



MIDS - GENEVA LL.M.
IN INTERNATIONAL
DISPUTE SETTLEMENT



MIDS – Geneva LL.M in
International Dispute
Settlement

Academic Year 2010-2011

Annual Report



**UNIVERSITÉ
DE GENÈVE**
FACULTÉ DE DROIT

THE GRADUATE INSTITUTE | GENEVA

INSTITUT DE HAUTES ETUDES
INTERNATIONALES ET DU DÉVELOPPEMENT

GRADUATE INSTITUTE OF INTERNATIONAL
AND DEVELOPMENT STUDIES



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Introduction

This chronicle reports on the performance of the MIDS program during the academic year 2010-2011, including the demography of the students, classes taught, and specific events.

The purview of the MIDS encompasses the study of international commercial arbitration, international investment arbitration, WTO dispute settlement, negotiation and mediation, proceedings before the ICJ and various other international courts and tribunals. Its broad scope makes it the only program in the world that covers all relevant aspects of the field, thereby acknowledging the interrelations and similarities that exist between most methods and mechanisms of international dispute settlement.

The MIDS is designed for students who have a first complete law degree and a good command of the English language. Most students already have professional experience in law at the time of enrolling, sometimes to a significant extent. Graduates from the program head for careers in the arbitration or international law departments of law firms, in the foreign affairs, trade or justice departments of governments, as in-house counsel in large companies, or as legal officers in international dispute settlement institutions, international organizations and NGOs. Some do a PhD after the MIDS.

The MIDS aims at ranking among the first three choices worldwide for students seeking postgraduate education in international arbitration or international dispute resolution. MIDS graduates have been hired as associates or interns by law firms such as King & Spalding (Houston), Shearman & Sterling (Paris, Singapore), Freshfields Bruckhaus Deringer (Paris), White & Case (Washington DC), Curtis Mallet-Prevost Colt & Mosle (New York), Lalive, Schellenberg Wittmer, Python & Peter, and by institutions such as the WTO, the International Court of Justice, the International Chamber of Commerce, and the American Arbitration Association. Other MIDS graduates work in ministries of justice and foreign affairs, NGOs, and in various other business sectors.



Overview of the MIDS program

The Geneva LL.M. in International Dispute Settlement (MIDS) was launched in September 2008 under the joint aegis of the Law Faculty of the University of Geneva and the Graduate Institute of International and Development Studies.

The MIDS covers international dispute settlement broadly speaking, including international commercial, investment and sports arbitration, WTO dispute settlement, proceedings before the International Court of Justice, negotiation and mediation.

It provides full-time postgraduate legal education to 35-40 students per year. It carries 65 ECTS credits. Students are admitted for one academic year of study in residence (September through June), typically followed by up to two months of research and drafting of a thesis. More than one third of the students benefit from a full scholarship arranged by the program.

The structure of the program is largely elective, offering students latitude to pursue their specific interests in dispute settlement while keeping within parameters set to ensure the acquisition of the indispensable knowledge in the field. The program is in English, with the possibility to take optional courses in French.

The LL.M gathers students from all over the world. In 2008-09, the program accounted for 26 students from 19 different countries. In 2009-10, the 35 students came from 27 different countries. In 2010-11, there were 39 students coming from 27 different countries.

- Launched in 2008
- Joint program Law Faculty and Graduate Institute
- Coverage of international dispute settlement "across the board"
- One year degree
- 65 ECTS credits
- 35-40 students per year
- More than one third of students obtain scholarship through program
- Largely elective program
- Program in English with optional French courses
- Students from all over the world

"The MIDS has changed my life. I applied for the MIDS because I thought that it would give me an opportunity to specialize in international dispute settlement and perhaps a chance to start a career in this area. The reality far exceeded my expectations. I found the program extraordinarily stimulating and the faculty superlative. I am about to embark on a career as an arbitration lawyer and this is all thanks to the MIDS. I would recommend it unreservedly."

MIDS Student



The MIDS Curriculum

The program's main building blocks are:

Two semester-long **general courses** providing a comprehensive overview of international dispute settlement. The first general course deals with the organization of international dispute settlement – which disputes go to which dispute resolution mechanism, and how these mechanisms operate. The second general course reviews the main procedural issues that arise in these proceedings, with an eye for comparisons and contrasts between. The general courses are accompanied by weekly **tutorials**, “Oxbridge” style, held in small groups.

A choice of semester-long **optional courses** drawn from a list of classes offered in the regular master program curricula of the Graduate Institute and the Law School. These courses revolve broadly around international dispute settlement.

A choice of **intensive courses**. Each course consists of nine hours of class spread over two to three days. These courses focus on a specific dispute settlement mechanism or explore in depth a particular topic. Intensive courses typically elaborate on matters addressed more briefly in the general courses.

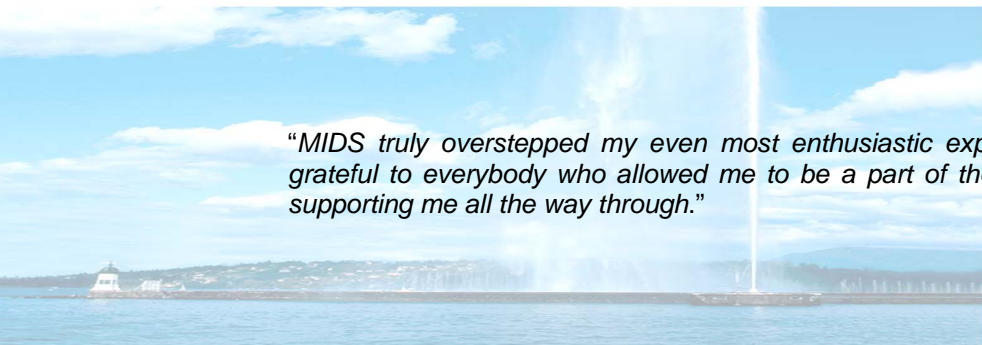
Clinical workshops in legal writing, arbitration advocacy, financial damage analysis, and mediation.

Academic Retreat. The purpose of our academic retreat is to develop skills in analyzing facts and evidence, building a strategy, construing a legal argumentation, training oral advocacy, all within limited time and with the related pressure. The retreat also develops the ability to work in a team.

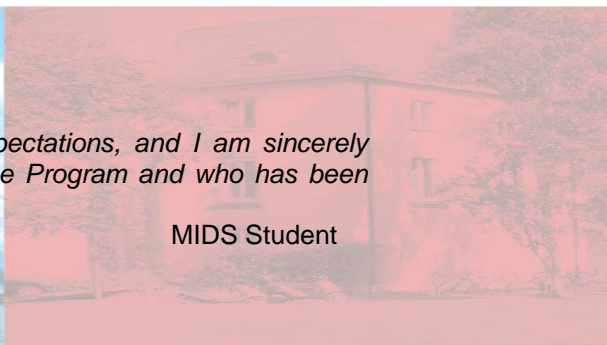
Attendance of a variety of **conferences, colloquia, seminars and lectures.**

Site visits to institutions of dispute settlement.

Completion of writing requirements, which include two short **essays** and a 40-50 page **LL.M.**



“MIDS truly overstepped my even most enthusiastic expectations, and I am sincerely grateful to everybody who allowed me to be a part of the Program and who has been supporting me all the way through.”



MIDS Student



The 2010-2011 Edition of the MIDS

Program Administration

Program Director: Gabrielle Kaufmann-Kohler (Geneva Law Faculty)

Program Committee: Laurence Boisson de Chazournes (Geneva Law Faculty)
Jean-Michel Jacquet (Graduate Institute)
Gabrielle Kaufmann-Kohler (Geneva Law Faculty)
Marcelo Kohen (Graduate Institute)

Executive Director: Thomas Schultz (Geneva Law Faculty / Graduate Institute)

Lecturers: Makane Mbengue (Geneva Law Faculty)
Michele Potestà (Graduate Institute)

Student Secretariat: Evelyne Bryden

Admin. Officer: Antonella Ghio

Professors

The new professors, and those returning from the first year, who taught in the MIDS during the 2010-2011 academic year were **Lucius Cafilisch** (Graduate Institute), **Pierre-Marie Dupuy** (Graduate Institute), **Emmanuel Gaillard** (Paris XII and Shearman & Sterling), **Francisco Orrego Vicuña** (University of Chile), **Daniel Shapiro** (Harvard), and **Lu Song** (China Foreign Affairs University).

The "regulars", teaching each year are **Laurence Boisson de Chazournes** (Geneva Law Faculty), **Jean-Michel Jacquet** (Graduate Institute), **Gabrielle Kaufmann-Kohler** (Geneva Law Faculty), **Marcelo Kohen** (Graduate Institute), **Robert Mnookin** (Harvard), **William Park** (Boston University), **Joost Pauwelyn** (Graduate Institute), **Antonio Rigozzi** (University of Neuchâtel), **Brigitte Stern** (University Paris I), **Pierre Tercier** (University of Fribourg), **Sébastien Besson** (Geneva Law Faculty), and **Thomas Schultz** (Geneva Law Faculty and Graduate Institute).

"The MIDS program felt mostly like an "academic family": a place where many life lessons were learnt, where support was available every step of the way, where ambitions, goals and passions were shared, where life-long friends were made, and where one learnt to find their way in the working world with as much ease and comfort as a baby bird would take to fly away from its nest."

MIDS Student

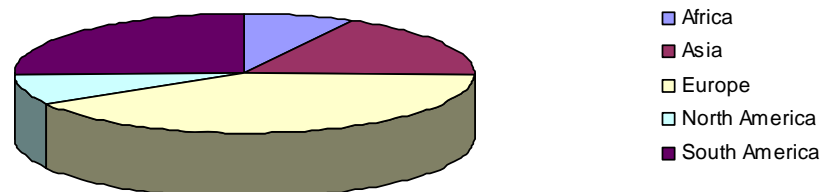


Students

For the 2010-2011 class edition, close to **220 applications** were submitted. **39 students** were enrolled, **aged on average 28.5**, representing **27 countries** and **five continents**.



Africa	3	(Eritrea, Ethiopia, Mauritius);
Asia	7	(China (2), Georgia, India (2), Russia, Uzbekistan);
Europe	16	(Cyprus, Estonia, France, Germany (3), Greece (2), Italy, Norway, Serbia, UK, Turkey, Ukraine (3));
North America	3	(USA (3));
South America	10	(Bolivia, Brazil (2), Colombia, Ecuador, El Salvador, Mexico (3), Venezuela).



Out of the 39 students who participated in the MIDS in 2010-2011, 14 received a scholarship from the MIDS, thanks to generous donations of the **Hans Wilsdorf Foundation**, the **Edmond J. Safra Foundation**, and a charity that wishes to remain **anonymous**. Financial support for the program is provided by tuition fees (CHF 25'000) and, in kind or in cash, by the **Swiss Network for International Studies**, the University of Geneva **Law Faculty**, and the **Graduate Institute of International and Development Studies**.

"I loved the discussions with my incredibly good classmates and the general spirit of eagerness to learn which has been present during the whole year. Not to mention the diversity of nationalities and all the advantages that entails. It helps to really understand the respective cultures, to get used to being in a truly transnational environment. It is an astonishing experience if you thought you were international before."

MIDS Student



Courses Taken

Students attended the following courses during the 2010-2011 MIDS program

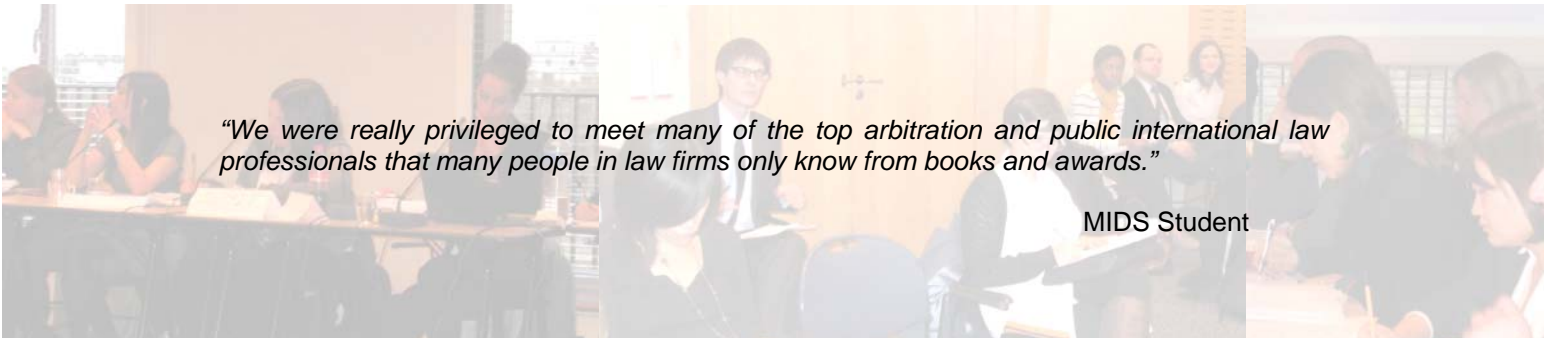
General Courses

The Organization of International Dispute Settlement	Prof. Laurence Boisson de Chazournes , Geneva Law Faculty Prof. Gabrielle Kaufmann-Kohler , Geneva Law Faculty
International Legal Proceedings	Prof. Marcelo Kohen , Graduate Institute Prof. Joost Pauwelyn , Graduate Institute Prof. Brigitte Stern , University of Paris I Prof. Sébastien Besson , Geneva Law Faculty

Intensive Courses

Students choose eight. Listed by attendance numbers.

Negotiation	Prof. Robert Mnookin , Harvard University; Director, Harvard Negotiation Research Project and chair, Program on Negotiation
ICC Arbitration	Prof. Pierre Tercier , Honorary Chairman, ICC International Court of Arbitration; Honorary Professor, University of Fribourg
ICSID Arbitration	Prof. Emmanuel Gaillard , University of Paris XII; Chair, Shearman & Sterling's international arbitration practice; Chair, International Arbitration Institute
The Power of the International Judge or Arbitrator to Interpret the Facts and the Law	Prof. Pierre-Marie Dupuy , Graduate Institute
Arbitration in the United States	Prof. William Park , Boston University; President, London Court of International Arbitration
International Mediation: Underlying Dynamics	Prof. Daniel L. Shapiro , Director, Harvard International Negotiation Program
Investment Arbitration in Latin America and the Development of International Law	Prof. Francisco Orrego Vicuña , University of Chile; former President, World Bank Administrative Tribunal; former President, Institut de droit international
WTO Dispute Settlement	Prof. Gabrielle Marceau , Counsellor, Legal Affairs Division, WTO; Associate Professor, Geneva Law Faculty
Arbitration in China	Prof. Lu Song , China Foreign Affairs University, Beijing
Philosophical Aspects of Dispute Settlement	Dr. Thomas Schultz , Senior Lecturer, Geneva Law Faculty; SNF Fellow, Graduate Institute
Sports Arbitration	Prof. Antonio Rigozzi , University of Neuchâtel; Partner, Lévy Kaufmann-Kohler
Due Process, Human Rights and International Dispute Settlement	Lucius Cafilisch , Honorary Professor, Graduate Institute; former judge, European Court of Human Rights; member, International Law Commission
Contrats d'Etat	Prof. Jean-Michel Jacquet , Graduate Institute



"We were really privileged to meet many of the top arbitration and public international law professionals that many people in law firms only know from books and awards."

MIDS Student



Optional Courses

Students choose two or, if they take three clinical workshops, one. Optional courses are drawn from a list of classes offered in the regular master curricula of the Graduate Institute and the Law School. The courses listed below are those that MIDS students chose in 2010-2011 listed by MIDS attendance numbers.

In English

International Investment Law

Prof. Joost Pauwelyn, Graduate Institute

International Trade Law

Prof. Joost Pauwelyn, Graduate Institute

International Criminal Law through the Cases in National and International Courts

Prof. Paola Gaeta, Graduate Institute

Trade and Investment Law Clinic

Prof. Joost Pauwelyn, Graduate Institute

WIPO and International Intellectual Property Law

Prof. Edward Kwakwa, Graduate Institute

Climate Change in International Law

Prof. Jorge E. Viñuales, Graduate Institute

Climate Change and Trade

Prof. Patrick Low, Graduate Institute

Human Rights: Concept, Norms and Implementation

Prof. Eibe Riedel, Graduate Institute

International Macroeconomics

Prof Charles Wyplosz, Graduate Institute

In French

Rédaction de contrats

Prof. Sylvain Marchand, Geneva Law Faculty

Droit international des investissements

Prof. Jean-Pierre Laviec, Graduate Institute

Droit de l'arbitrage commercial international

Prof. Jean-Michel Jacquet, Graduate Institute

Droit du commerce international: contrats, investissements, et contentieux international dans le domaine de l'énergie

Prof. Jean-Michel Jacquet, Graduate Institute

Droit du commerce international: sociétés et groupes de sociétés

Prof. Jean-Michel Jacquet, Graduate Institute

Droit de l'art et des biens culturels

Prof. Marc-André Renold, Geneva Law Faculty

Jurisprudence environnementale

Prof. Jorge E. Viñuales, Graduate Institute

La vente internationale de marchandises

Prof. Sylvain Marchand, Geneva Law Faculty



"The passionate, dedicated and utmost professional professors make this program truly inspiring, enjoyable and most of all indispensable to really understand international dispute settlement."

MIDS Student



Additional Learning Opportunities and Events

The start of the academic year was marked by an **opening lecture** delivered on 29 September 2010 by **William W. Park** (Boston University, President of the London Court of International Arbitration) on current trends in international arbitration. Thereafter, the students participated throughout the year in the following events:

Seminars and Lectures. During the fall semester, the MIDS organized a seminar on the international judicial function by **Prof. Georges Abi-Saab** (former Judge on the Appeals Chamber of the ICTY-ICTR and Honorary Professor of the Graduate Institute) as well as lectures by **The Honorable Charles N. Brower**, who shared his knowledge as judge of the Iran-United States Claims Tribunal, and by **Dr. Yas Banifatemi** (Partner, Shearman & Sterling) on most favoured nation clauses in investment treaties. **Prof. George Bermann** (Columbia University and chief reporter of the Restatement of the U.S. Law of International Commercial Arbitration) further spoke on the restatement of US arbitration law and on the New York Convention.



Prof George BERMANN

During the second semester students learned about human rights before international courts from **Judge Bruno Simma** (Judge at the ICJ) and about arbitration in the Arab countries from **Dr. Nathalie Najjar** (Partner, Ibrahim Najjar law firm in Beyrouth).

Academic Retreat. The two day retreat in February in a picturesque country setting was devoted to an arbitration competition similar to a moot court.



Crêt- Bérard, Switzerland

The students were divided into teams of claimants and respondents, were handed out materials from an arbitration case, and prepared oral arguments well into the night of the first day. On the second day, they made oral presentations in front of arbitral tribunals composed of the moot coaches, Prof. Gabrielle Kaufmann-Kohler, Dr. Sébastien Besson, Ian Meakin, Dr. Thomas Schultz, Dr. Makane Moïse Mbengue and Dr. Michele Potesta.

Conferences. The students also took part in a number of conferences, including the ASIL/ESIL/LASIL symposium on diplomatic and judicial means of dispute settlement, the 27th AAA/ICC/ICSID joint colloquium on international arbitration in Paris, a conference on international arbitration by the University of Neuchâtel, the 15th Geneva Global Arbitration Forum, ICCA's 50th Anniversary conference, and a conference organized by ASA.

"Thank you for the most incredible year of my life. I can tell you from first hand experience that it is amazing! I truly had the time of my life and learned more than I ever thought was possible! Thank you for working so hard to make it a unique and truly one of a kind experience."

MIDS Student



Workshops. Education in the field of international dispute resolution cannot remain solely academic. The MIDS therefore asked the **Foundation for International Arbitration Advocacy (FIAA)** to organize a two-day clinical workshop on advocacy in international arbitration. The instructors of the FIAA workshop were advocacy teachers and experienced arbitration practitioners from Europe, the USA and Canada. In addition, the students were offered workshops on financial damage analysis by Geoffrey Senogles (LBC International Investigative Accounting)), legal writing taught by Ian Meakin (XXIV Barristers' Chambers), mediation taught by Birgit Sambeth (Altenburger), and a workshop on construction arbitration by Michael Schneider (Lalive).



At the International Court of Justice

Visits. The MIDS also took its students to institutional site visits, to allow them to attend hearings and to better understand the operation of dispute settlement institutions. The students made visits to the **ICC Court of International Arbitration** in Paris, where part of the class of Pierre Tercier, Honorary President of the ICC Court, took place, the **International Court of Justice**, the **Permanent Court of Arbitration**, and the **Iran-US Claims Tribunal** in the Hague, and the Mediation and Arbitration Center of **WIPO** as well as the **WTO** in Geneva.

Career events and internships. In order to help students planning their careers, the MIDS staged career events with practitioners in the fields of commercial and investment arbitration. Several students were able to secure internships in the wake of these events. Other internships were organized by the MIDS, primarily in arbitration departments of law firms in Geneva and abroad.

Social events. Successful studies are not only about content. They also require the right atmosphere, friends to share experiences with, occasions to enjoy a year away from professional constraints. For the students, it is equally important to create contacts for the future and to stay connected to the program as alumni. For these purposes, the MIDS organized a number of social events, including welcome and farewell dinners, an *Escalade* evening, and several cocktail receptions. Some of them were attended by many of the key actors of the Geneva world of international dispute settlement, allowing for networking. Trips gave further occasion to socialize and groups were taken out for drinks by faculty members at various junctures of the program.

Media and community. In order to increase the students' exposure to current debates in the field of international arbitration and to provide them with an additional set of networking opportunities, they were subscribed to two news sources, the **Global Arbitration Review**, and to **Young OGEMID**.



"I will always be grateful for the knowledge I acquired and people that I met during my stay in Geneva."

MIDS Student



Developments for 2011-2012

Among the new developments for 2011-12, one may emphasize the addition to the MIDS faculty of **George Bermann** (Columbia Law School) for an intensive course on arbitration and EU law, and of **Raúl Viñuesa** (University of Buenos Aires) for an intensive course on investment arbitration in Latin America. **Brigitte Stern** (University Paris I) will no longer teach a part of the second general course, but an intensive course on the definition of investment. **Jan Paulsson** (Miami Law School and Freshfields Bruckhaus Deringer) and **Albert Jan van den Berg** (Erasmus University, Rotterdam and Hanotiau & van den Berg), who teach in the MIDS every second year, will return to teach in 2011-2012.

Developments for 2012-2013

The brochure for the fifth edition has now been printed. An electronic version is available on our website, www.mids.ch. Among the new developments, one may emphasize the addition to the MIDS faculty of **Alain Pellet** (University of Paris Ouest) for a course on the case law of the ICJ in ICSID arbitrations, of **Jacques de Werra** (University of Geneva) for a course on IP arbitration and ADR of intellectual property disputes, of **Karim Hafez** (American University in Cairo, Hafez Avocats) for an intensive course on arbitration in the Arab countries, of **Eduardo Silva Romero** (Dechert, University of Bogota, Sciences Po Paris) for an intensive course on arbitration in Latin America. **Emmanuel Gaillard** (Paris XII and Shearman & Sterling), who teaches every second year, will return to teach in 2012-2013.

Applications will open in October 2011.



The Journal of International Dispute Settlement (JIDS)

The Journal of International Dispute Settlement (JIDS) is published by Oxford University Press, in association with the MIDS, the University of Geneva Law Faculty and the Graduate Institute of International and Development Studies.



JIDS publishes most Opening Lectures of the MIDS (James Crawford in the first issue of 2010, Emmanuel Gaillard in the second issue of 2010, William Park in the second issue of 2011) and certain further MIDS lecture delivered during the year (George Bermann in the second issue of 2011). JIDS occasionally also publishes articles based on the best LL.M. theses of MIDS students (Gustavo Laborde in the first issue of 2010 and Leonila Guglya in the first issue of 2011).

During the calendar years 2010-11, the journal published the following issues:

2010, Issue 1

- Thomas Schultz, *Editorial*
- James Crawford, *Continuity and Discontinuity in International Dispute Settlement*
- William W. Park, *Arbitrators and Accuracy*
- Pierre Lalive, *On the Reasoning of International Arbitral Awards*
- Gabrielle Marceau and Julian Wyatt, *Dispute Settlement Regimes Intermingled: Regional Trade Agreements and the WTO*
- Gustavo Laborde, *The Case for Host State Claims in Investment Arbitration*
- Anthony Aust, *Advisory Opinions*
- Kaj Hobér, *Investment Arbitration and the Energy Charter Treaty*
- Bradley J. Condon, *Lost in Translation: Plurilingual Interpretation of WTO Law*
- Antonio Rigozzi, *Challenging Awards of the Court of Arbitration for Sport*

2010, Issue 2

- Thomas Schultz, *Editorial*
- Emmanuel Gaillard, *The Representations of International Arbitration*
- Gabrielle Kaufmann-Kohler, *Soft Law in International Arbitration: Codification and Normativity*
- Daniel Shapiro and Adam Kinnon, *The Prevention Principle: A Pragmatic Framework to Prevent Destructive Conflict*
- Wendy Miles and Daisy Mallet, *The Abyei Arbitration and the Use of Arbitration to Resolve Inter-state and Intra-state Conflicts*
- Jan Paulsson, *The Power of States to Make Meaningful Promises to Foreigners*
- Christoph Schreuer, *Full Protection and Security*
- Donald McRae, *The WTO Appellate Body: A Model for an ICSID Appeals Facility?*
- Joost Pauwelyn, *The Dog That Barked But Didn't Bite: 15 Years of Intellectual Property Disputes at the WTO*
- Chang-fa Lo, *Good Faith Use of Dictionary in the Search of Ordinary Meaning under the WTO Dispute Settlement Understanding*
- Chester Brown, *International, Mixed, and Private Disputes Arising Under the Kyoto Protocol*



2011, Issue 1

- Tom Grant, *Editorial*
- Gilbert Guillaume, *The Use of Precedent by International Judges and Arbitrators*
- W. Michael Reisman, *Soft Law and Law Jobs*
- Anastasios Gourgourinis, *The Distinction between Interpretation and Application of Norms in International Adjudication*
- Thomas Schultz, *The Concept of Law in Transnational Arbitral Legal Orders and some of its Consequences*
- Sébastien Manciaux, *The Representation of States before ICSID Tribunals*
- Zachary Douglas, *The MFN Clause in Investment Arbitration: Treaty Interpretation Off the Rails*
- August Reinisch, *How Narrow are Narrow Dispute Settlement Clauses in Investment Treaties?*
- Leonila Guglya, *The Interplay of International Dispute Resolution Mechanisms: the Softwood Lumber Controversy*
- Maud Piers, *Consumer Arbitration in the EU: A Forced Marriage with Incompatible Expectations*
- Isabelle Van Damme, *On 'Good Faith Use of Dictionary in the Search of Ordinary Meaning under the WTO Dispute Settlement Understanding'—A Reply to Professor Chang-Fa Lo*
- Cesare P.R. Romano, *A Taxonomy of International Rule of Law Institutions*

2011, Issue 2

- Thomas Schultz, *Arbitration as an iPhone, or Why Conduct Academic Research in Arbitration?*
- William W. Park, *Arbitration in Autumn*
- George A. Bermann, *'Domesticating' the New York Convention: the Impact of the Federal Arbitration Act*
- François Ost, *The Twelfth Camel, or the Economics of Justice*
- Stephan W. Schill, *Allocating Adjudicatory Authority: Most-Favoured-Nation Clauses as a Basis of Jurisdiction—A Reply to Zachary Douglas*
- Alexander Orakhelashvili, *The Competence of the International Court of Justice and the Doctrine of the Indispensable Party: from Monetary Gold to East Timor and Beyond*
- Katherine Del Mar, *Weight of Evidence Generated through Intra-Institutional Fact-finding before the International Court of Justice*
- Ralf Michaels, *A Fuller Concept of Law Beyond the State? Thoughts on Lon Fuller's Contributions to the Jurisprudence of Transnational Dispute Resolution—A Reply to Thomas Schultz*
- Peer Zumbansen, *Debating Autonomy and Procedural Justice: The Lex Mercatoria in the Context of Global Governance Debates—A Reply to Thomas Schultz*
- David Holloway, *Avoiding Duplicative Litigation about Arbitration Awards within the EU*
- Sophie Nappert and Dieter Flader, *A Psychological Perspective on the Facilitation of Settlement in International Arbitration—Examining the CEDR Rules*
- David Schneiderman, *Legitimacy and Reflexivity in International Investment Arbitration: A New Self-Restraint?*