



British Institute of
International and
Comparative Law

Thirty Third ITF Public Conference Valuation of Damages in International Investment Law

Friday, 18 October 2019
Woburn House Conference Centre, London

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CONFERENCE OVERVIEW

The magnitude of damages awards and the difficulties valuation causes for arbitrators and counsel has become a key concern for both foreign investors and states. To discuss valuation of damages in international investment law the Thirtieth ITF Public Conference convenes in London on 18 October 2019. At this conference the Forum brings together leading arbitrators, judges, practitioners and academics, drawn primarily from ITF members, to debate issues related to valuation, proving and quantifying damages in investor-state disputes.

Topics covered include:

- What makes valuation in investor-State disputes different from commercial arbitration (involvement of sovereigns, country risk premiums, expropriation compensation and claims for less than full value, the social impact)
- Proving damages (reasonably proven and speculative losses, the burden of proof, "best evidence", the impact of hindsight information)
- Quantification of damages (differences between "full reparation," "full compensation" and "fair market value", other valuation standards, valuation methods used in recent awards)
- The effect of contributory negligence
- Moral damages and other issues.

PRACTICAL INFORMATION

Venue

Woburn House Conference Centre, 20-24 Tavistock Square, London WC1H 9HQ

Nearest underground stations

- London Euston (Northern and Victoria lines)
- Kings Cross (Circle, Hammersmith and Metropolitan lines)
- Russell Square (Piccadilly line)

Nearest main line train stations

- London Euston
- Kings Cross St. Pancras

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AGENDA

8:30-9:00 | Registration with tea and coffee

9:00-9:15 | Welcome and Introduction

Prof Yarik Kryvoi, Investment Treaty Forum Director, British Institute of International and Comparative Law, United Kingdom

9:15-10:00 | Keynote Address

Juan Fernández-Armesto, Armesto & Asociados, Spain

10:00-11:30 | Panel 1: What makes valuation in investor-State disputes different

Chair: **Christophe Bondy**, Cooley LLP, United Kingdom

- **Jeffery Commission**, Burford Capital LLC, United States
 - **Marcos Garcia Dominguez**, University of Chicago, United States / Argentina
 - **Vikki Wall**, Haberman Ilett LLP, United Kingdom
-

11:30-12:00 | Tea and coffee break

12:00-13:30 | Panel 2: Proving damages

Chair: **Ronnie Barnes**, Cornerstone Research, United Kingdom

- **Dániel Dózsa**, Dechert LLP, London
 - **Huawei Sun**, Zhong Lun Law Firm, China
 - **Antolín Fernández Antuña**, Antuña & Partners, Spain
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13:30-14:30 | Lunch

14:30-16:00 | Panel 3: Quantifying damages

Chair: **Christina Beharry**, Foley Hoag LLP, United States

- **Aron Skogman**, Mannheimer Swartling Advokatbyrå AB, Sweden
- **John Ellison**, FTI Consulting Inc., United Kingdom
- **David Herlihy**, Skadden, Arps, Slate, Meagher & Flom LLP, United Kingdom

This programme is subject to change.

SPEAKER BIOGRAPHIES



Juan Fernández-Armesto

Armesto & Asociados

Juan Fernández-Armesto is a professional arbitrator. He has been President of the Spanish Securities and Exchange Commission (CNMV) (1996-2000), partner of Uría Menéndez (1983-1996) and Chaired Professor of Commercial Law (1988-2009). Since 2001 Juan F.-Armesto has acted as sole arbitrator, co-arbitrator or chairman in more than 180 proceedings, including investment, commercial and construction arbitrations.



Antolín Fernández Antuña

Antuña & Partners

Antolín Fernández Antuña is the founder and managing partner of Antuña & Partners, an international arbitration law boutique established in Madrid in 2019. With 20 years of experience in the field of law and finance, he has worked as Counsel before international courts in more than 40 investment arbitrations, 29 of them ICSID, having participated in more than 30 hearings representing the Kingdom of Spain, and performed over 30 cross-examinations of experts in investment arbitrations.

He has also worked as an expert in international taxation, being responsible for financially investigating various multinational corporations (some listed in NASDAQ and FTSE). His experience includes, among others, the following sectors: energy, transport, construction, infrastructure, mining and telecommunications. He is a Lawyer, Economist and Chartered Accountant. He has a Master's Degree in Public Management, Public Policies and Taxation, a High Specialization Diploma in International Taxation, and is a State Treasury Inspector.

His varied academic background and his hands-on experience combine to offer a unique blend of skills in both Law and Finance.



Christina Beharry

Foley Hoag LLP

Christina Beharry is an attorney in the International Litigation and Arbitration Practice. Christina's practice focuses on public international law, investor-state and commercial arbitration, and trade and investment policy. She has public and private sector experience in international arbitration proceedings conducted before panels administered by the International Centre for Settlement of Investment Disputes (ICSID), the Permanent Court of Arbitration (PCA), the International Chamber of Commerce (ICC), and ad hoc tribunals under the UNCITRAL Arbitration Rules.

She has represented clients in Asia, Central and South America, Europe, and North America in disputes involving various industries including mining, oil and gas, renewable energy, chemical manufacturing, agriculture, forestry, healthcare, telecommunications, and tobacco. Christina provides advice on a broad range of international matters, including reparations, economic sanctions, maritime delimitations, jus in bello, treaty interpretation, human rights, and international environmental law.

Christina works extensively with experts on complex financial matters relating to the valuation of businesses, environmental damage, and compensation for adverse human health impacts. She has repeatedly assumed responsibility for damages arguments in high-stakes disputes with claims in excess of US\$ 1 billion. In addition, Christina publishes regularly on compensation and valuation topics and has recently edited a book entitled *Contemporary and Emerging Issues on the Law of Damages and Valuation in International Investment Arbitration* (Brill Nijhoff, 2018).



Ronnie Barnes **Cornerstone Research**

Dr Ronnie Barnes, a principal at Cornerstone Research, has played a key role in establishing and developing the firm's European international arbitration practice. An expert on accounting, damages and valuation, Dr Barnes specialises in complex valuation methodologies, including the estimation of the cost of capital, the determination of country risk premia, and the valuation of complex financial instruments such as derivatives and structured finance products.

He has provided written and oral testimony in multiple matters involving topics that range include the tax treatment of hire purchase contracts; the assessment of damages resulting from the breach of a joint venture agreement; the economic equivalence of various financial derivatives; and the use of derivatives in alleged share price manipulation.

In addition to serving as a testifying expert, Dr Barnes leads teams that support Cornerstone Research's external academic and practitioner experts. In this capacity, he has worked on numerous matters related to financial institutions and financial products, cases requiring the analysis of damages stemming from alleged misrepresentations and omissions in corporate disclosures, and other matters requiring sophisticated accounting, financial, and/or economic, analysis.



Christophe Bondy **Cooley LLP**

Christophe Bondy is among the world's most experienced investment treaty counsel. For nearly a decade he was lead counsel to Canada in investment treaty claims under Chapter Eleven of NAFTA. During this period in addition to leading the defence of claims he took part in the negotiation of trade and investment treaties around the world, and notably was Canada's senior counsel in negotiation of the investment provisions of the Canada

European Union CETA.

Since his return to the private sector he has built up a significant practice representing both sovereigns and private investors in major investment treaty claims. Among his current instruction, he is lead counsel in a US\$3.5B NAFTA Chapter Eleven claim against Mexico, sits as State-appointed arbitrator in an investment dispute under the Energy Charter Treaty, is lead counsel in an ICSID arbitration against an African State, is advising a major privately-held US company on a pending investment treaty claim, and regularly provides advice to States on the negotiation of international investment treaties. He is a member of Cooley (UK) LLP's public international law group and based in London.



Jeffery Commission **Burford Capital LLC**

Jeffery Commission is a Director with responsibility for overseeing Burford's activity in the international investment and commercial arbitration spaces. Before joining Burford he was in private practice for over 15 years, the majority of which was with the International Arbitration Group at Freshfields Bruckhaus Deringer in London, New York, and Washington, DC. He is co-author of *Procedural Issues in International Investment Arbitration* (Oxford University Press, 2018) and the forthcoming *Third-Party Funding in International Arbitration: Law and Practice* (Oxford University Press, 2020). He has degrees in common law (LLB) and civil law (BCL) from McGill University's Faculty of Law, as well as an LLM in international dispute settlement from University College London.



Dániel Dózsa **Dechert LLP**

Dániel Dózsa focuses his practice on international commercial and investor-state arbitrations. He has experience handling such cases before the world's leading arbitral fora, such as the International Centre for Settlement of Investment Disputes (ICSID) and the International Chamber of Commerce (ICC), as well as under the rules of the United Nations Commission on International Trade Law (UNCITRAL). Mr. Dózsa's experience includes cases brought under bilateral investment treaties (BITs) and multilateral investment treaties such as the Energy Charter Treaty (ECT), as well as under various types of commercial and investment contracts. Mr. Dózsa has represented private companies, state-owned enterprises, and national governments in major international arbitration cases and has advised parties in disputes involving oil & gas, electricity and telecommunication matters.

Mr. Dózsa's working languages are English, Hungarian and Spanish. He is also conversant in French. Prior to joining Dechert, Mr. Dózsa worked in the Washington, D.C. and Budapest offices of another international law firm. While in Budapest, he served as an associate in the European regulatory and antitrust practice group where he represented clients in merger and antitrust cases before National Competition Authorities and the European Commission.



Dr Marcos Garcia Dominguez

University of Chicago

Dr Marcos Garcia Dominguez currently works independently in investment arbitration. In the past, he was a judicial assistant to Judge James Crawford at the International Court of Justice. He has also worked at a Magic Circle firm and Argentina's largest law firm. He has held academic and visiting positions at the Universities of Cambridge, Columbia, Chicago, and Buenos Aires. He received his doctorate from the University of Chicago Law School.



John Ellison

FTI Consulting Inc.

John is a chartered accountant who has testified orally as an expert witness on over 50 occasions in 12 jurisdictions, including the USA, UK, France, Singapore and Hong Kong. He is a Senior Managing Director in FTI. He was previously a senior partner in KPMG, and for 13 years the Chair of its forensic accounting department.

John has extensive experience of testifying in civil and criminal courts in the UK and overseas. He has been also appointed in 25 investor-state disputes and in commercial arbitrations, particularly on valuations / quantum. He was an expert for the Russian Federation in the Yukos arbitration involving a claim of over \$100 bn.

John sits as an arbitrator and an independent expert to determine international disputes. His cases have included appointments as LCIA sole arbitrator and as chair of a 3-person AAA Tribunal.



David Herlihy

Skadden, Arps, Slate, Meagher & Flom LLP

David Herlihy is a partner at Skadden, Arps in London. He has particular experience acting in investment treaty disputes as well as Spanish-language arbitrations in Europe and Latin America. David has represented investors and States in some of the most high-profile arbitrations of the last decade. These include successfully representing Cyprus, Slovakia and South Sudan in claims where the amounts in controversy exceeded \$1 billion in each case. In 2019, David obtained the largest damages award rendered against Spain to-date in the many claims filed against it under the Energy Charter Treaty: an award of €292 million in favour of NextEra Energy Spain Holdings BV. His current work includes representing Vodafone International Holdings BV in its multi-billion dollar investment treaty dispute against India.

His work has received various awards from the *Financial Times*, the *Legal Business Awards*, *Global Arbitration Review* and the *African Legal Awards*. David is also routinely identified as a leader in his field by *Chambers UK* and *Legal 500*, where he has been described as "frankly outstanding".



Prof Yarik Kryvoi
Investment Treaty Forum Director

Professor Yarik Kryvoi is the Senior Research Fellow in International Economic Law and Director of the Investment Treaty Forum.

He is a Professor of Law at the University of West London (part-time) and teaches arbitration at the Chartered Institute of Arbitrators. He has several years of experience practicing international dispute resolution with Freshfields Bruckhaus Deringer in London, Morgan Lewis & Bockius in Washington, DC and Baker & McKenzie in Saint Petersburg. He is the founding editor of the CIS Arbitration Forum and serves on editorial boards of several international legal periodicals.

Professor Kryvoi is a former Co-Chair of the ABA International Courts and Tribunals Committee and has also served as a counsel for the Economic Court of the Commonwealth of Independent States advising on issues of international administrative law. He holds law degrees from Harvard, Moscow, Nottingham, Utrecht and St Petersburg. He is admitted to practice in the State of New York.



Aron Skogman
Mannheimer Swartling Advokatbyrå AB

Aron Skogman is a partner in Mannheimer Swartling's practice group for Dispute Resolution, based in Malmö. He is specialised in arbitration, with a particular focus on investment treaty cases. He has acted as counsel in disputes encompassing a wide range of areas such as licensing, supply, share and asset purchases, insurance, agency and distribution. Aron has represented clients before arbitral tribunals both in Sweden and abroad

under various institutional rules and regularly represents clients before the Swedish courts. Aron is a member of the board of the Swedish Bar Association's Southern Department, a member of the Advisory Board of EFILA and a co-founder of the Young ISDS Club. He teaches commercial arbitration and investment treaty arbitration at Lund University and was recognised in the 2019 edition of Who's Who Legal in the category "Arbitration: Future Leaders – Partners". He has co-authored Mannheimer Swartling's Concise Guide to Arbitration in Sweden and various articles in professional journals.



Huawei Sun
Zhong Lun Law Firm

Huawei Sun specializes in international commercial and investment treaty arbitration and has represented Chinese and foreign clients in cases conducted under the ICC, UNCITRAL, LCIA, SIAC, HKIAC, ICSID and CIETAC arbitration rules. She has significant experience working as counsel and arbitrator on disputes involving cross-border M&A, energy and resources projects, financial products, international trade and construction

projects. Her experience spans a wide range of jurisdictions such as mainland China, Hong Kong, England, Kazakstan, South Africa and Malaysia. Huawei has advised MOFCOM on investment treaty issues and recently achieved victory for China in *Ansung v. China* (ICSID Case No. ARB/14/25).

Huawei has served as co-arbitrator, sole arbitrator and presiding arbitrator under the CIETAC and HKIAC arbitration rules. She is also listed in the first CIETAC Panel of Arbitrators of International Investment Disputes. Prior to Zhong Lun, Huawei worked for more than seven years at Allen & Overy.

Huawei is recognized in Chambers Global and Asia-Pacific, Legal 500, Who's Who Legal: Arbitration and other major directories.



Vikki Wall

Haberman Ilett LLP

Vikki Wall is a chartered accountant and has been the testifying expert in cases before UK Courts and international arbitration tribunals on a variety of accounting and financial issues. Her work has included quantifying the damages in both commercial arbitrations and a number of investment treaty disputes acting on behalf of both the investor (including cases against Mauritius, Egypt and Slovakia) and state (including Saudi Arabia, Croatia, Kenya, Barbados and Venezuela) in industries including mining, finance, leisure, manufacturing and insurance.

Vikki trained in audit, before specialising in forensic accountancy work over the last 20 years. She worked at EY's dispute services department for many years, before leaving in 2013 to help found Haberman Ilett. She is a partner in this boutique firm, which recently joined with Blackrock Expert Services Group, and the chair of the Forensic and Expert Witness special interest group at the ICAEW (Institute of Chartered Accountants of England and Wales).

INVESTMENT TREATY FORUM

Overview

The Investment Treaty Forum (ITF) was founded in 2004. Its aim is to provide a global centre for serious high level debate in the field of international investment law.

The Forum is a membership-based group, bringing together some of the most expert and experienced lawyers, business managers, policy advisers, academics and government officials working in the field. Like BIICL itself, the Forum has a reputation for independence, even-handedness and academic rigour. The Forum membership is by invitation only.

People

Patrons

The Patrons of the Forum are: HE Judge Rosalyn Higgins GBE QC and Yves Fortier CC QC.

Forum Director

The Forum Director is Professor Yarik Kryvoi.

The Advisory Board

Since its inception the Investment Treaty Forum's programme has been guided on an informal basis by a small Advisory Board which currently comprises:

- Sir Frank Berman, KCMG QC, Essex Court Chambers;
- Professor Andrea Bjorklund, McGill University;
- Professor A Vaughan Lowe, All Souls College Oxford and Essex Court Chambers;
- Loretta Malintoppi, 39 Essex Chambers, London;
- Audley Sheppard, Clifford Chance LLP, London;
- Robert Volterra, Volterra Fietta, London

The Public International Law Advisory Panel of the British Institute of International and Comparative Law also provides useful advice and support to the Forum.

Membership

The ITF's strength lies in its membership, which is drawn from as wide a range of backgrounds as possible. Members meet regularly (typically 6-7 times each year) to discuss topical issues and, where appropriate, to develop views on issues of concern to governments and decision-makers. The Forum also has strong links with related institutions (including the UK Foreign and Commonwealth Office, UNCTAD and many others).

Benefits of membership

Key benefits for ITF members include:

- 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.
- BIICL's Individual membership benefits (access to ICLQ, 40% discount on BIICL publications, 20% discount on CUP publications and member rate at BIICL events).

Conditions of membership

Forum membership is limited by invitation only, to ensure the highest quality in its plenary discussions. To guarantee continuity, and manageability of debate, membership is for named individuals only. However, at the time of joining, members may nominate a senior colleague to represent them on those occasions when they are unable to attend meetings.

Membership rates

Membership of the ITF is available at the following annual rates (exclusive of VAT):

- Corporate membership: £2,750
- Individuals: £500

Membership of the Forum is by invitation only. For more information on ITF membership please contact Prof Yarik Kryvoi (Y.Kryvoi@biicl.org).

RELATED BIICL EVENTS

Appointment of International Judges and Arbitrators: Legality, Legitimacy and the Rule of Law

25 October 2019

University of Liverpool in London, 33 Finsbury Square, Finsbury, London EC2A 1AG

www.biicl.org/appointment_of_international_judges

ITF Meeting: Counterclaims in Investor-State Arbitration

6 November 2019

DLA Piper LLP, 60 Aldersgate Street, Barbican, London EC1A 4HT

www.biicl.org/counterclaims

ITF Meeting: Provisional Measures in Investor-State Arbitration

27 November 2019

White & Case LLP, 5 Old Broad Street, London EC2N 1DW

www.biicl.org/provisional_measures

Short Course: Public International Law in Practice

28-29 November 2019

British Institute of International and Comparative Law, Charles Clore House,

17 Russell Square, London WC1B 5JP

www.biicl.org/PIL2019

The United Nations Convention against Corruption and International Investment Law

17 December 2019

Abu Dhabi, United Arab Emirates

www.biicl.org/united_nations_convention

Find out more online: www.biicl.org/events



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