



**British Institute of  
International and  
Comparative Law**

# Investment Treaty Forum Annual Report 2022

A global centre for high level debate on International Investment Law

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## Introduction from the ITF Director



2022 has been a challenging, yet successful, year for the Investment Treaty Forum. It was the first “normal” year after the peak of the Covid pandemic. The Forum convened high-level events on topics of interest for its members, engaged in ISDS reform efforts led by UNCITRAL and ICSID and conducted in-depth studies on various aspects of investor-state dispute settlement.

Our events last year reflected the changing geopolitical realities such as the war in Ukraine and the increasing complexity in investment treaty arbitration. Our two public conferences dealt with **overlapping treaty regimes in international investment law** and **complex arbitration proceedings in investor-state dispute settlement**.

Addressing rising concerns of Western states about investments from Russia and China we convened a joint event with BIICL’s Competition Law Forum, on **national security considerations in foreign investment regulation**. 2022 marked the moment the new **ICSID Arbitration Rules** entered into force and ITF organised an event in September which brought together a deputy Secretary General of ICSID and senior practitioners to discuss the future application of the new rules. An ITF event in December examined **the role of subsequent agreements and subsequent practice in treaty interpretation** to understand whether States are still masters of their treaties.

If you missed a particular event, you may watch the recoding of most events in the [members-only section](#).

To better engage the future generation of international investment law practitioners, ITF became a platform for Young ITF, a learning, discussion and networking forum for junior practitioners, postgraduate students, civil servants and academics interested in international economic law. **Young ITF Debates** in 2022 focused on a range of important issues **including amicus briefs in ISDS, legitimate expectations** and the **multilateral investment court**. There is no formal membership in Young ITF and its events are free to attend.

I continued to represent BIICL at the **UNCITRAL Working Group III** sessions in Vienna and engage in other interviews such as co-chairing the expert group on **corruption and arbitration** convened by the UN Office on Drugs and Crime.

Looking to 2023, we hope to launch new studies discussing key problems in the area of international investment law such as **taxation and ISDS, technology disputes and arbitration, financial and banking disputes in ISDS** and **performance requirements in international investment law**.

Furthermore, our online course [International Investment Law and Dispute Resolution](#) attracts junior lawyers from law firms and governments. The [Annual ISDS Update](#) helps lawyers to be on the top of the most complex recent developments in international investment law.

I would like to thank ITF members, my BIICL colleagues, interns and junior researchers who helped to shape the ITF activities last year. I hope that in 2023 we will build upon the success of this past year and continue to provide a leading platform for high level discussions and debates.

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

# Events

22 April 2022

## Thirty Seventh ITF Public Conference: Overlapping Treaty Regimes in International Investment Law



On 22 April 2022, the Investment Treaty Forum brought together senior practitioners, arbitrators, academics and other experts to discuss overlapping treaty regimes in international investment law.

As the number of international law norms increases, so does its fragmentation. Cases in which the same issue is governed by overlapping and sometimes conflicting treaty regimes become increasingly common. How do investors and State

reconcile their rights and obligations under investment, EU, environmental, human rights, anti-corruption, trade, and other treaty regimes? Are tribunals obliged to take into accounts rights and obligations of parties to investor-State disputes even if none of the parties pleads it? How to reconcile conflicting treaty rules taking into account the legitimate expectations of investors and the rights of States to regulate?

Participants addressed and discussed questions such as the above at this one-day conference which took place in hybrid format (in-person and online) at the British Institute of International and Comparative Law.

**Participants:** Professor Yarik Kryvoi, Investment Treaty Forum Director, BIICL; Professor Joost Pauwelyn, Graduate Institute; Dr. Susan L. Karamanian, Hamad Bin Khalifa University (HBKU); Dr. Ahmad Ghouri, University of Sussex; Robert Volterra, Volterra Fietta; Suzy H. Nikièma, International Institute for Sustainable Development; Can Yeginsu, 3 Verulam Buildings (3VB); Markus Burgstaller, Hogan Lovells; Sylvia Tnova, Jones Day; Catharine Titi, French National Centre for Scientific Research; Jessica Gladstone, Clifford Chance; Dr. Claudia Salgado Levy, Government of Ecuador; Charles Buder, Curtis, Mallet-Prevost, Colt & Mosle; Professor Federico Ortino, King's College London; José Manuel Gutierrez Delgado, Permanent Representation of Spain to the European Union.

[Watch a recording of the conference](#)

5 May 2022

## Young ITF Launch Debate: Amicus briefs and ISDS legitimacy crisis



On 5 May 2022, [Young ITF](#) hosted its launch event.

The main aim of the Young ITF is to provide young professionals around the world with opportunities to develop their careers and interest in international economic law.

To further this objective, the Young ITF undertook an ambitious plan to introduce a new format of

events. The idea is to organise quarterly debates where two teams would debate a topic relevant to international economic law. Importantly, each of the two teams would be composed of one arbitration thought leader and one junior arbitration practitioner.

This event hosted our first-ever debate tackling the proposition:

**"This House believes that greater use of Amicus briefs will address the legitimacy crisis that ISDS is facing"**

The debate was held in hybrid format (online and in person) at BIICL and was subject to the Chatham House Rules.

**Participants:** Prof. Maxi Scherer, Special Counsel, WilmerHale, Professor of Law, Queen Mary University of London; Dr Martins Paparinskis, Reader in Public International Law, University College London; Rebecca Zard, Associate, Freshfields Bruckhaus Deringer; Patricia Snell, Associate, Covington & Burling; Karolina Latasz, Member, Young ITF Steering Committee, Associate, Allen & Overy (moderator).

[Read event summary](#)

12 May 2022

[National Security Regime and FDI](#)



In 2021, the United Kingdom adopted the National Security and Investment Act (NSI Act), which allows the government to scrutinise and intervene in certain acquisitions made by anyone, including businesses and investors, which could harm the UK's national security. The NSI Act launches the first UK investment screening regime based on specific national security criteria, with the establishment of a new Investment Security Unit. This new regime has important ramifications for foreign direct investments.

In this context, the panel brought together academics, practitioners and government officials to discuss the new regime, the implications for the parties involved and the wider impact on investment in the UK.

This event was co-organised by the [Competition Law](#) and [Investment Treaty](#) Forums at BIICL and the [Global Policy Institute](#) at Queen Mary University London.

**Participants:** Prof. Yarik Kryvoi, BIICL; Prof. Ioannis Kokkoris, Queen Mary, University of London and co-director of the Competition Law Forum at BIICL; Nicole Kar, Head of UK Antitrust and Foreign Investment, Linklaters; José Manuel Gutiérrez Delgado, Permanent Representation of Spain to the European Union; Professor Tomoko Ishikawa, University of Nagoya.

[Watch a recording of the event](#)



13 September 2022

### Young ITF Debate on Legitimate Expectations



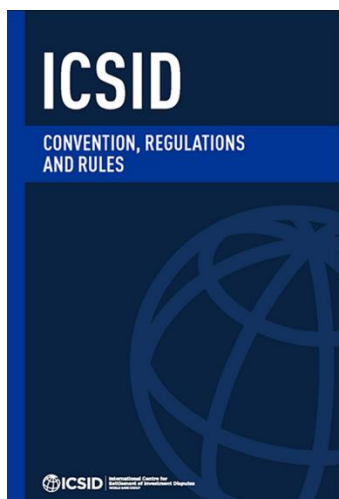
It is now rare to find an investment dispute which does not include a claim of a breach of legitimate expectations. Such claims have been successful in a wide variety of circumstances leading to concerns from some that the doctrine has lost its moorings.

This debate considered whether tribunals are losing control of the doctrine of legitimate expectations, or if the doctrine is finding its proper place in the ISDS regime.

**Participants:** Alison Macdonald KC, Essex Court Chambers; Prof. Jan Kleinheisterkamp, LSE; Augusto Garcia Sanjur, Wilmer Hale LLP; Dilara Khamitova, Clyde & Co

15 September 2022

### Revised ICSID Arbitration Rules: Key Changes



On 1st July 2022, the new ICSID Rules came into effect. This has marked an end of a nearly six-year long process that ICSID launched to modernise, simplify, and streamline the rules while also leveraging information technology to reduce the environmental footprint of ICSID proceedings.

The key changes are focused on four key areas: procedural efficiency - including rules on a new expedited procedure; costs - including new provisions on security for costs; third-party funding; and promoting transparency and enhancing greater public access to ICSID proceedings. The new rules also provide broader access to Additional Facility arbitration for non-contracting parties, and entirely new procedural rules have been introduced for mediation and fact-finding.

The panel brought together members of the ICSID Secretariat, leading practitioners and others to discuss key changes introduced by the new ICSID 'Rules and their implications on the practice of investor-State arbitration.

**Participants:** Prof. Yarik Kryvoi, BIICL; Kate Cervantes-Knox, DLA Piper and the University of Law; Martina Polasek, ICSID Secretariat; Guglielmo Verdirame KC, Twenty Essex; Dr Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan.

[Read event summary](#)

14 October 2022

### Thirty Eighth ITF Public Conference: Complex Arbitration Proceedings in ISDS



On 14 October 2022, the Investment Treaty Forum brought together senior practitioners, representatives of States, arbitrators, academics, and other experts to discuss complex arbitration proceedings in ISDS.

Disputes between investors and States become increasingly complex as they may involve parallel proceedings with partially or fully overlapping parties in domestic courts, various arbitration

tribunals and other adjudicative bodies. The approaches of international tribunals to traditional public international law doctrines such as exhaustion of remedies and res judicata differ, which leads to the lack of legal certainty.

States may assert counterclaims or resist enforcement in attempt to minimise the adverse consequences of arbitral proceedings. Issues such as parallel proceedings and elective loss have become subject of attention of the UNCITRAL Working Group III, which tries to find solutions to these problems.

This one-day conference served as a platform to get updates, exchange views, best practices and practical know how on various procedural problems, which arise in the context of complex arbitral proceedings.

**Participants:** Prof. Yarik Kryvoi, BIICL; Sam Wordsworth KC, Essex Court Chambers; Marcin Kaldunski, Government of Poland; Raed Fathallah, Bredin Prat; Chloe Carswell, Reed Smith; Alexander Slade, Mishcon de Reya; Louise Woods, Vinson & Elkins; Jeff Sullivan, Gibson, Dunn & Crutcher; Prof. Matthew Happold, University of Luxembourg; Aniruddha Rajput, Withers; Antolín Fernández Antuña, Antuña and Partners; Naomi Briercliffe, Allen & Overy; David Kavanagh KC, Skadden; Iain Jones, Kroll; Audley Sheppard KC, Clifford Chance.

[Read event summary](#)

[Watch a recording of the conference](#)

15 November 2022

### Are States Still Masters of their Treaties? The Role of Subsequent Agreements and Subsequent Practice in Treaty Interpretation



States are often said to be the "Masters of their Treaties." However, recent decisions of arbitral tribunals in ISDS cases question the enduring accuracy of that title.

What is the role - in theory and practice - of States' subsequent agreement and subsequent practice in treaty interpretation? When established, is it simply something that "must be taken into account" by tribunals akin any admissible input on treaty

interpretation by any disputing party? Does it have special, though not binding, weight? Or does it control (absent any special circumstances, such as when it may contravene a jus cogens norm)?

BIICL and Curtis, Mallet-Prevost, Colt & Mosle convened this hybrid event to look at these and other questions by comparing how subsequent agreements and subsequent practice are treated in ISDS and other international courts and tribunals, and exploring the implications of the relevant approaches.

The distinct perspectives and views on these topics by the panelists, composed of practitioners, academics, and government officials, would contribute invaluable to the discussion at the session.

Participants: Prof. Yarik Kryvoi, BIICL; Prof. Dapo Akande, Oxford University, Member of the International Law Commission; Lise Johnson, Curtis Mallet-Prevost, Colt & Mosle; Prof. Malgosia Fitzmaurice, Queen Mary University of London; Sylvie Tabet, General Counsel at Canada's Trade Law Bureau; Luciana Ricart, Curtis Mallet-Prevost, Colt & Mosle.

6 December 2022

[Young ITF Debate: This House believes that the approach of the Multilateral Investment Court to appointment of judges will not appropriately balance interests of States and investors](#)



The proposed Multilateral Investment Court will appoint a permanent, remunerated, and state-appointed body of judges who will be randomly allocated to cases. In doing so, the Multilateral Investment Court seeks to overcome concerns regarding the independence and impartiality of party-appointed arbitrators in the ISDS system.

The debaters considered whether the Multilateral Investment Court's method of appointing judges

would be equally favourable to all disputing parties, or whether it would perpetuate the imbalances in an already asymmetric system.

**Participants:** Eva Kalnina, Arbitration Chambers; Mark Konstantinidis, PhD candidate and Visiting Lecturer, KCL; Prof. Loukas Mistelis, Queen Mary University of London; Puloma Mukherjee, Lalive

# Investment Treaty Forum Membership

## Membership Benefits

- The right to participate in an independent Forum, including free entry to all ITF meetings and conferences;
- A direct influence on the agenda of meetings and the opportunity to recommend events, speakers and topics for debate;
- The opportunity to suggest research to be carried out by the Forum staff;
- Access to a members-only section of the BIICL website including various materials related to investment treaty law;
- All Forum members also receive the following benefits: electronic access to the ICLQ; one free place per organisation at any standard BIICL evening event; and named Forum representatives are eligible for the BIICL member rate at other public Institute events.

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- The United Nations Conference on Trade and Development
- The United Kingdom Department for International Trade
- The United Kingdom Foreign, Commonwealth and Development Office

## Individuals

- Sir Frank Berman, KCMG KC, Essex Court Chambers
- Prof. Jansen Calamita, National University of Singapore (former ITF director)
- Prof. 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 KC, International Court of Justice
- Prof. Loukas Mistelis, Queen Mary University of London
- Prof. 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 Sauvart, Columbia University Law School
- Prof. Christoph Schreuer, University of Vienna
- Judge Stephen M. Schwebel, Essex Court Chambers
- Prof. M Sornarajah, National University of Singapore

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## ITF Director:

Prof. Yarik Kryvoi, British Institute of International and Comparative Law



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## Online Course International Investment Law and Dispute Resolution



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

## Contact Information

### Contact

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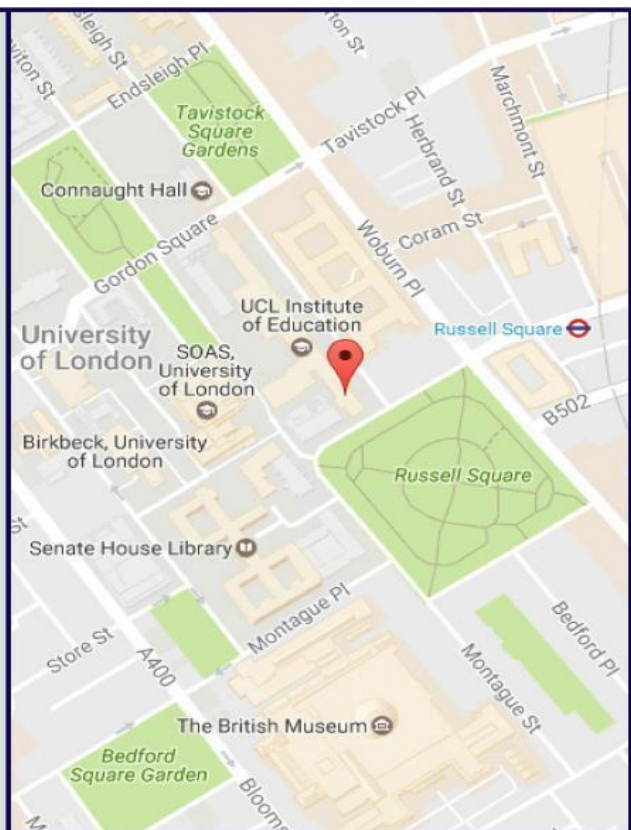
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