



# MAX PLANCK INSTITUTE

FOR COMPARATIVE PUBLIC LAW  
AND INTERNATIONAL LAW

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**When Constitutional Courts Meet Investment Arbitrators:  
Current Tensions of the Rule of Law in Economic Governance**

**MPIL Agora**

**Thursday, 20 July 2017, 16:00 – 17:00, Room 014**

The international investment law regime is in an ongoing process of change and has entered an era of 're-orientation'. Some of the main issues that have emerged in this respect concern the advocacy for a systemic and sustainable development-oriented approach for new international investment agreements (IIAs), which are now being expanded to the regional dimension with the negotiation of mega-regional agreements. In this era of 're-orientation', it has been stated that the crucial question is no longer whether or not to reform the global investment regime, but what the contents, method, and extent of such reforms should be.

In this context, one of the points of concern is that arbitrators not only solve disputes, but also exercise a unique type of public authority that in some cases overlaps with that of states. This situation of overlapping authorities has produced a series of cases where matters of investment arbitration have fallen within the scope of constitutional review and, vice versa, in cases where arbitrators fulfill functions comparable to constitutional review. This in turn has produced unusual outcomes, where for example the highest court of a country ends up analyzing investment concepts such as 'stability clauses', while on the other hand investment tribunals are starting to use methods which were once believed to belong exclusively to public law, such as the principle of proportionality. Current constitutional challenges to 'mega-regional' agreements like CETA indicate that these interactions will continue to shape the future of the discipline.

Based on these premises, this Agora will explore various interactions in recent cases (e.g. dialogue, resistance) between constitutional courts and investment arbitrators. The impact that constitutional courts can have both on shaping a concept of rule of law at the national level and on the legitimacy of the international investment regime will be broadly assessed.



José Gustavo Prieto Muñoz has a Ph.D. in Corporate Law and Economics - Doctor Europaeus from the University of Verona, Italy (2017). His work is focused on International Investment Law and International Economic Law. Currently, he is a visiting researcher at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany. He has been an invited Professor in 'EU External Relations Law' for the Jean Monnet Module on European Law, Ukraine (2015-2017). Over the last decade, he has been an invited lecturer in the course on 'International Investment Law' at various Universities and Institutes in Latin America and Europe. Former lecturer of International Business Law at Simon Bolivar Andean Community University in Quito, Ecuador. He also holds an attorney at law degree and a Juris Doctorate from the University of the Americas "UDLA" in Quito, Ecuador. Lawyer accepted to practice in Quito, Ecuador.

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