



**British Institute of
International and
Comparative Law**

Investment Treaty Forum Annual Report 2021



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Introduction from the ITF Director



2021 has been a successful year for the Investment Treaty Forum. Although we did not have as much in person interaction as in pre-COVID times, our members have been active speaking and hosting events, conducting studies, and participating in training programmes.

We began the year with a launch event of a study on **annulment in ICSID arbitration** chaired by the current President of the International Court of Justice Joan Donoghue. Our event dealing with **appointment and removal of ISDS arbitrators** successfully brought together arbitrators, states, and arbitral institutions. Our first big conference of 2021 lasted two days and focused on **evidence in investor-State arbitration**. In May, we presented a new version of a comprehensive report on **damages, costs and duration of investment treaty arbitration**.

Since September, we conducted three hybrid events. The first dealt with **sovereign wealth funds and international dispute resolution**, followed by a full-day conference on **time limits in international investment law**. The year concluded with revealing findings of a study conducted with the UN Office on Drugs and Crime on **corruption in ISDS and foreign direct investments**.

ITF members increasingly engage in conducting joint studies with ITF focusing on the most complex problems of international investment law. In 2022 we hope to launch three more studies, dealing with **tax and international arbitration, technology-related disputes and ISDS in the banking and finance sector**. Our online course **International Investment Law and Dispute Resolution** continued to attract junior lawyers from law firms and governments. The **Annual ISDS Update** helped lawyers to be on the top of the most recent developments in international investment law.

Many thanks to ITF members, my BIICL colleagues, interns and junior researchers who helped to shape the ITF activities last year, in particular, Aleksander Kalisz and Nojan Rostami. I hope that in 2022 we will be able to meet in person more often while allowing people to join our meetings remotely. Should you have any questions, ideas, or comments – please do not hesitate to get in touch with me.

With best wishes,

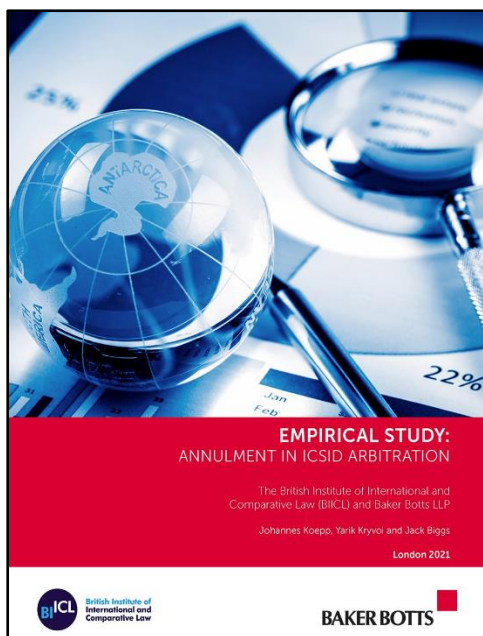
A handwritten signature in black ink, appearing to read 'Yarik Kryvoi', written in a cursive style.

Professor Yarik Kryvoi
y.kryvoi@biicl.org

Events

28 January 2021

Launch of Empirical Study on Annulment in Investor-State Disputes



On 28 January 2021, BIICL and Baker Botts presented the first comprehensive empirical study on annulment in investment treaty arbitration. The study examines hundreds of annulment decisions rendered by ICSID annulment committees and domestic courts.

This empirical study builds on a detailed examination of the entire universe of publicly available decisions and offers a unique insight into how ICSID annulment committees and domestic courts treat annulment applications

Participants: Judge Joan Donoghue, International Court of Justice; Dr. Johannes Koepf, Baker Botts; Professor Yarik Kryvoi, British Institute of International and Comparative Law; Jack Biggs, Baker Botts; Professor Andrea K. Bjorklund, L. Yves Fortier Chair in International Arbitration and International Commercial Law, McGill University.

- [Watch event recording](#)
- [Read event summary](#)

29 March 2021

Appointment and Removal of ISDS Arbitrators: Practical Problems and Prospects for Reform



Challenges to and removal of arbitrators in context are becoming more commonplace in investor-state dispute settlement. The parties brought a record number of challenges in the last few years.

The online event hosted by Reed Smith gathered representatives of states, arbitrators, arbitral institutions, other members of the Investment Treaty Forum and members of the public. The panellists discussed the current situation in the field, the common rules applicable to the appointment of

tribunals and concerns about the current mechanisms expressed by States and other stakeholders.

Participants: Chloe Carswell, Reed Smith; Serhat Eskiyyörük, Republic of Turkey Ministry of Energy and Natural Resources; Shreyas Jayasimha, Aarna Law; Garth Schofield, Permanent Court of Arbitration, the Hague.

- [Read event summary](#)
- [Watch event recording](#)

29 - 30 April 2021

Thirty Fifth ITF Public Conference: Evidence in Investor-State Arbitration



This online conference brought together members of the Investment Treaty Forum to address complex issues related to evidence in investor-state disputes. The topics included law applicable to evidentiary issues, admissibility of evidence (including obtained using illegal means), determining the relevance and materiality of evidence, adverse inferences, disclosure requests, distinction between law and facts, and provisional measures related to evidence.

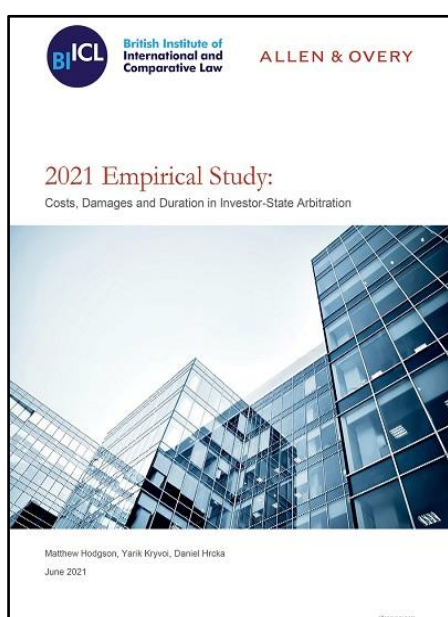
Participants: Prof Yarik Kryvoi, British Institute of International and Comparative Law; Sir Daniel Bethlehem KCMG QC, Twenty Essex, London; Gaëtan Verhoosel, Three Crowns, London; Professor Frédéric Sourgens, Washburn School of Law, Topeka; Jennifer Younan, Shearman & Sterling, London; Samantha Rowe, Debevoise & Plimpton, London; Prof Maurice Mendelson QC, Blackstone Chambers, London; Kate

Cervantes-Knox, DLA Piper, London; Andrew Cannon, Herbert Smith Freehills, London; Rachel Thorn, Cooley, New York; Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan, London; David Goldberg, White & Case, London; Robin Rylander, Mannheimer Swartling, Stockholm; Kiran Sanghera, Hong Kong International Arbitration Centre, Hong Kong; Mark Kantor, Independent Arbitrator, Washington, DC; Adam Douglas, Government of Canada, Ottawa; Colin Johnson, HKA, London; Erica Stein, Dechert, Paris.

- [Watch event recording](#)
- [Download event brochure](#)

14 May 2021

Damages, Costs and Duration of Investment Treaty Arbitration



On 14 May 2021, Allen & Overy and the British Institute of International and Comparative Law launched a joint report on "Damages, Costs and Duration of Investment Treaty Arbitration." The report, which is the third iteration of Allen & Overy's study on the topic, considers and identifies trends from the empirical data on damages, costs, and duration of investment treaty arbitration from investment treaty awards published until May 2020.

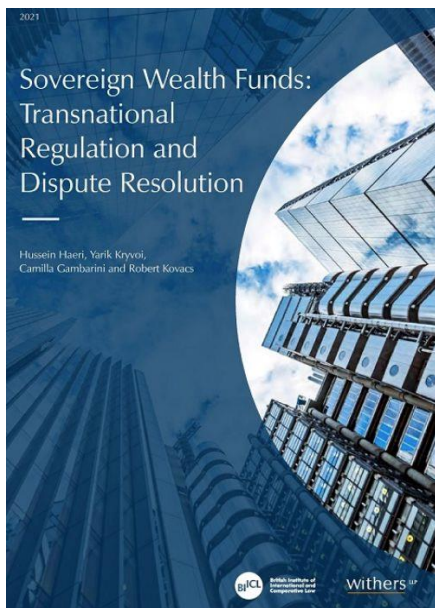
To mark the launch of the report, we hosted an ITF webinar to present the [key findings of the study](#) and discuss what they mean for States, investors, and arbitration practitioners.

Participants: Anna Joubin-Bret, UNCITRAL, Vienna; Matthew Hodgson, Allen & Overy, Hong Kong; Professor Yarik Kryvoi, BIICL, London; Professor Chin Leng Lim, Chinese University of Hong Kong, Hong Kong; Wendy Miles QC, Twenty Essex, London.

- [Watch event recording](#)
- [Read event summary](#)

14 September 2021

Sovereign Wealth Funds and International Dispute Resolution



On 14 September 2021, BIICL and Withers LLP launched a report on Sovereign Wealth Funds (SWFs) and dispute resolution. The report presents findings of a months-long research project into SWFs and dispute resolution, including the use of international arbitration - both commercial and investor-State - recourse to domestic courts and issues of attribution and enforcement.

Professor Yarik Kryvoi of BIICL and Hussein Haeri, head of the Public International Law Group of Withers LLP led the project, understood to be the first of its kind to examine dispute resolution approaches of sovereign wealth funds.

Participants: Dr. Claudia Annacker, Dechert, Paris; Hussein Haeri, Withers, London; Prof. Yarik Kryvoi, British Institute of International and Comparative Law, London; Dr. Dini Sejko, Chinese University of Hong Kong, Hong Kong; Diego Lopez, Global SWF, New York.

- [Watch event recording](#)
- [Read event summary](#)

22 October 2021

Thirty Sixth ITF Public Conference: Time Limits in International Investment Law



On 22 October 2021, the Investment Treaty Forum brought together senior practitioners, arbitrators, academics and other experts to discuss time limits in international investment law. The topics included retroactive application of law, application of treaties before entry into force (including provisional application), continuous breaches, the applicability of commercial law statutes of limitation in ISDS, sunset clauses in international investment agreements, and the consequences of mutually agreed termination of treaties.

Participants: Prof Yarik Kryvoi, British Institute of International and Comparative Law, London; Prof Kaj Hobér, Uppsala University and 3 Verulam Buildings, Sweden; Prof Nicolas Angelet, Université Libre de Bruxelles, Brussels; Graham Coop, Volterra Fietta, Brussels; Katia Finkel, Baker McKenzie, London; Alexander Slade, Vinson & Elkins, London; Ishita Pant, Energy Charter Treaty Secretariat, Brussels; Christophe Bondy, Steptoe & Johnson, London; Cameron Forsaith, Eversheds, London; Danielle Morris, WilmerHale, Washington, DC; Norah Gallagher, Queen Mary University of London; Joachim Pohl, Organisation for Economic Co-operation and Development (OECD), Paris; Nick Gallus, LK Law, Adelaide; Nick Lawn, Van Bael & Bellis, London; Sabine Konrad, Morgan Lewis, Frankfurt am Main; Thayanathan Baskaran, Baskaran, Kuala Lumpur; Ina Popova, Debevoise & Plimpton, New York; Roula Harfouche, HKA, London; Vaughan Lowe QC, Essex Court Chambers, University of Oxford, Oxford.

- [Watch event recording](#)
- [Download event brochure](#)

16 December 2021

Taking Stock of Work of the Expert Group Meeting on Corruption and International Investments



The expert level side event on Taking Stock of Work of the Expert Group Meeting on Corruption and International Investments was organized in line with resolution 8/9 of the Conference of the States Parties to the UN Convention against Corruption, which will take place in Sharm El-Sheikh. The side event served as a platform for reporting to the Conference on the activities of this Expert Group Meeting.

A perspective workplan for the future work of this expert meeting was presented with the support of

UNCTAD, NORAD, Multilateral Development Institutions and interested countries. The event raised awareness of the importance of continuing ongoing work in the area of countering corruption in international investments.

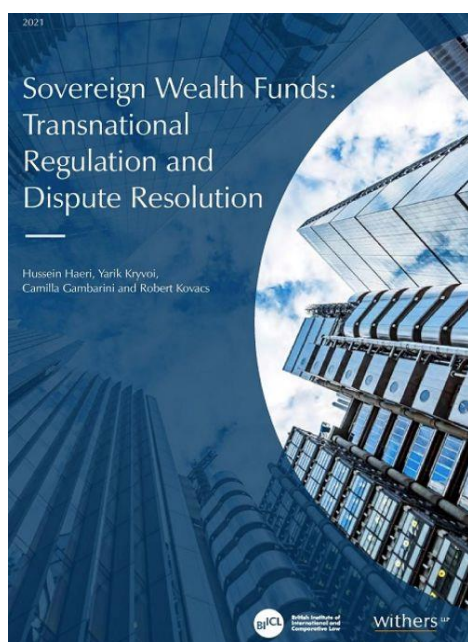
In addition, key findings of an upcoming publication of UNODC on Corruption and Investor-State Disputes were presented to the audience during this event.

Participants: Prof Yarik Kryvoi, British Institute of International and Comparative Law, London; Vladimir Kozin, United Nations Office on Drugs and Crime; Hamed El-Kady, United Nations Commission on Trade and Development; Luo Chenzi, National Commission of Supervision of China; Max Heywood, Elucidate.

- [Read event summary](#)
- [Read Executive Summary of the Follow-up Report of the Expert Group Meeting on Corruption and International Investments](#)
- [Read blog post about the event](#)

ITF Publications

[Hussein Haeri, Yarik Kryvoi, Robert Kovacs, and Camilla Gambarini, Sovereign Wealth Funds: Transnational Regulation and Dispute Resolution, BIICL and Withers \(2021\)](#)

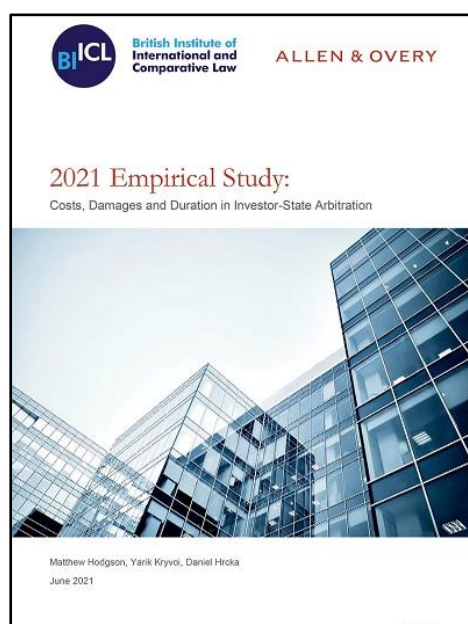


As the presence of SWFs in the global economy grows so does their involvement in international disputes. SWFs as SOEs involved in commercial activities present a particular set of challenges for regulators, adjudicators and legal practitioners. Although corporate structuring of SWFs differs, international courts and tribunals often tend to apply similar sets of public international law principles to determine the issues of their standing in investor-State disputes or attribution of their activities to their home States, as well as the possibility of claims being raised on their behalf by their home State.

This report examines the structure and dispute resolution matters related to SWFs, as well as related questions of sovereign immunity, enforcement, sanctions and future trends. The report focuses on the transnational dimension of SWFs and reviews different approaches to defining SWFs, their origins and cross-border operations. The report also explores transnational dispute resolution involving SWFs before both

national courts and international courts and tribunals and discusses strategic legal issues.

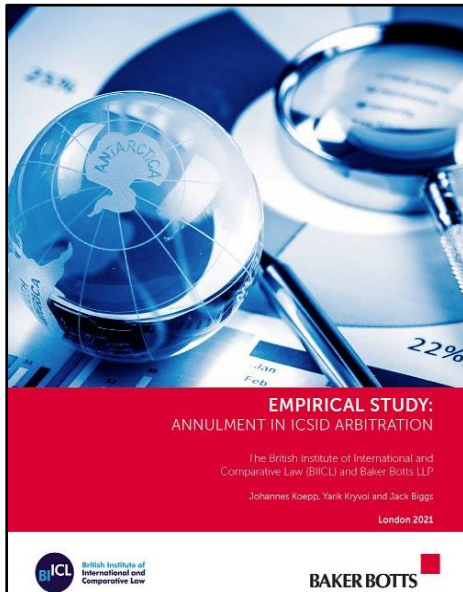
[Matthew Hodgson, Yarik Kryvoi, and Daniel Hrcaka, Costs, Damages and Duration in Investor-State Arbitration, BIICL and Allen & Overy \(2021\)](#)



This study examines over 400 investor-State cases conducted under ICSID, UNCITRAL and other arbitration rules, and over 70 ICSID annulment decisions, giving a comprehensive account of how long ISDS proceedings last, how much they cost, how tribunals allocate those costs as well as the amounts of damages awarded.

It offers an empirical insight into the current position of costs incurred by parties in investor-State arbitrations and also changes in tribunals' practice in fixing and allocating such costs. In addition to a quantitative focus, the authors analyse factors of potential relevance to costs of ISDS proceedings, including the choice of arbitration rules and the length of proceedings. This study aims to serve as a reference point for those involved in investor-State arbitrations as well as policymakers considering the reform of the ISDS system.

[Johannes Koeppe, Yarik Kryvoi, and Jack Biggs, Empirical Study: Annulment in ICSID Arbitration, BIICL & Baker Botts \(2021\)](#)



This study examines over 150 annulment decisions rendered by ICSID ad hoc committees and offers a unique insight into how the ICSID system deals with annulment. It provides a detailed examination of the entire universe of publicly available annulment awards. It builds on the Updated Background Paper on Annulment for the Administrative Council of ICSID published by ICSID in May 2016.

This report examines the trends and practices of annulment committees on key issues such as the success rate of annulment applications, the most frequently invoked annulment grounds, the length and costs of annulments proceedings. It also provides an in-depth analysis on how tribunals approach the specific annulment grounds under Article 52(1) of the ICSID Convention.

Selected Publications by ITF Director

[Yarik Kryvoi, UK and International Experience in the Admission, Regulation and Operation of Arbitral Institutions \(2021\)](#)



States increasingly compete for arbitration users because it helps them to offload the courts, create business opportunities for domestic lawyers and serviced related to law (experts, interpreters, witnesses, conference organizers, hospitality industry). Foreign law firms also actively set up branches of their firms in what they perceive as arbitration hubs. In addition, the popularity of a particular jurisdiction among arbitration users sends a powerful signal to foreign investors about the rule of law and enhances the prestige of the arbitration venue.

This report shows that successful arbitration hubs such as London and Singapore appreciate the economic benefits that international arbitration can bring to them and create favorable conditions for arbitration

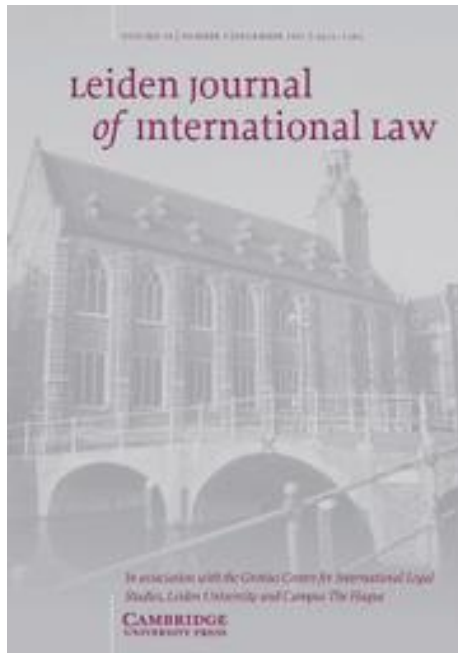
institutions and users. This report concludes that most jurisdictions do not adopt any special rules for admission of foreign arbitral institutions. Moreover, some jurisdictions (e.g., Singapore) actively adopt various measures to liberalize access of arbitration users and institutions.

[Yarik Kryvoi and Shaun Matos, Non-Retroactivity as a General Principle of Law, Utrecht Law Review, Volume 17, Issue 1, pp.46–58 \(2021\)](#)



This article examines the principle of non-retroactive application of law, which prohibits the application of law to events that took place before the law was introduced. The application of this principle has become particularly controversial as states adopt stricter regulations to tackle climate change with retroactive effect, and investors challenge such regulations before international courts and tribunals. In the context of criminal law, the principle is widespread and has become a binding norm of international law. However, a survey of domestic jurisdictions and decisions of international courts and tribunals shows that that there is no general principle of international law which forbids the retroactive application of administrative law. Despite pronouncements of some international courts and tribunals to the contrary, states can conclude treaties and adopt administrative regulations with retroactive effect to pursue legitimate public policy objectives.

[Yarik Kryvoi, Private or Public Adjudication? Procedure, Substance and Legitimacy, Leiden Journal of International Law, Volume 34, Issue 3, pp. 681-703 \(2021\)](#)



This article identifies the essential differences between public and private adjudication and their implications for the legitimacy and efficiency of dispute resolution institutions, as well as the rule of law. It shows that procedural rules of these institutions differ when it comes to the appointment of adjudicators, their professional background, and how long they serve. Public and private institutions consistently follow different approaches to transparency and confidentiality of proceedings, the application of primarily substantive rules or principles to resolve disagreements, and the extent to which decisions can be reviewed internally or externally. By examining the procedural rules and practices of selected institutions, the article asserts three main claims. First, the choice of public or private adjudication is likely to lead to different procedural outcomes, including the cost of the process and the duration. Second, the legitimacy of any dispute resolution system must rest on both procedural and substantive aspects, while in reality these two are often viewed in isolation.

Finally, the article shows how institutions could learn from each other to become more efficient and strengthen their legitimacy.

Investment Treaty Forum Membership

Membership Benefits

- The right to participate in an independently-run Forum, including free entry to all ITF meetings and conferences.
- A direct influence on the agenda of Forum meetings and the opportunity to recommend events, speakers and topics for debate.
- The opportunity to suggest research or other work to be carried out by the Forum staff.
- Access to a members-only section of the website with materials related to investment treaty law.
- The membership benefits in line with the Institute's Individual membership (access to ICLQ, 40% discount on BIICL publications, 20% discount on CUP publications and member rate at BIICL events).

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- The Energy Charter Secretariat
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- The International Institute for Sustainable Development
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- Trade Law Bureau, Government of Canada
- Ministry of Finance of the Czech Republic
- The Organisation for Economic Cooperation and Development
- The Permanent Court of Arbitration
- Treasury Legal Advisers, Government Legal Department, United Kingdom
- The United Nations Conference on Trade and Development
- The United Kingdom Department for International Trade
- The United Kingdom Foreign and Commonwealth Office

Individuals

- Professor Jansen Calamita, National University of Singapore (former ITF director)
- Professor James Crawford SC, FBA, University of Cambridge and International Court of Justice
- Norah Gallagher, Queen Mary University of London (former ITF director)
- Judge Christopher Greenwood QC, International Court of Justice
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- Professor Peter Muchlinski, School of Oriental and African Studies, University of London
- Dr Federico Ortino, School of Law, King's College London (former ITF Director)
- Dr Antonio Parra, Visiting Professor, University College London and former Deputy Secretary-General, International Centre for the Settlement of Investment Disputes
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ITF Director:

Professor Yarik Kryvoi, British Institute of International and Comparative Law

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Online Course International Investment Law and Dispute Resolution



British Institute of
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Overview

This course covers the history and the rationale of protection of foreign direct investments, applicable law, the key principles of international investment law and investor-state dispute settlement (ISDS). Participants will develop their own critical appreciation of international investment law and will cover the nature of international investment law, the main substantive and procedural principles, dispute resolution mechanisms and the current professional criticisms of the system. Total guided learning time is approximately 18 hours.

Curriculum

- Introduction to international investment law and dispute resolution
- Why do we need international investment law?
- Conflict of law issues in investment arbitration
- Fair and equitable treatment and arbitrary measures
- Substantive standards of international investment law: expropriation and denial of justice
- Investor-State dispute settlement
- Legitimacy challenges and reform of international investment law

Tutors

- Professor Yarik Kryvoi (course leader)
- Suzanne Spears, Allen & Overy LLP
- Hussein Haeri, Withers LLP
- Stuart Dutson, Simmons & Simmons LLP
- Samantha Rowe and Patrick Taylor, Debevoise & Plimpton LLP
- Maurice Mendelson QC, Blackstone Chambers
- Professor Phillippe Sands QC, Matrix Chambers and University College London

Pricing and Registration

The course fee is \$149 (approx £120) (incl. VAT). Discounts are available for groups of five and more people, please contact eventsregistration@biicl.org for more information.

Contact Information

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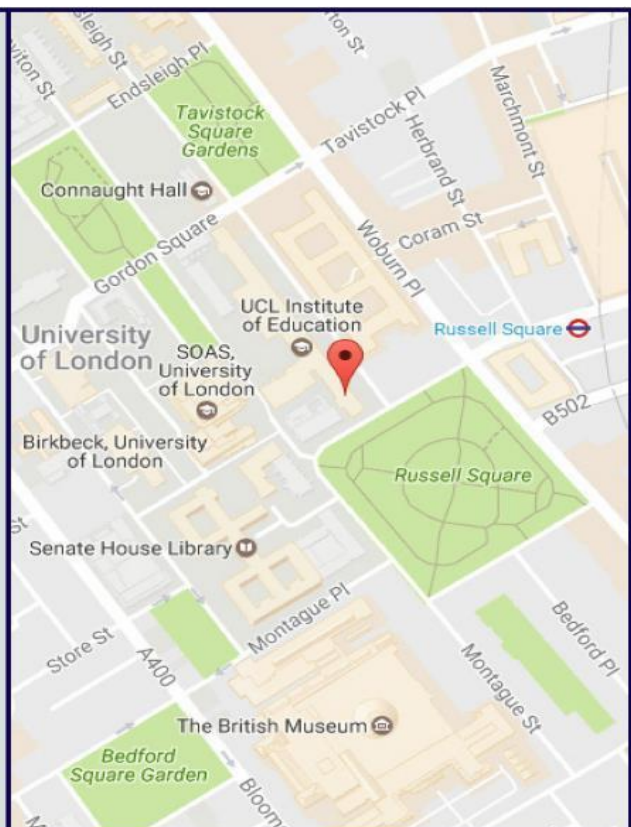
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