



British Institute of International and Comparative Law

# Investment Treaty Forum

## Thirty First ITF Public Conference: Human Rights in International Investment Law

Friday, 26 October 2018

The British Academy, 10-11 Carlton House Terrace, London SW1 5AH



Media Partner



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## CONFERENCE OVERVIEW

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As international investment tribunals increasingly confront non-investment obligations, academics and practitioners in the field of international investment law find it challenging to understand the legal and ethical responsibilities of foreign investments in the area of human rights.

Investment tribunals typically do not include experts on international human rights law and investment treaties are usually silent on human rights issues. This leads to inconsistent decisions violating human rights, the right to regulate of host States, as well as undermining legal certainty.

The issues which arise in the context of international investment law include the right to health, access to drinking water and justice, as well as the right to property. Each of these principles has different interpretations in domestic legal systems. Issues related to corporate social responsibility may involve difficult conflicts between national and international (including the concept of "responsible non-compliance") with domestic laws which breach fundamental international law rules.

Complex issues involving human rights in international investment law include piercing the corporate veil, identifying obligations of investors under international in the absence of relevant provisions in investment treaties. Proceedings in front of international investment tribunals may also overlap with proceedings at other bodies, including international human rights courts. Managing such proceedings presents difficult tasks for the parties, including at the stage of enforcement.

To discuss these issues the Thirty-First ITF Public Conference will convene in London on 26, October 2018. The Forum will bring together leading arbitrators, judges, practitioners and academics, drawn primarily from ITF members, to debate issues related to human rights in international investment law.

## PRACTICAL INFORMATION

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### Venue

The British Academy, 10-11 Carlton House Terrace, London SW1Y 5AH

### Nearest Underground stations

- Charing Cross (Cockspur Street exit) – 6 minute walk to venue
- Piccadilly Circus (Lower Regent Street exit) – 7 minute walk to venue

### Wi-Fi access

Username: 10-11cht

Password: hospitality

### Social media hashtag

@BIICL #ITFLaw



# AGENDA

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

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9:00-9:15 | Welcome and Introduction

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

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9:15-10:00 | Keynote Address

**Sir Christopher Greenwood, GBE, CMG, QC**, 24 Lincoln's Inn Fields, Judge of the International Court of Justice from 2009 to 2018, United Kingdom

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10:00-11:30 | Panel 1: Non-investment obligations in international investment law

**Chair:** **Prof Robert McCorquodale**, University of Nottingham and former Director of BIICL, United Kingdom

- **Monica Feria-Tinta**, 20 Essex Street, United Kingdom
  - **Kinda Mohamadieh**, The South Centre, Switzerland
  - **Prof Yannick Radi**, University of Louvain, Belgium
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11:30-12:00 | Tea & coffee

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12:00-13:30 | Panel 2: Competing jurisdiction and parallel proceedings

**Chair:** **Andreas Bucher**, University of Geneva, Switzerland

- **Filip Balcerzak**, Adam Mickiewicz University and SSW Pragmatic Solutions, Poland
  - **Prof Eric De Brabandere**, Leiden University, Netherlands
  - **Prof Ursula Kriebaum**, University of Vienna, Austria
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13:30-14:30 | Lunch

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14:30-16:00 | Panel 3: Interpretation of human rights obligations by international tribunals

**Chair:** Prof Krista Nadakavukaren Schefer, University of Basel and Swiss Institute of Comparative Law, Switzerland

- **Ella Davies**, Freshfields Bruckhaus Deringer, United Kingdom
- **David Ingle**, Allen & Overy, Spain
- **Alex Slade**, Vinson & Elkins, United Kingdom

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16:00-16:30 | Closing remarks

**Robert Volterra**, Volterra Fietta, United Kingdom

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This programme is subject to change.

## SPEAKER BIOGRAPHIES

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### Filip Balcerzak

Adam Mickiewicz University and SSW Pragmatic Solutions, Poland

Filip Balcerzak, LL.M., Ph.D., attorney-at-law. He has been admitted to the bar in two jurisdictions: Poland (*adwokat*) and Spain (*abogado*). He is an Associate Professor (Research) at Adam Mickiewicz University in Poznań and works predominantly on a project funded by the Polish National Science Centre ("International investment law and the renewable energy sector's challenges"). He acts as an arbitrator at the Lewiatan Court of Arbitration (Warsaw). He is a Senior Associate at SSW Pragmatic Solutions (Poland), specializing in dispute resolution (arbitration and litigation).

In 2017 he published a monography entitled "Investor-State Arbitration and Human Rights" (Brill / Nijhoff, [www.brill.com/view/title/34356](http://www.brill.com/view/title/34356)).



### Andreas Bucher

University of Geneva, Switzerland

Expert of the Swiss delegation at the Hague Conference of Private International Law (1993-2005), President of the Commission on choice of court agreements at the 20<sup>th</sup> diplomatic session (June 2005). Author of four courses at the Hague Academy of International Law, including the general course on Private International Law in 2009 (volume 341 of the collected courses).

Member of a number of international arbitration tribunals, mostly including investment matters governed by ICSID. Member of the Institute of international law.



### Ella Davies

Freshfields Bruckhaus Deringer, United Kingdom

Ella Davies is an Associate in the International Arbitration Group at Freshfields Bruckhaus Deringer LLP based in London. Ella has experience advising clients in the energy, natural resources and telecoms sectors in contractual and investment treaty disputes against States, including under the UNCITRAL, ICSID, and ICC arbitration rules. Her recent experience includes successfully representing a European telecoms company in a bilateral investment treaty dispute against India.

Ella also has experience advising NGOs in interventions before the UK higher courts and has previously been seconded to the Asylum Support Appeals Project, for whom she acts as a volunteer advocate. Ella is qualified as a solicitor advocate in England and Wales. She has a BA and Masters degree in History from Oxford University.



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### Prof Eric De Brabandere

Leiden University, Netherlands

Eric De Brabandere is Professor of International Dispute Settlement and Director of the Grotius Centre for International Legal Studies. He is also Attorney-at-Law at the Brussels Bar practicing in international law and arbitration, Editor-in-Chief of the Leiden Journal of International Law, and a member of the Board of Editors of the Journal of World Investment & Trade, the Revue belge de droit international (Belgian Review of International Law), and the Martinus Nijhoff Investment Law Book Series.



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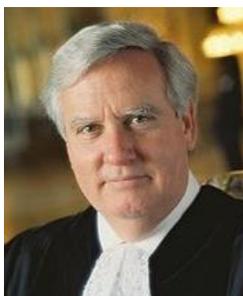
### Monica Feria-Tinta

20 Essex Street, United Kingdom

Monica Feria-Tinta is a barrister, a specialist in public international law. She advises and represents States, companies and private parties. She acts as counsel in cases before English courts, international courts, and arbitral tribunals under a variety of rules (ICSID, UNCITRAL, SIAC, LCIA and ICC) and applicable laws. Monica has appeared/advised on cases before the ICJ, Permanent Court of Arbitration, International Tribunal for the Law of the Sea, UN Human Rights Committee, Inter-American Court of Human Rights, ICSID and SIAC tribunals, UN Special Rapporteurships and diplomatic fora.

Monica is the author of numerous publications in international law including an upcoming book, *Foreign State Immunity and Enforcement of Arbitral Awards in English Courts*, to be published by Oxford University Press, and "Like Oil and Water? Human Rights in Investment Arbitration in the Wake of *Phillip Morris v. Uruguay*", an article in the *Journal of International Arbitration* (Issue 34, No 4). She regularly lectures, and appears as speaker on international law, worldwide.

Prior to the Bar Monica worked for international tribunals including at the International Court of Justice. Her international law experience includes acting as Assistant Legal Adviser to the Foreign & Commonwealth Office. She has also held academic positions at the LSE and as a Visiting Scholar at the Lauterpacht Centre for International Law, University of Cambridge.



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### Sir Christopher Greenwood, GBE, CMG, QC

24 Lincoln's Inn Fields, Judge of the International Court of Justice from 2009 to 2018, United Kingdom

Since March 2018, Christopher Greenwood has been a Judge of the Iran-United States Claims Tribunal and an international arbitrator. Prior to his appointment to the Tribunal, he was a Judge of the International Court of Justice from 2009 to February 2018. Before his election to the Court, he was Professor of International Law at the London School of Economics and a practising barrister who regularly argued cases about international law before international and English courts.

Born in 1955, he was educated at Raeburn Park School, Singapore, Wellingborough School and Magdalene College, Cambridge, he obtained degrees in Law and International Law with first class honours and was elected a Fellow of Magdalene College, Cambridge, in 1978. He taught at Cambridge

for nearly twenty years before being appointed to a Chair of International Law at the London School of Economics in 1996.

His publications include over 100 volumes of the International Law Reports (including some 80 volumes as Joint Editor with the late Sir Elihu Lauterpacht QC), a collection of essays – Essays on War in International Law (2006) – and numerous articles. He has sat as an arbitrator in many investment cases and in the arbitration between Mauritius and the United Kingdom regarding the Chagos Islands. He was appointed Queen’s Counsel in 1999, made a Companion of the Order of St Michael and St George (CMG) for services to public international law in 2002 and knighted in 2009. In June 2018 he was appointed Knight Grand Cross (GBE) for services to international justice in Her Majesty the Queen’s Birthday Honours List. He is an Honorary Fellow of Magdalene College and of the Lauterpacht Centre for International Law and an associate of the Institut de droit international.



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### David Ingle

Allen & Overy, Spain

David specialises in international arbitration and has acted for a range of banking and corporate clients as well as State entities, in international commercial and investment treaty arbitrations under ICC, ICSID, LCIA and UNCITRAL Rules. He has provided advice to clients on a broad range of contentious issues and with respect to a multitude of jurisdictions. David also regularly lectures on English law is admitted to the Texas bar.

Based in Madrid, is part of the core team advising investors in many disputes under the Energy Charter Treaty against the Kingdom of Spain. His current clients in these matters include the PV Investors, Bridgepoint, Infracapital, and Masdar. He also represented RWE, Stadtwerke München and others in their claim against Spain, including appearing alongside Marie Stoyanov as an advocate at the final hearing.



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### Prof Ursula Kriebaum

University of Vienna, Austria

Dr. Ursula Kriebaum is Professor for Public International Law at the University of Vienna, Department of European, International and Comparative Law. She is a Member of the Permanent Court of Arbitration, an Alternate Member of the Court of Conciliation and Arbitration within the OSCE and a Member of the Arbitration panel for the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States and the Republic of Korea. She acts as legal expert in international investment law and human rights law cases and as consultant for law firms and advisor to governments on investment law and arbitration issues. Ursula Kriebaum has published widely on international investment law and arbitration as well as on human rights law.



### **Prof Yarik Kryvoi**

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

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.



### **Prof Robert McCorquodale**

University of Nottingham and former Director of BIICL, United Kingdom

Robert is Professor of International Law and Human Rights at the University of Nottingham and a barrister at Brick Court Chambers in London. He is also the founder of Inclusive Law, a consultancy which aims to bring together business, law and human rights ([www.inclusivelaw.com](http://www.inclusivelaw.com)). He has been the Head of two Law Schools and was the Director for 10 years of the British Institute of International and Comparative Law, which is the world's leading independent applied legal research body.

Robert's experience extends to most aspects of public international law, with a special interest in international human rights law, self-determination, and business and human rights. He has written widely and taught globally on these areas, and also advised companies of all sizes, assisted governments, been involved with civil society and intergovernmental organisations in drafting legal changes, and worked with trade and industry associations. Robert has also drafted national constitutions, advised governments and independence movements, and spoken at events around the world.



### **Kinda Mohamadieh**

The South Centre, Switzerland

Kinda Mohamadieh is senior researcher with the Global Governance for Development Programme of the South Centre, where she works on issues pertaining to international investment governance and the role and accountability of business enterprises with respect to human rights. For nine years, she had worked as Policy Advisor at the Arab NGO Network for Development (Beirut) where she addressed issues pertaining to development and economic policies in the Arab region. Kinda holds an LL.M. in International Economic Law from the University of Lausanne, a master degree in Public Affairs from UCLA, and an undergraduate degree in economics. She is currently PhD candidate at the international law department of the Graduate Institute in Geneva.



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### Prof Yannick Radi

University of Louvain, Belgium

His areas of expertise include international investment law, international dispute settlement, business and human rights as well as sustainable development. He has developed a cutting-edge expertise in the interplay between international investment law and other international law regimes, in particular human rights law. He has extensively published on these matters; he is notably the Editor of a forthcoming Research Handbook on Human Rights and Investment published by E Elgar. Yannick is also Editor-in-Chief of the Brill Research Perspectives in International Legal Theory and Practice and a member of various scientific committees and research projects, in particular the International Committee of the International Law Association on the 'Rule of Law and International Investment Law'.

Yannick holds a Ph.D. and an LL.M. from the European University Institute (Florence). He also holds an LL.M. in international law from the University Paris II Panthéon-Assas.



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### Prof Krista Nadakavukaren Schefer

University of Basel and Swiss Institute of Comparative Law, Switzerland

Krista is a Vice Director of the Swiss Institute of Comparative Law. She is also on the faculty of the World Trade Institute in Bern and is an adjunct instructor at the Universities of Basel and Bern.

Long interested in the intersection of international economic law and other areas international law, Dr. Nadakavukaren's research has looked at poverty, corruption, human rights, and vulnerability on their own as well as in connection with the more traditional topics of trade and investment law. She is very interested in the legal implications of obesity and has just been pursuing research on legal responses to street harassment.

Professor Nadakavukaren is a native of the United States. She received her *juris doctor* from Georgetown University Law School, and her doctorate and Habilitation from the University of Bern.



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### Alex Slade

Vinson & Elkins, United Kingdom

Alexander Slade is a Senior Associate in Vinson & Elkins' International Dispute Resolution team, based in London. He has broad experience of investment arbitration and international commercial arbitration, including appearing regularly as advocate. He has acted in arbitrations under most of the major institutional rules, with particular experience under the ICSID, UNCITRAL, ICC, LCIA, and SCC Rules. Alexander also acts in English litigation and has appeared as advocate in the English Court of Appeal.

Alexander's advisory practice includes international investment law and nationality planning, boundary issues, dispute resolution clauses, public international law, and issues arising out of EU sanctions. His practice covers a wide variety of sectors, with particular focus on energy, infrastructure, private equity and M&A disputes, construction, and telecommunications. He is the author of book chapters on investment arbitration and speaks regularly on arbitration issues.



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### **Robert Volterra**

Volterra Fietta, United Kingdom

Robert has been recognised for many years in the global legal directories as one of the world's top public international law practitioners. He is qualified as a barrister in Canada and as a solicitor-advocate in England and Wales. He advises and represents governments, international organisations and private clients on a wide range of contentious and non-contentious public international law and international dispute resolution issues, including international boundaries, sovereign immunities, Brexit, the application of international law in domestic court systems, the Law of the Sea, WTO and trade law, treaties, international organisations, Business and Human Rights (BHR), transboundary resources, the Laws of War, bilateral investment treaties (BITs) and ICSID, international oil and gas issues, government relations. He regularly acts as co-agent, counsel and advocate before the International Court of Justice and ad hoc international arbitration tribunals, including under the Permanent Court of Arbitration, ICSID, ICC, SCC, LCIA, UNCITRAL, WTO and UNCLOS rules.

Robert combines being a seasoned practitioner with being a thought-leader in the field of public international law. He is a Visiting Professor of International Law at University College (UCL), University of London, where he has taught the international law of foreign investment for almost 20 years. He is a Visiting Senior Lecturer at King's College, University of London, where he has taught the international law of boundary disputes for several decades. He is invited to lecture on a variety of public international law topics in Europe, the Americas, Africa and Asia. He publishes regularly. He is on the International Law Advisory Board of the British Institute of International and Comparative Law. He is on the Management Board of the Investment Treaty Forum. He is a member of the ICC Latin American Arbitration Committee. He is on the Expert Panel for States of UNCTAD's Programme on Dispute Settlement in International Trade, Investment and IP. He is a Legal Expert on the Energy Charter Secretariat's Legal Advisory Task Force.

# INVESTMENT TREATY FORUM

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## 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 DBE 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 3-4 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, the 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.
- The membership benefits in line with BIICL's Individual membership (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

The Forum membership is by invitation only. For more information on ITF membership please visit [www.biicl.org/investmenttreatyforum](http://www.biicl.org/investmenttreatyforum) or contact Professor Yarik Kryvoi ([Y.Kryvoi@BIICL.ORG](mailto:Y.Kryvoi@BIICL.ORG)).

















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