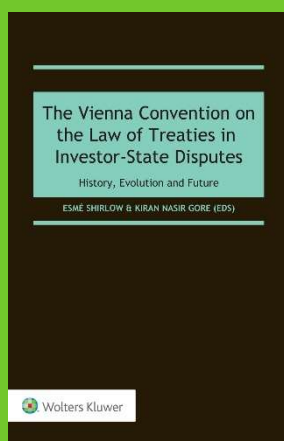


The Vienna Convention on the Law of Treaties in Investor-State Disputes History, Evolution and Future

Edited by Esmé Shirlow & Kiran Nasir Gore



Overview

The Vienna Convention on the Law of Treaties (VCLT) – as the ‘treaty on treaties’ – has achieved a rich and nuanced track record of use in international law. It has now been over fifty years since the VCLT was opened for signature in 1969, and over forty years since it entered into force in 1980. As of 2022, the VCLT has been ratified by 116 States and signed by 45 others, with some non-ratifying States also recognising parts as reflective of customary international law. In the intervening decades, the VCLT has had a profound influence on the interpretation, application and development of international investment law, including in the context of investment treaty arbitration. This book presents the first consolidated analysis of how the VCLT has informed the practice of international investment law and the resolution of investor-State disputes, and the role that the VCLT may play in shaping the future of this field.

The diverse contributors to this book are scholars and practitioners from around the world, who offer a variety of perspectives on the nexus between the VCLT, international investment law and investor-State dispute settlement (ISDS). Each chapter demonstrates how approaches to key issues of treaty law in investment treaty arbitration diverge or converge from the VCLT and approaches of other international courts, as well as the lessons that investment treaty arbitration could derive – or even offer – for the interpretation and application of the VCLT rules in other settings. Their insights and analyses consider aspects such as the role of the VCLT for:

- interpretation of more specific approaches to treaty law drafted by treaty negotiators;
- treaty application in circumstances of contested State territory or succession challenges;
- temporal challenges arising in treaty interpretation;
- the status of bilateral investment treaties between European Union Member States and related termination endeavours;
- questions concerning the validity, termination and amendment of investment treaties, including as part of ongoing ISDS reform processes;
- current multilateral reform proposals, including the possibility of an appellate mechanism or a multilateral investment court;
- grappling with the challenge of fragmentation in international investment law, including the role of prior decisions in treaty interpretation, the challenges introduced by treaty conflict and the multitude of approaches that may be taken by national courts when implementing treaties like the New York Convention; and
- treaty interpretation and drafting as aided by emerging technologies, such as data analytics, machine learning, smart contracts and blockchain.

The book’s appendix provides a highly valuable tabular summary of ISDS arbitral practice relating to the VCLT, collating key references from over 350 different procedural orders, decisions and awards.

By revisiting the role that the VCLT has played in the development of this field of law, this invaluable book unlocks insights into how the VCLT might be used to support its ongoing development and the resolution of the next generation of investor-State disputes.

This book is essential reading for a variety of stakeholders, including arbitrators, counsel, scholars and government officials, who will benefit from its in-depth and practical analysis of the VCLT’s relevance to and impact on investment law and investor-State arbitration and its role in shaping where this field of public international law might be headed in the decades to come.

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‘This book is nothing short of a must-have for scholars and practitioners interested in investor-State dispute resolution. It provides a holistic and detailed analysis of all relevant aspects concerning the creation, interpretation, application and termination of investment treaties. In an impressive *tour de force*, the editors and contributors have created a reference on the VCLT that is both practice-oriented and intellectually stimulating.’

- **Professor Dr. Maxi Scherer**, Queen Mary University of London and Special Counsel, WilmerHale

‘Amongst the excellent practical, theoretical, and academic works published each year in the field of international arbitration, occasionally a book comes along that is a “must have” for practitioners, arbitrators, academics and government lawyers. Shirlow and Gore’s well-organized, detailed and comprehensive study of the principles and practical applications of the VCLT is one such book. Treaties memorialize established and desired norms, imposing obligations on subjects of international law that are their creators and signatories. But the objectives intended by a treaty’s framers and the words used to reflect those objectives often take on different meaning over the passage of time and in different cultural, linguistic and political contexts. Shirlow and Gore’s book provides lucid analyses and pragmatic insights on the life and afterlife of investment treaties, including their creation, interpretation, termination, and reform. It is an invaluable reference work that will allow counsel to put forward smarter arguments, arbitrators to write better decisions, and States to make well-informed decisions.’

- **Arif Hyder Ali**, Partner and Co-Chair of International Arbitration and Public International Law Group, Dechert LLP

‘In celebration of the overarching importance of the Vienna Convention on the Law of Treaties - the “treaty on treaties” - Dr. Shirlow and Professor Gore have assembled in this volume contributions by some 30 writers providing expert analyses of treaty law issues that regularly arise before and are resolved by tribunals in investor-State arbitrations, including notably issues of treaty interpretation under provisions of the Vienna Convention. Each of the four main sections of the book features a chapter by Dr. Shirlow and Professor Gore with incisive summary and commentary. An appendix by Dr. Shirlow contains a very useful table recording references to the Vienna Convention in over 360 decisions and awards of investor-State arbitral tribunals. Policymakers, scholars, and legal practitioners will find this book to be an enlightening read and valuable resource.’

- **Antonio R. Parra**, former Legal Adviser and Deputy Secretary-General, International Centre for Settlement of Investment Disputes

‘This book is an especially valuable contribution to thinking about the role of the VCLT in modern investment law. Dr. Shirlow and Professor Gore have focused on the nexus of the VCLT, international investment law, and investment arbitration, providing a unique perspective on the use of the VCLT to resolve investment treaty disputes. The large and growing body of these arbitrations and their use of the VCLT over the past decades make this book especially persuasive. The editors and contributors have curated a superb collection that is educational and thought-provoking, and I have no doubt that readers will find this book extremely useful. This volume is the perfect way to celebrate the first half-century of the VCLT: a review of what it has done and an informed assessment of what it may yet do in the next half century.’

- **Meg Kinnear**, Secretary-General, International Centre for Settlement of Investment Disputes (from the Book’s foreword)

‘This collection of essays on the interplay between the Vienna Convention on the Law of Treaties and investment law and dispute settlement provides important material for reflection for all those engaged in reform of the investor-state dispute settlement system. It investigates the past, present and future role of the Vienna Convention in interpreting investment treaties and addresses the place of the Convention in ongoing reform efforts. The book should be read by academics and government officials working in the current system and reflecting on how it can be improved.’

- **Colin Brown**, Head of Unit, European Commission Directorate General for Trade, Legal Aspects of Trade and Sustainable Development and Investment

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