

# LALIVE

Quito, 5 October 2017

## ***Opciones ante las denuncias de los TBI / Options available upon the termination of BITs***

**Domitille Baizeau**

1	FOREIGN INVESTMENT PROTECTION UNDER BILATERAL INVESTMENT TREATIES AND ICSID.....	3
1.1	BITS .....	3
1.2	ICSID Convention.....	5
1.3	Arbitration of investment disputes: relationship between BITs and ICSID.....	6
2	A RECENT MOVE AWAY FROM THE INTERNATIONAL INVESTMENT PROTECTION REGIME? .....	6
3	THE RELATIVE IMPACT OF BIT TERMINATIONS .....	9
3.1	States' right to terminate BITs.....	10
3.2	The relative effect of BIT termination: survival clauses .....	12
4	THE UNCERTAINTY ARISING OUT OF WITHDRAWALS FROM ICSID .....	13
4.1	The effect of withdrawal under the ICSID Convention .....	14
4.2	The effect of ICSID withdrawal depends on the BIT in question	16
5	CONCLUSION: RENEGOTIATION AS A BETTER ALTERNATIVE?.....	18
	BIBLIOGRAPHY.....	20

As you all know, a few months ago, Ecuador decided to terminate the remaining 16 bilateral investment treaties that it had entered into, including the ones with the United States and several EU countries.

This decision came after the amendment to the Ecuadorian Constitution and a first wave of terminations in 2008, after Ecuador's withdrawal from ICSID in 2010, and **after a decade** of arbitrations brought by foreign investors against Ecuador, as a result of which the country faced **very large adverse awards**, including

- a US\$980 million in favour of US oil company **Occidental** following the State's termination of a participation contract for an oil block; and
- a US\$380 million to a **ConocoPhillips** subsidiary for seizing two oil blocks.

And of course, meanwhile, Ecuador continues to face a US\$9 billion treaty dispute initiated by **Chevron** relating to environmental pollution in the Amazon, *in which the US oil company alleges it was denied justice by the Ecuadorean court system.*

Today I will address you on the impact of the termination or denunciation of some of the international instruments that currently govern foreign investment protection around the world, including the investor-State dispute settlement (ISDS), specifically two instruments, BITs and along with them, the ICSID Convention.

I will first set the scene by summarizing the key features of this regime based on BITs and the ICSID Convention (Section 1) and recalling the recent move away from that regime, in particular but not only in Latin America (Section 2).

I will then address certain issues that arise out of unilateral BIT terminations specifically, and in particular the relative impact of BIT termination (Section 3) and then related issues - and uncertainty - that arise from certain countries' withdrawal from ICSID (Section 4).

## **1 FOREIGN INVESTMENT PROTECTION UNDER BILATERAL INVESTMENT TREATIES AND ICSID**

Foreign investment protection has since the 1960s been supported by various multilateral and bilateral treaties, including the ICSID Convention which came into force in 1966, and bilateral investment treaties – BITs.

(The very first BITs were concluded in the 1950s and 1960s but then did not contain dispute resolution clauses. Many more BITs were concluded in the 1980s and 1990s with dispute resolution clauses, which were discovered - so to speak - relatively recently.)

### **1.1 BITS**

**BITs** are treaties entered into by two States for the reciprocal promotion and protection of investments made by nationals of one State in the other State.

Today there exist some 2'700 of such BITS, along with multilateral investment treaties such as NAFTA (between the US, Canada and Mexico), the Energy Charter Treaty (ECT, covering specifically the energy sector), or more recently the Trans-Pacific Partnership (TPP, signed by 12 countries of the pacific rim, but not yet ratified).

These international investment agreements, or IIAs as they are sometimes referred to, are designed first to provide **substantive protection** to foreign investors, including typically the following, at times overlapping, standards

(although their scope and formulation can vary greatly depending on the BITs):

1. **Fair and equitable treatment (FET)** – which is a broad standard of protection, and includes the provision of a stable and predictable legal environment, freedom from harassment, coercion or denial of justice (*e.g.* by local courts).
2. **Protection from expropriation** (both direct and indirect) without compensation.
3. **Most-favoured-nation (“MFN”) treatment** - which is basically allows investors to “import” other substantive protection standards (such as FET) from other BITs if the BIT in question does not contain it. It also protects investors against discrimination on the basis of nationality as it ensures that the treatment by the host State is no less favourable than that which host State provides to investors from third State.
4. **Full protection and security (FPS)** - which includes protection from physical violence against the assets and individuals connected with an investment, and also legal security. (It can overlap with FET standard.)
5. **Protection from discriminatory and arbitrary measures.**
6. **Freedom to transfer funds.**

Importantly, and considered also as a key feature, these treaties typically have a **dispute resolution clause** containing the States’ consent to arbitrate and allowing the investor to bring a claim directly against the host State in which they have invested for violation of these standards of protection, and to do so under different arbitration rules, typically those of the ICSID convention (the ICSID Arbitration Rules) and also often the UNCITRAL Rules or, less frequently, the ICC or SCC Rules.

## 1.2 ICSID Convention

The ICSID Convention or Convention on the Settlement of Investment Disputes between States and Nationals of Other States has been ratified by 153 Contracting States, although some very large States are not signatories, including India and in Latin America, Brazil and Mexico.

The ICSID Convention provides essentially **procedural protection** to investors, *i.e.* a self-contained dispute resolution process designed to facilitates investors' pursuit of their claims against States, as compared to doing so before a national court or commercial arbitration body, thanks to certain key features, including:

1. The **impossibility for States to invoke their immunity** from jurisdiction since the process is one of treaty arbitration;
2. The **application of international law** to the relationship between the host State and the investor as opposed to only domestic law;
3. The **exclusion of local courts**– with a possible challenge of ICSID awards limited to annulment proceedings under the ICSID Rules; and
4. The **direct enforceability** of ICSID awards within the territories of all State parties to the ICSID Convention.

In addition, the Convention established ICSID, the International Centre for the Settlement of Investment Disputes, which provides support and facilities for the arbitration proceedings conducted under the ICSID Rules, including in the appointment of the Arbitral Tribunal.

### 1.3 Arbitration of investment disputes: relationship between BITs and ICSID

When considering the arbitration of investment disputes, it is important to understand the relationship between these instruments.

For ICSID arbitration to be available, there are **two requirements**:

- a) the host State and the investor's home State need to be party to the ICSID Convention; and
- b) the parties need to have consented to ICSID arbitration.

The ICSID Convention itself does not provide the States' consent. It merely makes ICSID available as a forum for disputes "which the parties ... consent in writing to submit to the Centre" (Article 25(1) ICSID Convention).

**A State's actual consent** to arbitrate a given dispute must be constituted by or contained in another instrument, either a specific **investment agreement** between the investor and the host State (*e.g.* mining concession or a hydrocarbon PSA), or the **State's investment law**, which contains an offer to arbitrate, which the investor accepts by initiating the arbitration, or, more commonly, a **BIT** between the investor's home State and the host State.

This connection between the ICSID Convention and BITs is particularly significant when considering the impact of termination and denunciations of these instruments, as has recently happened

## 2 A RECENT MOVE AWAY FROM THE INTERNATIONAL INVESTMENT PROTECTION REGIME?

Indeed, in the last 10-15 years, States have faced an **increasing number of claims** filed by foreign investors, whether at ICSID or at other venues available under BITs, leading to a host of arbitral decisions awarding billions

of dollars to foreign investors against - in particular - developing and emerging countries.

These claims have concerned a wide range of industries, chief of which utilities (electricity / power concessions, water and waste water management); services; natural resources in particular, oil and gas and mining.

This relatively recent development has brought with it **increased knowledge** about a system which remained relatively unknown till then, also, recently, a **wave of criticism**.

Criticism has been directed not only at (a) the substantive protection afforded by BITs, perceived as being to the detriment of implementation of crucial national security, social, health or environmental policies; but also at (b) the investor-State dispute settlement process (ISDS) they provide for, in which private arbitral tribunals seek to apply these broad standards of protection, leading to decisions perceived as unpredictable and/or inconsistent, or even biased in favour of investors.

Whether this criticism is partly or entirely justified is the subject of a vast and largely political debate.

What is certain, however, is that the increased knowledge about the content of BIT protection and the ISDS process provided by ICSID and BITs, has led **many countries to reconsider their position on foreign investment protection** and to scrutinize their BITs, as those reached the end of their initial period of application.

This phenomenon has concerned both developing and developed countries. We have indeed seen great scepticism towards ISDS displayed in Europe

during the negotiation of the Transatlantic Trade and Investment Partnership (TTIP) with the US (with the EU wanting to establish an investment court so as to address in particular concerns of lack of transparency, accountability and predictability of the ISDS provided by current BITs). A similar debate took place in Australia during the negotiations of the TPP.

This reconsideration of - or move away from - the foreign investment protection regime provided for by BITs and ICSID has taken **different forms**.

Some countries, including in Latin America (Mexico, Costa Rica, Peru, Panama), have opted for the **renegotiation** (or attempted renegotiation) of their BITs, or the **replacement** of their first-generation BITs by new BITs, in which they have sought to place greater emphasis on, for instance, exemptions for State regulations in essential areas such as national security, public health and protection of the environment, and more transparency in the dispute resolution process; the idea being not to abandon the international foreign investment protection system generally, but to negotiate better terms for States.

Other countries have opted for more drastic steps, namely the **withdrawal from ICSID** and/or **unilateral terminations of BITs**, again not necessarily to abandon altogether any form of foreign investment protection, but in order to replace BITs by domestic investment law (*e.g.* the one adopted by Ecuador in 2010) and domestic or regional investment arbitration processes (such as UNASUR and ALBA initiatives in Latin America).

This approach has been chosen not only by **Bolivia**, the first country to **withdraw from ICSID** 10 years ago, **Ecuador** in 2010 and **Venezuela** in 2012 (the only three countries to have withdrawn from ICSID), but also by

**Russia** and **Italy** which both **denounced the ECT** in 2009 and 2015 respectively.

In addition, several other countries have **terminated their BITs** or recently declared their intention to do so (this, not counting the numerous intra-EU terminations).

- In Asia, **India** has terminated 15 BITs so far, and in 2017 announced that it had issued termination notices to 58 of its BIT partners, and **Indonesia**, with 20 BITs terminated already, having announced in 2014 that it would terminate more than 60 BITs.
- In Africa, **South Africa** has terminated nine BITs, several with Western European countries, having announced its intention to replace the current foreign investment system with domestic protection for investors.
- In Latin America, we have had four terminations by **Colombia**, 11 by **Bolivia**, one by **Venezuela** and of course 26 by **Ecuador**, the only country with no more BIT in force (save through survival clauses as addressed later – Section 3).

These unilateral terminations and denunciations raise novel and complex issues many of which do not yet have a clear answer, having given rise to much academic debates, but no arbitral tribunal or court decision yet.

As a result, there remains much uncertainty as to the options available to investors and possible outcomes for States.

### **3 THE RELATIVE IMPACT OF BIT TERMINATIONS**

Whether a State may terminate a BIT and the impact of such terminations (including on the options available to investors) is governed by both of international law, as embodied in the Vienna Convention on the Law of

Treaties (VCLT), and by the specific provisions of the relevant BIT as *lex specialis*.

### 3.1 States' right to terminate BITs

Under international law, parties may terminate a treaty:

- In accordance with the provisions of that treaty; and
- By mutual consent. (Art. 54 VCLT)

Furthermore, States may only exercise their right to terminate with respect to the whole treaty unless otherwise agreed (Art. 44 VCLT).

Hence, States can only unilaterally terminate a BIT in its entirety (and not only *e.g.* the ISDS clause), and as provided for in the BIT.

However, **BITs are rather restrictive on termination rights**. They typically specify an **initial term** (of 10 or 15 years, sometimes more) during which neither party may terminate; *i.e.* termination is only possible at the end of that term or thereafter (*e.g.* US / German / Canadian Model BIT), and usually with **six-month or 12-month notice**. (Some more recent BITs lapse at the end of their term unless specifically renewed – *e.g.* 2015 India Model BIT.)

The objective is to provide a degree of stability throughout the - at times very long - term of investment projects.

Termination is in theory at least also possible under certain general rules of international law, as embodied in particular in the VCLT, such as termination due to impossibility to perform (Art. 61 VCLT) or fundamental change in circumstances (Art. 62 VCLT), which rules apply / are available regardless of the provisions of the treaty (unlike the VCLT Part II rules on the conclusion and entry into force of treaties which may be modified by a treaty).

These grounds are, in practice, very difficult to make out. In particular, Article 62 requires exceptional circumstances and will typically not include a change in domestic law (according to the ICJ jurisprudence: advisory opinion in the *Treatment of Polish Nationals in Dazing Case*), a position supported Art. 27 and 46 VCLT.

Hence Art. 27 provides that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” It is without prejudice to Art. 46 (Provisions of Internal Law Regarding Competence to Conclude Treaties), which, in turn, sets a very high threshold to the extent that initial consent to a treat can be said to be in violation of internal law, the violation needs to be objectively (“with normal practice and in good faith”) “manifest” and to concern “a rule of its internal law of fundamental importance”.

To my knowledge, neither impossibility nor fundamental change in circumstances have been argued with respect to any BIT termination to date before an arbitral tribunal or national court.

Both **Bolivia** and **Ecuador** did invoke a **change of their constitution** resulting in the anti-constitutionality of BITs and investment arbitration to justify their BIT terminations. However, in practice, both countries proceeded with terminations at the end of, or following, the initial term of the relevant BITs. (There appears to be only one exception, in the case of Ecuador with the Ecuador Finland BIT terminated a year early, but no claim has been made in this regard.)

### 3.2 The relative effect of BIT termination: survival clauses

All of the first generation BITs contain **survival or sunset clauses**, *i.e.* clauses that provide for the ongoing treaty protection, after termination, of investments made/established/acquired prior to the date of termination.

In practice, these clauses **vary greatly**, first in **length**, with terms of five up to 20 or even potentially more when the protection of the survival clause is provided to be through the period of the existing investments (as some French BITs provide).

They also vary in **scope**. They may cover either all or only some investments (*e.g.* investment contracts only, or investments made after entry into force only and not before).

Like minimum treaty duration periods and notice periods, survival clauses provide better protection for investors, but, conversely, make it harder for State to extract themselves from the BIT/ISDS system.

Yet, they reflect the **general international law principle** that termination of a treaty cannot affect any right, obligation or legal situation of the parties created through execution of the treaty prior to termination. (Art. 70(1) VCLT.)

Whilst in theory, survival clauses may be of no effect if the BIT is validly **terminated in accordance with general rules of international** (impossibility or fundamental change in circumstances), as noted, these grounds are very difficult to establish and unlikely to be established in practice.

There is however some uncertainty as to whether survival clauses cease to apply in case of **treaty termination by mutual consent**, as opposed to

unilateral termination *i.e.* whether they can also be specifically terminated by the State parties, generally of if the terminated treaty is replaced by another treaty.

Scholars are divided on this question and no decision has yet been rendered to my knowledge on this point. The issue, however, is of practical importance as it goes to the impact of the withdrawal of States' consent given in a BIT on investors' rights. The controversy arises out of the question of whether a State's consent to arbitration as contained in a BIT has any effect **before** it is accepted by an investor by commencing arbitration. It is one of the issues that also arises when considering the effects of ICSID withdrawal.

#### **4 THE UNCERTAINTY ARISING OUT OF WITHDRAWALS FROM ICSID**

As I mentioned earlier, to date are the only three countries to have denounced the Convention: Bolivia, Ecuador and Venezuela. However, these three countries, in addition to being parties to the ICSID Convention (prior to their denunciations) had entered into BITs in which they had consented to ICSID arbitration.

As noted, the relevant dispute resolution clause in those BITs is said to be the State's consent to arbitrate under the ICSID rules, which is accepted by the investor, typically when filing a request for arbitration. It is then that the arbitration agreement is concluded or that the host State's consent is said to have been **perfected**.

The denunciation of the ICSID Convention, in fact **raises two main issues**, one arising out of the denunciation provisions contained in the ICSID Convention itself; and one arising out of the interpretation of the States' consent to ICSID Arbitration as contained in the BITs.

#### 4.1 The effect of withdrawal under the ICSID Convention

Like any treaty, the ICSID Convention may only be denounced in accordance with its terms or by mutual consent of all the parties (Art. 54 VCLT; or if replaced by another treaty on the same subject matter: Art. 59.1, *e.g.* in the context of the TPP).

The ICSID Convention provides that **any State** may denounce the Convention by a **six-month notice**, *i.e.* the denunciation takes effect at the expiry of the six months (Art. 71).

Art. 72 deals with the **effect of denunciation**. It reflects the same well-established principle of international law referred to already: that rights, obligations, legal situations created through the execution of the treaty prior to its termination may not be affected by the termination of a treaty (Art. 70(1) VCLT).

In full, **Art. 72 provides:**

“Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.”

The debate that has arisen out of Article 72 is whether the **consent given** referred to in this provision includes only the State’s **perfected consent** (consent given by the State, *e.g.* in a BIT, **and** accepted by the investor by initiating arbitration, *e.g.* under a BIT) or also the **unilateral consent** given by the State, including in BITs, even if not yet accepted by investors.

The latter interpretation would allow investors to continue to invoke the ICSID Convention even **after** the effective host State's denunciation.

There has been much (academic) debate about this interpretation issue, but **no final decision** by any arbitral tribunal or court yet (although some obiter Statement, including in *Venoklim v Venezuela* to which I will refer).

In essence, some scholars (such as Christoph Schreuer) argue that a State's offer to consent to ICSID Arbitration cannot be accepted upon denunciation, even within the six-month notice period (which would limit the usefulness of the six-month notice period in Art. 71). Others contend that it may be accepted, even afterwards, once the denunciation is fully effective (which would render the denunciation in Art. 71 ineffective).

Both the opponents and the proponents of - what I could be called - the full safeguard effect of Art. 72 rely on **Art. 25(1) of the ICSID Convention**, which provides that "when the parties have given their consent, no party may withdraw its consent unilaterally".

On the one hand, this would suggest that, conversely, consent may be withdrawn under the Convention, until perfected, and thus may be revoked by States upon their denunciation of the Convention.

On the other, Art. 25 and Art. 72 deal with separate issues: Art. 25 deals with a specific issue, namely ICSID jurisdiction and **both parties'** consent (*i.e.* necessarily **perfected consent**), whereas Art. 72 deals with the effect of the denunciation of the Convention, and **solely** with the consent of the State.

However, it is difficult to ignore the **historical context** in which the ICSID Convention came to exist. It was signed in 1965, when investment contracts (with the State's consent perfected in the contract in which the investor also

gave its consent) were common and BITs were not. It was likely not the intention at the time that States could be “caught” by unilateral offers to consent as opposed to perfected consent.

Ultimately, the **question must be addressed under each relevant BIT** as a separate international treaty and not solely in isolation, under the Convention and its Art. 72.

#### **4.2 The effect of ICSID withdrawal depends on the BIT in question**

BITs contain quite different provisions and conditions when it comes to consent to arbitration. At least three scenarios come to mind.

**First**, a BIT may provide that for ICSID arbitration to be available both States (the host State and that of the investor) need to be **party to the ICSID Convention** (*e.g.* Ecuador-Canada BIT or Ecuador-US BIT).

In such a case, upon the **effective** denunciation of the ICSID Convention (*i.e.* past the six-month notice period), the pre-condition is not fulfilled, the question of the safeguard of Art. 72 should not even arise, and there should be no possible recourse to ICSID arbitration. This would however not prevent recourse to another forum, such as arbitration under UNCITRAL Rules if available under the relevant BIT.

**Second**, a BIT may provide that the State **only intends to give consent** to arbitration and that, once a dispute arises, an agreement has to be reached as to the arbitration forum (including possibly ICSID arbitration), with a default forum such as UNCITRAL arbitration, *i.e.* **not** ICSID arbitration (*e.g.* Bolivia UK BIT).

In that case, it would be hard to argue that there is any State's consent to ICSID arbitration contained in the BIT that should be protected by Art. 72. of the Convention.

**Third**, more difficult are BITs that unequivocally provide that any dispute “**shall be submitted to ICSID Arbitration**”, with **no pre-conditions** (or only accession as a condition *i.e.* that the parties “shall have become” parties to the Convention in the past, which is the case even upon denunciation, *e.g.* Bolivia-France BIT; Ecuador-Spain BIT).

Here, the debate remains open, as does the uncertainty, as to whether Art. 72 of the Convention means that, despite the withdrawal from ICSID, the State's offer to consent in those BITs remains effective, so that investors can pursue claims before ICSID under these BITs, provided that these BITs have not been terminated or, if they have, that their survival clause still applies.

This scenario is of particular concern where no forum other than ICSID arbitration (*e.g.* UNCITRAL arbitration) is available. This is the case in two BITs for Venezuela (Chile and France), two for Bolivia (Chile and Korea), and five for Ecuador (Chile, Peru, Dominican Republic, El Salvador, Nicaragua).

As noted, there is to my knowledge no case in which this issue has been finally and directly decided, including among the cases which were registered by ICSID both before and after the expiry of the six-month notice against Bolivia and Venezuela.

Hence, *Pan American Energy v Bolivia* filed in 2010 after the expiry of the six-month notice period from Bolivia's notification to ICSID, was duly registered by ICSID but the case settled (for USD 357M in favour of the investor) before the Tribunal could reach a decision on its jurisdiction. (The

claim was bought under the Bolivia – US BIT in which the dispute resolution clause provides for no pre-condition for ICSID arbitration but in which several fora are available.)

However, in *Venoklim Holding BV v Venezuela*, a case filed in 2012, before the expiry of Venezuela’s six-month notice to ICSID, which was also registered by ICSID, the Tribunal rejected jurisdiction but not on the basis that the arbitration was not validly commenced (which the Tribunal stated would amount to treating an Art. 71 denunciation as an immediate denunciation). More interestingly, the Tribunal did state that, in its view, consent in Article 72 referred to the State’s unilateral offer of consent and not to perfected consent, such that an investor should be able to bring a claim under a BIT containing such State consent, even after a denunciation of the ICSID Convention.

It is however, to my knowledge, the only decision in which the matter was discussed, in passing only such that the uncertainty remains.

## **5 CONCLUSION: RENEGOTIATION AS A BETTER ALTERNATIVE?**

To conclude, yes, a number of countries have moved away or are seeking to move away from (a) the substantive foreign investment protection and (b) ISDS, as provided for by ICSID and the first generation of BITs. According to a July 2017 UNCTAD report on the reform of the international investment agreement regime, as at March 2017, nearly 10% of all BITs had been terminated.

But, no, this has not allowed States to extract themselves from the foreign investment protection regime of BITs and ICSID.

In fact, of those BITs terminated, 2/3 were replaced by a new treaty. Given the long lasting effect of BITs even after termination, though survival clauses, and given the uncertainty arising out of the denunciation of the ICSID Convention, renegotiation may indeed be a preferred path to secure room for domestic policies in sectors such as health, welfare or the environment and more transparency and accountability in the investor State dispute resolution process.

It is a path that even countries like Ecuador intend to follow, despite their initial choice first to terminate their BITs and withdraw from ICSID.

Another option for countries that have not terminated (all of) their BITs or remain subject to survival clauses, may be to negotiate joint interpretative notes on certain aspects, such as certain standards of protection. These notes can have strong persuasive value with arbitral tribunals (according to customary international law, as reflected in Article 31(3) VCLT, they must be taken into account when interpreting treaties). This is a path that *e.g.* India has taken (with Bangladesh, recently in 2017, for the test of dominant and effective nationality for dual nationals) as well as the three NAFTA States in 2001 (to clarify their intention as to the standard of NAFTA's fair and equitable treatment). However, it of course does not address some of the fundamental criticism towards ISDS.

## BIBLIOGRAPHY

“Denunciation, Termination and Survival: The Interplay of Treaty Law and International Investment Law” by Tania Voon and Andrew D. Mitchell.	ICSID Review, Vol. 31, No. 2 (2016)
“Recent Trends in Investor–State Dispute Settlement” by Rachel L. Wellhausen	JIDS (7) 2016
“Two Solutions for One Problem: Latin America's Reactions to Concerns over Investor-State Arbitration” by A. López Ortiz, J.J. Caicedo and W. Ahern	TDM, Vol. 13 (2) (2016)
“Parting Ways: The Impact of Mutual Termination of Investment Treaties on Investor Rights” by Tania Voon, Andrew Mitchell and James Munro.	ICSID Review, Vol. 29, No. 2 (2014)
“Legal Effects and Implications of the Denunciation of the ICSID Convention on Unilateral Consent Contained in Bilateral Investment Treaties: A Perspective from Latin American Cases” by Mariana Durney (LLM Thesis)	Max Planck, March 2012.
“The Life and Death of BITs: Legal Issues Concerning Survival Clauses and the Termination of Investment Treaties” by James Harrison	JWIT 13 (2012)
UNCTAD: Trade and Development Board Investment, Enterprise and Development Commission Multi-Year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-building and Sustainable Development Fifth session Geneva, 9–11 October 2017 (provisional agenda)	
UNCTAD Reform of the international investment agreement regime: Phase 2, 31 July 2017 (TD/B/C.II/MEM.4/14)	

“Denunciation of the ICSID Convention and BITS: Impact on Investor-State Claims” by UNCTAD	IIA (2) 2010
“Denunciation of the ICSID Convention and Consent to Arbitration” by Christoph Schreuer, In: Michael Waible et al. (eds.) <i>The Backlash against Investment Arbitration: Perceptions and Reality</i>	Kluwer Law International, 2010, 353-68
<i>Treatment of Polish Nationals in Dazing Case</i>	PCIJ (1932) Series A/B no. 44. 24
Mark E. Villiger, <i>Commentary on the 1969 Vienna Convention on the Law of Treaties</i> , (Martinus Nijhoff, 2009) 370.	