



British Institute of  
International and  
Comparative Law

# Investment Treaty Forum

## Annual Report 2020



A global centre for high level debate on International Investment Law

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# Introduction from the ITF Director



Dear colleagues,

Despite the COVID-19 pandemic, 2020 has been a successful year for the Investment Treaty Forum (ITF). ITF grew its membership and launched several new projects with its members. It has quickly moved into the online-only format to address the most pressing issues of the day helping its members to stay informed and demonstrate their expertise on the most recent developments in international investment law.

By the end of 2020, ITF had 28 corporate members and around the same number of individual members who include senior academics, government officials or practitioners in the area of international investment law. ITF has also opened free consultative membership to States and intergovernmental organisations. New consultative members include various governmental agencies of Canada, Czech Republic, Ecuador, Latvia, Mexico, Slovakia, Spain and Turkey.

In 2020, ITF organised three major online conferences: on state regulatory powers, arbitration in Africa and investor-state mediation. In addition, ITF hosted several smaller events covering UK investment protection post-Brexit with Steptoe & Johnson, responses to the pandemic, corporate restructuring and investment law with Baker McKenzie, intra-EU BITs and emissions trading with Three Crowns. The newly launched BIICL Blog features summaries of the most recent ITF events.

In March, ITF launched, at Baker McKenzie's London office, an empirical study on Corporate Restructuring and Investment Treaty Protections. We are currently working with Baker Botts, Withers, Dechert and Allen & Overy on new studies, which we hope to launch in 2021. I am also working with the United Nations Office on Drugs and Crime on a new study of corruption in investment law as well as on an edited book with the University of Nagoya on New Security Threats and the Future of Economic Globalization.

In 2020, Kluwer published the 4<sup>th</sup> edition of my book on ICSID which will also be available on Kluwer Arbitration, as well as a study examining inequality in ISDS: Three Dimensions of Inequality in International Investment Law.

The Investment Treaty Forum launched online course International Investment Law and Dispute Resolution which features interviews with many ITF practitioners. The course proved to be popular with ITF members who benefit from group discounts to provide training to junior colleagues.

In 2021 we plan to conduct at least eight ITF meetings and conferences, including events on the temporal dimension in international investment law and evidence in ISDS.

I encourage to get in touch with your ideas about possible events, research projects, providing on-demand training to your colleagues and other forms of cooperation.

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](mailto:y.kryvoi@biicl.org)

# Events

25 February 2020

## UK Investment Protection Policy Post-Brexit



Convened in partnership with Steptoe & Johnson LLP.

The UK is getting ready to deliver on the ambitious promise to conclude new trade agreements with various countries around the world. Although the EU rules did not prevent the UK from concluding its own international investment agreements consistent with EU law, the British government preferred to rely on Brussels to negotiate and conclude such agreements. After all, the last bilateral investment treaty the UK concluded separately from the EU was the 2010 Colombia-UK agreement. After the end of the Brexit

transition period this year, the UK will need to make choices on which substantive and procedural protections to include in its new international investment agreements.

Participants: Christophe Bondy, Steptoe & Johnson; Professor Ming Du, Durham University; Nicolaj Kuplewatzky, European Commission; Laura Rees Evans, Fietta LLP; Yumiko Takahashi, Steptoe & Johnson.

- [Listen to podcast](#)
- [Read an event summary](#)

4 March 2020

## Corporate Restructuring: Managing Investment Risks through Treaty Protections



Convened in partnership with Baker McKenzie LLP

Already in the 1960s, the drafters of the ICSID Convention noted that the system of international investment law could add further criteria which would help qualify investors as 'foreign'. More specifically, they agreed to include the criterion of control in the ICSID Convention. Qualifying investors as foreign on the basis of control rather than place of incorporation or business has also appeared in various international investment agreements.

The British Institute of International Law (BIICL) and Baker McKenzie recently concluded a [study](#) examining how international tribunals approach the use of corporate restructuring by corporations to benefit from international investment agreements.

Participants: Ekaterina Finkel, Baker McKenzie; Luis Gonzalez Garcia, Matrix Chambers; Mahnaz Malik, Twenty Essex; Ed Poulton, Baker McKenzie; Yarik Kryvoi, BIICL

- [Listen to podcast](#)
- [Read an event summary](#)

7 May 2020

## Government response to the pandemic: balancing public health and investment protection



As states face difficult choices to protect public health and keep their economies afloat, their treatment of foreign investors in this crisis is yet to be tested by investor-state tribunals.

The pandemic led governments around the world to take unpopular and often unprecedented measures such as regulating prices and imposing export restrictions, preventing foreigners from crossing national borders, expropriating private property and compelling private

companies to produce certain goods. Moreover, the social and economic fallout of the crisis may require other unpopular regulatory measures in the future.

Participants: Sir Frank Berman QC, Essex Court Chambers; Ms. Miriama Kiselyova, Government of the Slovak Republic; Prof. Yarik Kryvoi, British Institute of International and Comparative Law; Mr. Jeffrey Sullivan, Gibson Dunn; Prof. Valentina Vadi, Lancaster University.

- [Watch the video](#)

1 June 2020

## Termination of Intra-EU BITs: Legal and Practical Consequences for Pending and Future Dispute



23 Member States of the European Union signed on 5 May 2020 agreement for the termination of intra-EU bilateral investment treaties. This agreement implements the 2018 judgment of the European Court of Justice, in which the Court found that intra-EU BITs violate the EU Treaties.

The participants and the audience discussed various topics ranging from legal uncertainty, the apparent contradiction

between not reopening closed cases and discontinuing pending cases, corporate restructuring, the EU Commission's infringement proceedings.

Participants: Ms. Anna Bilanova, Ministry of Finance of the Czech Republic; Mr. Charles Claypoole, Latham & Watkins; Prof. Matthew Happold, University of Luxembourg; Prof. Yarik Kryvoi, British Institute of International and Comparative law; Ms. Anne-Françoise Melot, European Commission.

- [Watch the video](#)
- [Read an event summary](#)



3-4 September 2020

### Inaugural Africa Arbitration Day



Convened in partnership with Freshfields LLP and Linklaters LLP

Today, Africa is arguably the most magnetic of the world's emerging economies with a fast-rising youthful population and enormous opportunities for international trade and investments. Disputes arising in Africa have increased more than disputes from other parts of the world in all major arbitration institutes. This conference addressed the most significant challenges and offered deep insights into issues that will affect strategy in dealing with disputes in future.

Participants: Prof. Yarik Kryvoi, Investment Treaty Forum, BIICL, London; Abubakar Malami, SAN, the Honourable Minister of Justice and Attorney General of the Federation of Nigeria, Abuja; Prof. Julian Lew, Queen Mary University of London; Sir Bernard Rix, BIICL, London; Amb. Namira Negm, African Union, Addis Ababa; Tafadzwa Pasipanodya, Foley Hoag, Washington, DC; Prof. Makane Mbengue, University of Geneva; Sylvia Noury, Freshfields Bruckhaus Deringer, London; Doyin Rhodes Vivour, SAN, Doyin Rhodes-Vivour & Co, Lagos; Matthew Weiniger QC, Linklaters, London; Ndanga Kamau, Ndanga Kamau Law, Hague; Prof. Bankole Sodipo, Babcock University, Ilishan; Prof. Stavros Brekoulakis, Director School of International Arbitration, Queen Mary University of London; Hon. Mr. Justice Mike Chibita, Justice of the Supreme Court of Uganda, Kampala; Charles Nairac, White & Case, President, Arbitration committee, Lagos Court of Arbitration, Paris; Prof. Mohamed Abdel Wahab, Zulficar Partners & Cairo University; Ike Ehiribe, 7 Stones Chambers, London; Narcisse Aka, Secretary General, OHADA's Common Court of Justice and Arbitration, Abidjan; Paula Hodges QC, Herbert Smith Freehills, London, President of the LCIA; Dr Remy Gerbay, Queen Mary University of London; Lady Justice Abha N. Patel, SC, High Court of Zambia, Kitwe; Sarah McKenzie, Webber Wentzel, Joburg; Tunde Ogunseitan, International lawyer, Former Counsel ICC, London.

- [Watch the video](#)

10-11 September 2020

### Thirty Fourth ITF Public Conference: State Regulatory Powers and their Limits



This conference addressed the limits of state regulatory powers under international law. The speakers included a mix of law firm partners, independent arbitrators, academics and valuation experts. The topics covered the most recent developments in investor-state dispute resolution, new trends in investment treaty making, force majeure, hardship and the right to regulate as well as the impact of Brexit and COVID-19 on investors. Finally, the speakers discussed the differences between various regions

and the practical ways how new international investment agreements can better balance protection of investors and interests of States.

Participants: Prof Yarik Kryvoi, British Institute of International and Comparative Law, London; Sylvie Tabet, Trade Law Bureau, Government of Canada, Ottawa; Prof Robert Volterra, Volterra Fietta, London; Dr Inga Martinkute, Vilnius University, Vilnius; Roland Ziadé, Linklaters, Paris; Louise Woods, Vinson & Elkins, London; Jessica Gladstone, Clifford Chance, London; Manish Aggarwal, Three Crowns, London; Thayananthan Baskaran, Baskaran, Kuala Lumpur; Can Yeginsu, 4 New Square, London; Diana Rosert, UNCTAD, Geneva; David Gaukrodger, the Organisation for Economic Co-operation and Development (OECD), Paris; Robert Hunter, Osborne Clarke, Cologne; Prof. Jansen Calamita, National University of Singapore, Singapore; Dr Aniruddha Rajput, International Law Commission and Withers, London; Alan Bonfiglio Rios, Government of Mexico, Mexico; Chloe Carswell, Reed Smith, London; Ike Ehiribe, 7 Stones Chambers, London; José Manuel Gutiérrez Delgado, Government of Spain, Madrid.

- [Watch the video](#)
- [Read an event summary](#)

18 November 2020

### Emissions Trading: International Law and Dispute Resolution



Convened in partnership with Three Crowns LLP

In April 2020, the COP26 UN climate change conference set to take place in Glasgow in November 2020 was [postponed due to COVID-19](#). One consequence: agreement on the rules for a global emissions trading scheme under Article 6 of the [Paris Agreement](#) will be deferred again, to at least 2021.

As agreement under Article 6 has been delayed in the past, various groups - including the [International Carbon Action Partnership \(ICAP\)](#) and [Carbon Market Watch](#) - have advocated for increased linking of domestic schemes. The thinking is that this would encourage the creation of a global carbon market, involving a range of State and non-State actors, and thus lead to harmonization of regulatory standards and lower the costs of reducing emissions.

In that context, this webinar considered existing international and domestic schemes, as well as the risks to market actors as those schemes evolve and interact, before discussing how these risks may give rise to international disputes.

Participants: Kathryn Khamsi, Partner, Three Crowns LLP; William Acworth, International Carbon Action Partnership (ICAP); Lisa DeMarco, DeMarco Allan LLP, Canada; Vice Chair of the International Emissions Trading Association (IETA); Jacob Werksman, Principal Adviser to the Director General for Climate Action in the European Commission.

- [Watch the video](#)
- [Read an event summary](#)

8-9 December 2020

## Forum on Investor-State Mediation



This event followed the successful 2019 Colloquium on Investor-State Mediation, held by the Negotiation Task Force at the Davis Center for Russian and Eurasian Studies, Harvard University on 4 December 2019. The Colloquium Report has now been published and summarises the outcome developed by the attendees.

The event discussed the options open to stakeholders to meaningfully expand on the use of

mediation in Investor-State disputes, obstacles to using mediation in this context and options to assist in developing the use of mediation to resolve investor-state disputes. The application of mediation in this context was explored as a means to encourage foreign direct investment (FDI) and to ease international trade tensions, thereby facilitating international trade and sustainable development coming out of the COVID-19 Crisis.

Participants: Prof Yarik Kryvoi, British Institute of International and Comparative Law, London; Dr Arvid Bell, Negotiation Task Force, Davis Center for Russian and Eurasian Studies, Harvard University; Wolf von Kumburg, International Dispute Registry (IDR), London; Meg Kinnear, International Centre for Settlement of Investment Disputes (ICSID), Washington, D.C.; Mark Appel, ArbDB Chambers, London; Frauke Nitschke, ICSID, Washington D.C.; Alejandro Carballo Leyda, Energy Charter Secretariat (ECS), Brussels; James South, Centre for Effective Dispute Resolution (CEDR), London; Charlie Ries, RAND Corporation; Ken Hyatt, Albright Stonebridge Group, Washington D.C.; Prof Anne van Aaken, University of Hamburg, Hamburg; Marat Aitenov, AIFC Authority Board Member, Astana; Prof Catherine Kessedjian, University Pantheon-Assas Paris II, Paris; Mercedes Tarrazon, Dispute Management, Barcelona; Prof Dr. Malik Dahlan, Queen Mary University, London; Dr. Xuehua Wang, Huanzhong & Partners, China; Barry Leon, 33 Bedford Row, London; Aygun Aliyeva, Ministry of Energy of Azerbaijan, Baku; Alexander Uff, Shearman & Sterling; Roland Schroeder, GE Corporate, Fairfield; rooke Guven, Columbia Center on Sustainable Investment, New York; Amandine Van den Berghe, ClientEarth, London; Prof Robert McCorquodale, University of Nottingham and Brick Court Chambers, London; Shaun Donnelly, United States Council for International Business, Washington, DC; Rt Hon Sir David Edward, Blackstone Chambers.

- [Watch the video](#)
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## Publications



### [Empirical Study: Corporate Restructuring and Investment Treaty Protections](#)

The study examines all publicly available decisions of investor-state tribunals dealing with issues of corporate structuring and restructuring.

The study shows that the top five most effective objections of respondent states were based on the interpretation of the relevant treaty provisions and the timing of the restructuring. Other key factors considered by tribunals were the existence of genuine economic activity of the claimant in the host state and the underlying reason for the corporate restructuring.



### [Three Dimensions of Inequality in International Investment Law](#)

This paper puts the system of international investment law into its historical context, examines economic data as well as most recent statements of states on inequalities in international investment law. It examines inequalities between foreign investors and states, between developed and developing states as well as between foreign and domestic investors. It shows that each dimension of inequality has its own *raison d'être* and proposes ways to tackle them in the context of today's political and economic realities.



### [International Centre for Settlement of Investment Disputes](#)

Derived from the renowned multi-volume International Encyclopaedia of Laws, this practical analysis of the structure, competence, and management of International Centre for Settlement of Investment Disputes (ICSID) provides substantial and readily accessible information for lawyers, academics, and policymakers likely to have dealings with its activities and data. Available on [Amazon](#) and on [Kluwer Arbitration](#).



# 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 various materials related to investment treaty law.
- The membership benefits in line with the Institute's Individual membership (free access to ICLQ, 40% discount on BIICL publications, 20% discount on CUP publications and member rate at BIICL events).



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- Dr Tomoko Ishikawa, Nagoya University, Nagoya
- Jean Kalicki, Independent Arbitrator, Washington, D.C.
- Prof Mark Kantor, Georgetown University Law Center, Washington, D.C.
- Dr Sabine Konrad, Morgan Lewis, Frankfurt a. M.
- Prof A Vaughan Lowe, All Souls College Oxford and Essex Court Chambers, London
- Loretta Malintoppi, 39 Essex Chambers, London
- Prof Emeritus Maurice Mendelson QC, Blackstone Chambers, London
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- Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan, LLP, London
- Can Yeginsu, 4 New Square, London

## Consultative Forum Members

### Organisations

- Attorney General Office of the State of the Republic of Ecuador
- The Energy Charter Secretariat
- General Attorney's Office, the Kingdom of Spain
- The International Institute for Sustainable Development
- The Legal Office for International Trade Law, Ministry of Economy, Government of Mexico
- Ministry of Finance of the Czech Republic
- Ministry of Energy and Natural Resources, Republic of Turkey
- The Organisation for Economic Cooperation and Development
- The Permanent Court of Arbitration
- The Permanent Representation of the Slovak Republic to the European Union
- Secretariat for Legal Affairs - Presidency of the Republic of Ecuador
- State Chancellery of Latvia
- Trade Law Bureau, Government of Canada
- 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
- Professor Loukas Mistelis, Queen Mary University of London
- 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
- Dr Karl P Sauvant, Columbia University Law School
- Professor Christoph Schreuer, University of Vienna
- Judge Stephen M. Schwebel, Essex Court Chambers
- Professor M Sornarajah, National University of Singapore

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- Loretta Maintoppi, 39 Essex Chambers
- Audley Sheppard QC, Clifford Chance LLP
- Robert Volterra, Volterra Fietta LLP and Faculty of Law, UCL

### **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  
International and  
Comparative Law**

## 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](mailto:eventsregistration@biicl.org) for more information.



## Contact Information

### Contact

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Director of the Investment  
Treaty Forum

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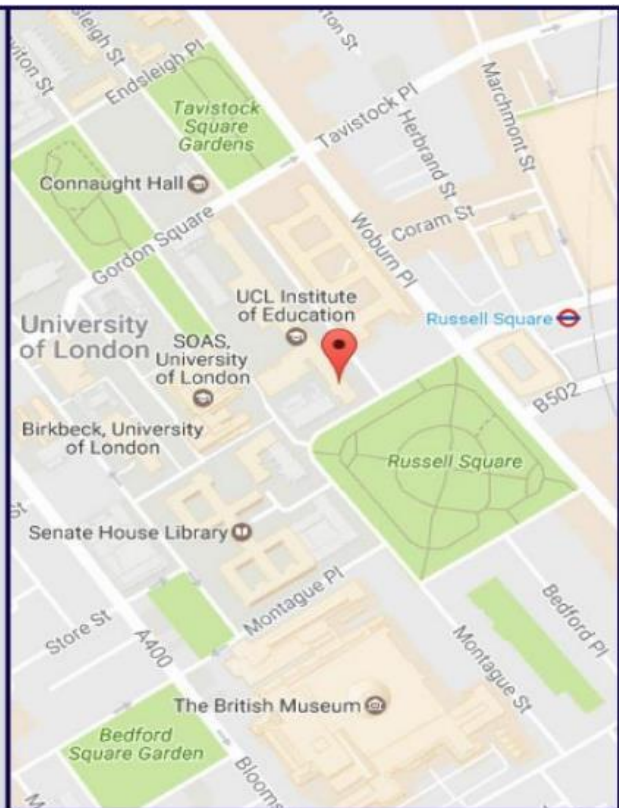
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