

# Kluwer Arbitration Blog

## Investors' Views on the ISDS Reform: QMUL Investment Arbitration Survey

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Last week QMUL, in partnership with the Corporate Counsel International Arbitration Group (“CCIAG”), launched its first ever survey focusing exclusively on international investment. This is the tenth major empirical International Arbitration survey conducted by the School of International Arbitration at Queen Mary University of London. A link to the survey can be found [here](#).

The survey comes at a critical time for the investor-state dispute resolution regime. The current regime is characterised by the use of arbitral tribunals to solve a dispute between an investor and a state concerning the former’s investment. Typically this is regulated by a bilateral or multilateral investment treaty and involves an investor bringing a claim directly against the state, the dispute being heard by an arbitral tribunal whose members are appointed by both the investor and the state.

In the last forty years, there has been a steep increase in the number of disputes submitted to arbitral tribunals. While many cases are brought against developing countries and emerging markets, in recent years a very good number of cases is brought against developed countries.

The growth of ISDS as a forum for resolving investment disputes between investors and states has come in for criticism from public opinion, the media and the users of the system. A large number of conferences, keynote speeches and papers have addressed the potential for reform of the current framework. Professor Brigitte Stern, who delivered the 34th Annual Lecture of the Queen Mary University of London School of International Arbitration and Freshfields lecture in November 2019, spoke of a system which has prevented war between states in the last century, and is now at “existential risk”. This has been picked up by states which are now working multilaterally to consider reforms.

In 2017, the United Nations Commission on International Trade Law (“UNCITRAL Commission”), the core legal body of the United Nations system in the field of international trade law, assigned its Working Group III with the task of assessing concerns and potential reforms to ISDS. The Working Group III is now examining potential procedural changes submitted by states with the objective of developing recommendations to the UNCITRAL. As described elsewhere on this blog ([here](#)), the fifth session of the UNCITRAL’s Working Group has shown a more concrete approach by governments who have finalised a medium-term work plan. The January 2020 session will focus on three topics, namely the creation of an appellate mechanism, the introduction of a standing multilateral investment court, and the selection and appointment of arbitrators and judges.

The session in March/April 2020 will focus on counterclaims, dispute prevention and the reform instruments. Without doubt, the discussion under UNCITRAL Working Group III represents a welcomed effort to improve the system on which investors can rely when making an investment in a foreign country.

So far, the discussion has been limited to the perspectives of states and investors' voice risks not being heard. As investors are users of the ISDS system as well as states, and the system was established to incentivise and protect foreign investment, QMUL and CCIAG's survey is seeking their input to facilitate the discussion on reform proposals. We are looking to hear in-house counsel and management representatives and hear how the current system works (or does not work) for them and which reforms to the current system may help resolve disputes and promote foreign investment.

### **Take the Survey**

We welcome responses from in-house corporate counsel and management representatives. The Investment Arbitration Survey is available at the [following link](#). The questionnaire is in two parts. Part 1 should take 10-15 minutes to complete and Part 2, which is optional, will take a further 10-15 minutes.

The closing date for responses to this questionnaire is **19 December 2019**. Results will be published in January 2020 on the [School of International Arbitration website](#).

We are grateful for your participation and look forward to the Survey's outcomes. Since the results will benefit from a wide pool of respondents, please feel free to forward this questionnaire to any other potentially interested respondents.

### **Interviews**

In addition to the questionnaire phase of the Survey, we plan to conduct individual interviews with a selection of willing respondents. If you would prefer to provide an interview rather than completing the questionnaire, please contact Caroline Le Moullec and Giammarco Rao at [qmulinvestmentsurvey2019@qmul.ac.uk](mailto:qmulinvestmentsurvey2019@qmul.ac.uk).

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