



British Institute of  
International and  
Comparative Law

Investment Treaty Forum

Online Course Study Guide

# International Investment Law & Dispute Resolution

**British Institute of International and Comparative Law**

Version No 05

© BIICL 2020

## Administrative Details and Course Leader

<b>Total guided learning time</b>	<b>approx. 18 hours</b>
Consisting of:	
<ul style="list-style-type: none"> <li>• <b>Video lectures</b> (7 lectures to be watched twice)</li> </ul>	<b>4 hours</b>
<ul style="list-style-type: none"> <li>• <b>Guided Independent Study Hours</b> (1 hour reading additional materials, 0.3 reflective journal, 0.5 hour quizzes, 7 weeks)</li> </ul>	<b>12.6 hours</b>
<ul style="list-style-type: none"> <li>• <b>Final quiz</b></li> </ul>	<b>1 hour</b>
<ul style="list-style-type: none"> <li>• <b>Finalising submission of learning journal</b></li> </ul>	<b>0.5 hours</b>

<b>Assessment</b>	
Those who want to obtain a certificate need to achieve the following:	<b>Complete reflective journal</b>
	<b>Pass the final quiz</b>

<b>Course Leader</b>	Professor Yarik Kryvoi
Organisation	Investment Treaty Forum, BIICL
Email	y.kryvoi@biicl.org
Location	17 Russell Square, London

Professor Yarik Kryvoi is the Senior Research Fellow in International Economic Law and Director of the [Investment Treaty Forum](https://www.biicl.org). Professor Kryvoi's expertise is primarily in the areas of international dispute resolution, including investor-state arbitration and international commercial arbitration, international administrative law and international public law.

In addition to his role at the BIICL, he is a visiting professor at a London-based university and teaches arbitration at the Chartered Institute of Arbitrators. He has several years of experience practising international dispute resolution with Freshfields Bruckhaus Deringer in London, Morgan Lewis & Bockius in Washington, DC and Baker & McKenzie in Saint Petersburg.

Read more: <https://www.biicl.org/yarik-kryvoi>

## **1. Introduction to the Course**

Welcome to the International Investment Law & Dispute Resolution online course, an essential framework for understanding the nature and functioning of legal regulation of foreign direct investments.

This course covers history and the rationale of protection of foreign direct investments, applicable law, as well as the key principles of international investment law such as fair and equitable treatment, guarantees in event of expropriation and denial of justice. The course also focuses on key aspects of investor-state dispute settlement, including institutional (primarily ICSID) and *ad hoc* arbitration.

Each class contains an introduction of the main concepts followed by interviews with lawyers who explain how these concepts work in practice. Each video ends with concluding remarks highlighting the most important issues.

## **2 Timetable**

**Length of the Course:** 8 weeks

Although normally the participants will cover one topic per week, this course is asynchronous, which means that every participant can choose his or her own pace of learning. However, it is strongly advised to plan for approximately 3 hours each week to keep up with the work.

**Teaching Pattern:** Combination of video lectures and interviews, readings, reflective journal and online quizzes.

## **3. Content of the Course**

Week 1	<b>Introduction to the course</b>
Week 2	<b>Why do we need international investment law?</b>
Week 3	<b>Conflict of law issues in investment arbitration</b>
Week 4	<b>Fair and equitable treatment and arbitrary measures</b>
Week 5	<b>Expropriation and Denial of Justice</b>
Week 6	<b>Investor-State Dispute Settlement</b>
Week 7	<b>Legitimacy challenges and reform of international investment law</b>
Week 8	<b>Final quiz and learning journal</b>

## **4. Learning Activities**

Week 1 is the introduction to the course, involving just videos and reading.

In weeks 2-7 the participants are expected to engage in the following sequential activities:

- Take the week's quiz before watching or reading any Learning Resources
- Watch the relevant video featuring an overview of the most important topics and interviews with practitioners
- Make notes in your reflective journal
- Read the assigned materials and listen to optional podcasts
- Add notes to your reflective journal
- Watch the relevant video once again
- Take the week's quiz once again
- Finalise the week's entry in the reflective journal, according to the suggested structure.

Week 8 is the final quiz and submission of your learning journal.

## **5. Aims of the Course**

The aim of this course is to enable participants to understand the theory and practice of international investment law and dispute resolution. Although general knowledge of international law would be desirable, there is no such prerequisite for this course.

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.

## **6. Learning Outcomes**

Upon successful completion of the course, participants will:

1. have knowledge and understanding of the conceptual basis of international investment law
2. have an understanding of how the political, economic and legal factors shape international regulation of foreign direct investments
3. have an appreciation of how the main procedural and substantive principles of international investment law apply in practice
4. be able to select and apply the international and domestic rules on the regulation of foreign direct investments
5. appreciate the complexity of problems and legitimacy issues related to legal regulation of foreign direct investments and the system of investor-state dispute settlement.

## 7. Learning Resources

Once enrolled, the participants will have access to the following learning resources:

1. full videos featuring lectures and interviews
2. texts in pdf (treaties, cases, articles, book chapters)
3. links to podcasts
4. mini-quizzes for each week
5. final quiz.

## 8. Assessment

For participants willing to obtain a BIICL certificate, this course has the following assessments:

### **Assessment 1: Weekly Quizzes (Formative)**

This computer-assessed formative assessment is designed to provide you with feedback and inform you of your progress to date, enabling you to improve on your performance.

#### **Type of assessment:**

The participants will find it useful to take quizzes before and after each class to measure their performance and progress.

#### **Feedback:**

The participants will be able to review computer-generated feedback

### **Assessment 2: Reflective Journal**

**Type of Assessment:** creation of a reflective journal containing a summary of the most important points related to each week (at least 300 words per week)

All participants must maintain an evaluative/self-reflective journal in which they note the most important concepts, analyse and evaluate what they have learnt. A reflective journal of around 2,000 words is a requirement to be awarded a certificate. The reflective journal will be assessed by the course leader to make sure it demonstrates substantive reflective comments on the module, with an analysis and evaluation of the respective concepts. The participants will be asked to submit to the tutor a link to the Google doc version of their journal, upon successful completion of their final quiz. An example of a reflective journal is available here (link to be provided).

### **Assessment 3: Final Quiz (Summative)**

Summative assessment is designed to measure your success or failure of performance against the 'Learning Outcomes'.

#### **Type of Assessment:**

A final test related to the entire course

**Number of questions:** 50

At the end of the course, after passing all weekly quizzes and completing the reflective journal, the participants will be authorised to access the final quiz page. It will cover all aspects of the course. The final quiz will cover all aspects of the syllabi as laid out in this Course Study Guide. It will be an open book test and the participants will be able to use any materials.

- The participant will be tested on work that has been covered in the videos and assigned reading materials.
- The participant is expected to answer all the questions requested in the test rubrics.

**Re sits of failed elements:**

- The participant who attempts but fails various elements will get instant feedback and be able to retake as many times as necessary to pass.

## **9. Evaluation of the Course**

Participants are given the opportunity to evaluate and comment on the course through an anonymous questionnaire at the end of the course. The questionnaire will be sent to the participants by email. The course leader will include the results in the end of year course report.

## 10. Guide to Learning Sessions

Week 1	
Topic	Introduction to the Course
Learning Resources	<ul style="list-style-type: none"> <li>• Video 1</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes Chapters 1-2 (Part I) (2020)</li> </ul>

Learning Outcomes Week 1
<ul style="list-style-type: none"> <li>• Understand the structure and the purpose of the course</li> <li>• Formulate course expectations and main focus areas</li> </ul>

Week 2	
Topic	Why do we need international investment law?
Key Concepts	Globalisation, foreign direct investment (FDI), multinational enterprises, the right to regulate, legitimate expectations, regulatory regime, substantive protections, procedural protections
Learning Resources	<ul style="list-style-type: none"> <li>• Video 2 (including an interview with Suzanne Spears from Allen &amp; Overy)</li> <li>• Yarik Kryvoi, The Path of Investor-State Disputes: From Compensation Commissions to Arbitral Institutions (2018). ICSID Review - Foreign Investment Law Journal, Volume 33, Issue 3, Fall 2018, Pages 743–765, available at <a href="https://ssrn.com/abstract=3301337">https://ssrn.com/abstract=3301337</a></li> <li>• The History of International Investment Law: A Conversation with A Parra and C. Schreuer (optional <a href="#">podcast</a>)</li> <li>• Statute of the International Court of Justice</li> <li>• ICSID Convention (1966)</li> <li>• <i>Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador</i>, ICSID Case No. ARB/06/11 (2012)</li> <li>• Energy Charter Treaty (1994)</li> <li>• <i>Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic</i>,</li> </ul>

	ICSID Case No. ARB/07/26 (2016)
--	---------------------------------

<p><b>Learning Outcomes Week 2</b></p> <ul style="list-style-type: none"> <li>• Understand history and the rationale of protection of foreign direct investments</li> <li>• Critically approach the clash between public interests and expectations of investors.</li> <li>• Evaluate the effect of the growth of investment treaties and key investment protection standards</li> </ul>
--

<b>Week 3</b>	
Topic	<b>Conflict of law issues in investment arbitration</b>
Key Concepts/issues	Sources of law, domestic law, international public law, hierarchy of norms, determining applicable law, deference, inconsistencies in international investment law
Learning Resources	<ul style="list-style-type: none"> <li>• Video 3 (including an interview with Hussein Haeri from Withers World Wide)</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes, Part IV, Chapters 1-3 (2020)</li> <li>• ITF Meeting: Renewing the Relationship between Treaties and Customary International Law (optional <a href="#">podcast</a>)</li> <li>• Report of Executive Directors of ICSID (1965)</li> <li>• ICSID Convention (1966)</li> <li>• <i>Emilio Agustín Maffezini v. The Kingdom of Spain</i>, ICSID Case No. ARB/97/7 (2000)</li> <li>• <i>Amco Asia Corporation and others v. Republic of Indonesia</i>, ICSID Case No. ARB/81/1 (1990)</li> <li>• <i>Inceysa Vallisoletana S.L. v. Republic of El Salvador</i>, ICSID Case No. ARB/03/26 (2006)</li> <li>• ICSID Convention (1966)</li> <li>• International Law Commission's Articles on State Responsibility (2001)</li> <li>• The Vienna Convention on the Law of Treaties (1969)</li> <li>• <i>ATA Construction v Jordan</i>, ICSID Case No. ARB/08/2 (2008)</li> <li>• <i>Swisslion v Macedonia</i>, ICSID Case No. ARB/09/16 (2009)</li> <li>• Statute of the International Court of</li> </ul>



	Justice (1945).
--	-----------------

<p><b>Learning Outcomes Week 3</b></p> <ul style="list-style-type: none"> <li>• Understand how the choice of applicable law works in international investment law.</li> <li>• Have a better grasp of sources of international law and how they interact with domestic law.</li> <li>• Understand why the inconsistency of various sources of law remains a serious problem.</li> </ul>
--

<b>Week 4</b>	
Topic	<b>Fair and equitable treatment and arbitrary measures</b>
Key Concepts	Arbitrary measures, discriminatory measures, legitimate expectations, specific representations, minimum international standards of treatment
Learning Resources	<ul style="list-style-type: none"> <li>• Video 4 (including an interview with Dr Stuart Dutson from Simmons&amp;Simmons)</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes, Part IV, Chapter 4 (2020)</li> <li>• Legitimate Expectations in International Investment Law (optional <a href="#">podcast</a>)</li> <li>• The World Bank Guidelines on the Treatment of Foreign Direct Investment (1992)</li> <li>• <i>Eletronica Sicula S.p.A (ELSI) (United States of America v Italy)</i> (1989)</li> <li>• <i>S.D. Myers, Inc. v. Government of Canada</i>, UNCITRAL (20002)</li> <li>• Draft International Convention on Investments Abroad (the Abs-Shawcross Convention) (1959)</li> </ul>

<p><b>Learning Outcomes Week 4</b></p> <ul style="list-style-type: none"> <li>• Understand the role of principles of international investment law and the role of investment tribunals in their formulation</li> <li>• Have an understanding of how international treaties and tribunals interpret fair and equitable treatment and arbitrary measures</li> <li>• Appreciate the overlap between the principle of fair and equitable treatment and other principles</li> </ul>
--

<b>Week 5</b>	
Topic	<b>Expropriation and Denial of Justice</b>
Key Concepts	Guarantees in the event of expropriation in

	various international law instruments, due process, public purpose, good faith, discrimination, payment of appropriate compensation, regulatory measures, creeping expropriation, the right to expropriate, anti-judicial measures.
Learning Resources	<ul style="list-style-type: none"> <li>• Video 5 (including an interview with Samantha Rowe and Patrick Taylor from Debevoise &amp; Plimpton)</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes, Part IV, Chapter 4 (2020)</li> <li>• ITF Debate on Regulatory Freedom and Indirect Expropriation in Investment Arbitration (optional <a href="#">podcast</a>)</li> <li>• The World Bank Guidelines on the Treatment of Foreign Direct Investment (1992)</li> <li>• <i>Saluka Investments B.V. v. The Czech Republic</i>, UNCITRAL (2006)</li> <li>• <i>Robert Azinian, Kenneth Davitian, &amp; Ellen Baca v. The United Mexican States</i>, ICSID Case No. ARB (AF)/97/2 (1991)</li> <li>• <i>Rusoro v Venezuela</i>, ICSID Case No. ARB(AF)/12/5 (2012)</li> <li>• <i>Crystallex v. Venezuela</i>, ICSID Case No. ARB(AF)/11/2 (2011)</li> <li>• <i>Metalclad v. Mexico</i>, ICSID Case No. ARB(AF)/97/1 (1997)</li> <li>• <i>ConocoPhillips v. Venezuela</i>, ICSID Case No. ARB/07/30 (2007)</li> <li>• <i>Tidewater v. Venezuela</i>, ICSID Case No. ARB/10/5 (2010)</li> <li>• <i>Chorzów Factory case</i>, Permanent Court of International Justice (1927)</li> <li>• <i>Chevron and TexPet v. Ecuador (I)</i>, PCA Case No. 2007-02/AA277 (2006)</li> </ul>

<p><b>Learning Outcomes Week 5</b></p> <ul style="list-style-type: none"> <li>• Understand the concept of guarantees in the event of expropriation</li> <li>• Appreciate the difference between direct and indirect expropriation and its consequences</li> <li>• The principle of denial of justice in law and practice of investment tribunals</li> </ul>
---

<b>Week 6</b>	
Topic	<b>Investor-State Dispute Settlement</b>

Key Concepts	Institutional arbitration, ad hoc arbitration, conciliation, ICSID, arbitration rules. UNCITRAL, ICSID Additional Facility, consent to arbitration, appointment of arbitrators, enforcement of awards
Learning Resources	<ul style="list-style-type: none"> <li>• Video 6 (including an interview with Maurice Mendelson QC from Blackstone Chambers)</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes, Part III (2020)</li> <li>• Difficult Issues in Commercial, Investor-State, and State-State Dispute Resolution, (optional <a href="#">podcast</a>)</li> <li>• UNCITRAL Arbitration Rules (2010)</li> <li>• ICSID Arbitration Rules (2006)</li> <li>• New York Convention, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (1958)</li> </ul>

### Learning Outcomes Week 6

- Understand different options for dispute settlement in the context of international investment law.
- Appreciate the differences between institutional and ad hoc arbitration, as well as differences between various arbitral institutions.
- Understand how investment awards are enforced and the differences between ICSID and other regimes.

<b>Week 7</b>	
Topic	<b>Legitimacy challenges and reform of international investment law</b>
Key Concepts	Delays in proceedings, negative impact on Sovereignty, high costs of proceedings, delays of proceedings, imbalance between the global North and South, multilateral investment court, reforming international investment agreements
Learning Resources	<ul style="list-style-type: none"> <li>• Video 7 (including an interview with Phillippe Sands, QC from Matrix Chambers)</li> <li>• Yarik Kryvoi, International Centre for Settlement of Investment Disputes Part V (2020)</li> <li>• Yarik Kryvoi, ICSID Arbitration Reform: Mapping Concerns of Users and How to Address Them (November 8, 2018). Available at SSRN: <a href="https://ssrn.com/abstract=3280782">https://ssrn.com/abstract=3280782</a></li> </ul>

	<ul style="list-style-type: none"> <li>• The Future of Investment Arbitration: Have We Reached a High Water Mark? (optional <a href="#">podcast</a>)</li> <li>• Mauritius Convention, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (2017)</li> </ul>
--	--

<p><b>Learning Outcomes Week 7</b></p> <ul style="list-style-type: none"> <li>• Appreciate legitimacy concerns related to international investment law.</li> <li>• Evaluate problems of investor-state dispute settlement from the point of view of states, investors and civil society actors.</li> <li>• Understand the ongoing efforts to reform the system of investor-state dispute settlement and various views on the direction of the reform.</li> </ul>
--

<b>Week 8</b>	
Topic	<b>Final quiz and submission of learning journal</b>