international governance, and worries about who writes, interprets, and benefits from the international rules that are crafted. In addition to aligning the international investment regime with substantive priorities regarding sustainable development, it is crucial that the system of international governance be recognized as legitimate and inclusive in the eyes of the governed. This means ensuring that the investment law system adheres to core principles of good governance such as transparency, accountability of law- and decision-makers, inclusivity, adherence to the rule of law, and equality before the law.

This panel will assess how investment law today – both with respect to how law is formulated through treaties and applied (and arguably also developed) by investor-state arbitral tribunals or proposed “courts” – aligns with good governance norms, and what reforms may be needed to ensure it maintains or acquires legitimacy in the eyes of its potential users and other stakeholders.

Moderator: **Brooke Güven**, Legal Researcher, CCSI

Confirmed Panelists:

- **Frank Garcia**, Professor, Boston College, School of Law
- **Jane Kelsey**, Professor of Law, University of Auckland, New Zealand
- **Kinda Mohamadieh**, Senior Researcher, Global Governance for Development Programme, The South Centre
- **Nicolás M. Perrone**, Assistant Professor of International Law, Durham Law School; Visiting Professor, Universidad Nacional de San Martín

## September 28, 2018, Friday

8:30 – 9:00    **Breakfast**

9:00 – 12:00    ***Session IV: Reimagining International Investment Governance***

After the previous sessions of critically evaluating the current regime the previous day, this session will allow for creative reimagining of investment governance that advances the objectives of sustainable development, consistent with the substantive and procedural principles refined over the first day. The session will explore whether and how international cooperation on investment might enable establishment of norms and/or mechanisms to:

- Catalyze and harness international investment for sustainable development;
- Promote effective participation in investment governance from all relevant stakeholders; and
- Avoid, mitigate, and remedy the harms that international economic activity and actors can cause.

This session will involve a creative and solution-oriented discussion among panelists and participants to reconsider the issues on which international cooperation on investment should focus, and the instruments and tools – which need not be formal state-to-state treaties – that can be used to advance progress.

Moderator: **Sarah Pray**, Team Manager Fiscal Governance Program, Open Society Foundation

Confirmed Panelists:

- **Ben Beachy**, Director, Trade Program, Sierra Club
- **Eleanor Fox**, Walter J. Derenberg Professor of Trade Regulation, New York University School of Law
- **Kevin Gallagher**, Professor of Global Development Policy; Director, Global Development Policy Center, Frederick S. Pardee School of Global Studies, Boston University
- **Anna Joubin-Bret**, Director, International Trade Law Division, United Nations Office of Legal Affairs; Secretary, United Nations Commission on International Trade Law (UNCITRAL)
- **Howard Mann**, Senior International Law Advisor, International Institute for Sustainable Development
- **Irma Mosquera Valderrama**, Associate Professor of Tax Law at Leiden University, the Netherlands

12:00 – 13:30 *Lunch and Treaty Lab Presentation*

In 2017, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) launched an innovative project to crowdsource a forward-looking, innovative and workable model treaty that aims to encourage investment in climate change mitigation and adaptation. From the over 40 teams that registered to present proposals for new international agreements, two have been selected as commended teams. This lunch session describes this initiative and the solutions it has inspired.

Moderator: **Lisa Sachs**, Director, CCSI

Speakers:

**Annette Magnusson**, SCC Secretary General and the initiator of Stockholm Treaty Lab

**Martin Dietrich Brauch**, captain of the Creative Disrupters

**Paula Henin**, team member of Team Innovate

13:30 – 14:30 *Session V: Termination and Withdrawal of Consent*

There are various ongoing reform efforts that offer crucial opportunities to rethink the international investment regime, align it with sustainable development objectives, and resolve conflicts between investment law and other areas of internal and international law. However, these reform initiatives – such as initiatives being pursued at the United Nations Commission on International Trade Law (UNCITRAL), or steps being taken on a piecemeal basis by states individually terminating or amending their treaties – may be slow. In the meantime, governments and other stakeholders may wish to pursue nearer-term options to avoid or resolve some of the costs and problems with the current investor-state dispute settlement (ISDS) system while longer-term work on substantive and procedural reform is ongoing. Such options include:

- Unilateral or joint instruments on withdrawal of consent to arbitrate; and/or
- A joint instrument on termination (as is being contemplated by at least some governments in the European Union).

The session examines the desirability of these options, and how they might be advanced.<sup>2</sup>

Moderator: **Brooke Güven**, Legal Researcher, CCSI

Confirmed Panelists:

- **Cecilia Olivet**, Programme Coordinator, Trade & investment, Transnational Institute (TNI)

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<sup>2</sup> For a discussion of these options, see [“Clearing the Path: Withdrawal of Consent and Termination as Next Steps for Reforming International Investment Law”](#) (CCSI 2018).

- **Luis Parada**, Senior Counsel, Curtis, Mallet-Prevost, Colt & Mosle LLP
- **Matt Porterfield**, Deputy Director and Adjunct Professor, Harrison Institute for Public Law, Georgetown University

14:30 – 14:45 *Coffee Break*

14:45 – 16:30 ***Session VI: Advancing Solutions, including in Ongoing Reform Efforts***

At present, a host of intergovernmental institutions are focusing on reforming international investment law and policy. Individual states are also seeking to elaborate and advance new approaches to investment governance. At the multilateral level, World Trade Organization (WTO) members are considering investment facilitation; UNCITRAL is working on ISDS reform; and the International Centre for Settlement of Investment Disputes (ICSID) is revising its ISDS rules. At the pluri- and bilateral levels, states are revisiting their existing treaties: North American states are renegotiating their North American Free Trade Agreement (NAFTA); a range of new models and approaches to existing stocks of treaties have been advanced, including by Brazil and South Africa; and across Europe, European member states and the European Union are devising plans and taking steps to terminate a wide swath of existing investment protection agreements.

Meanwhile, states are negotiating other international instruments that will impact the governance of investment, including, for instance, the Global Pact for the Environment and the Treaty on Transnational Corporations and Other Business Enterprises.

This session will look at where opportunities exist to integrate the guiding principles on governing investment, as elaborated over the previous two days, within existing reform processes.

Moderator: **Lise Johnson**, Director, CCSI

Confirmed Panelists:

- **Ricardo Meléndez-Ortiz**, Chief Executive Officer, International Centre for Trade and Sustainable Development
- **Anita Ramasastry**, Professor of Law and Director, Sustainable International Development Program, University of Washington School of Law; Member, United Nations Working Group on Business and Human Rights
- **Jeffrey Sachs**, Special Advisor to the UN Secretary-General on the SDGs; Director, Center on Sustainable Development, Columbia University
- **Greg Shaffer**, Director, Center on Globalization, Law, and Society, University of California Irvine, School of Law

16:30 – 16:45 ***Closing Remarks***



16:45 *Stockholm Treaty Lab Reception, hosted by Mannheimer Swartling*