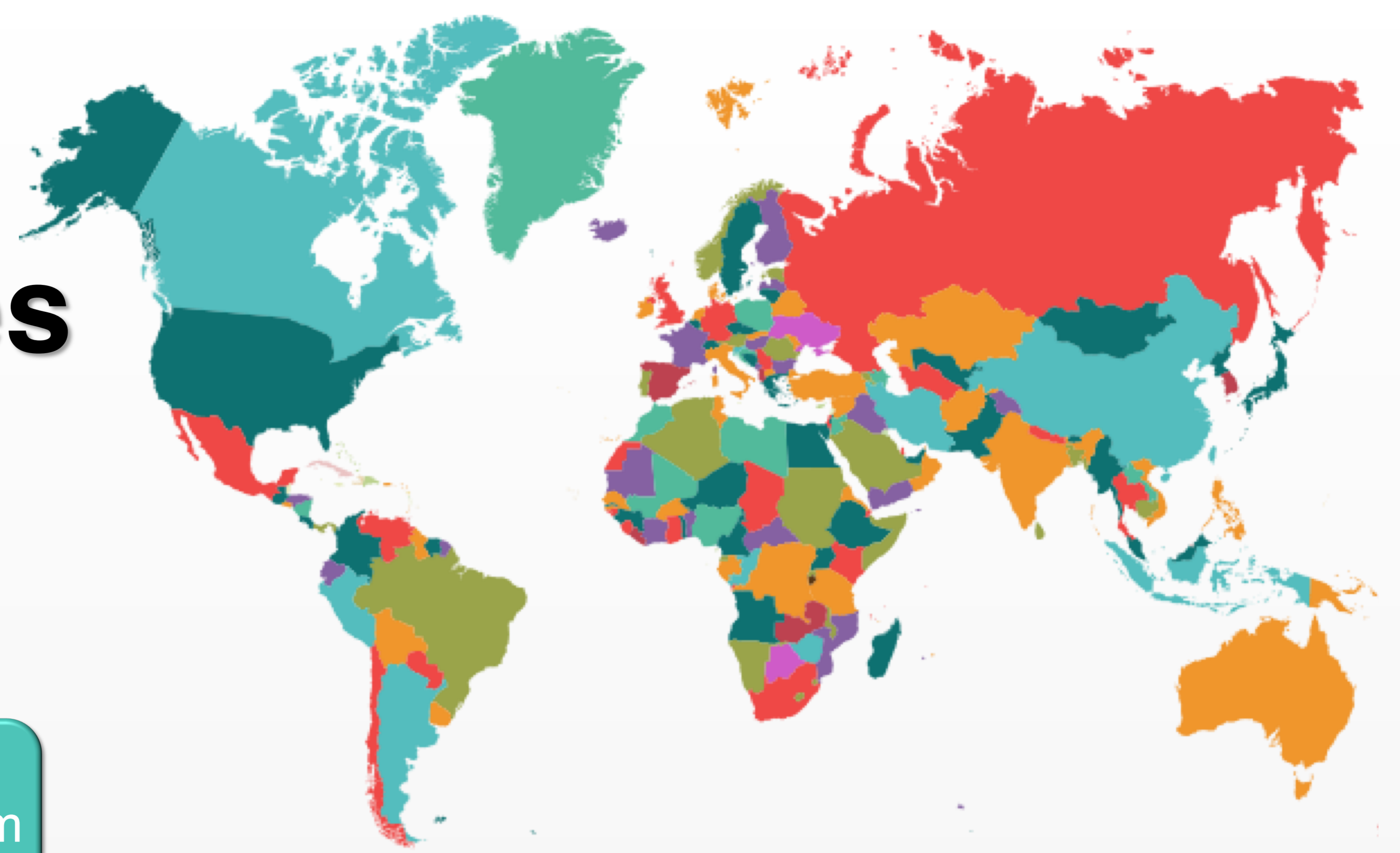


A Comparative Empirical Analysis of International Investment Treaties



Uttra Gautam, HBS, JD (2019), Dr. Wolfgang Alschner, BA, MA, LLB, JSM, PhD
Faculty of Law

1. Introduction

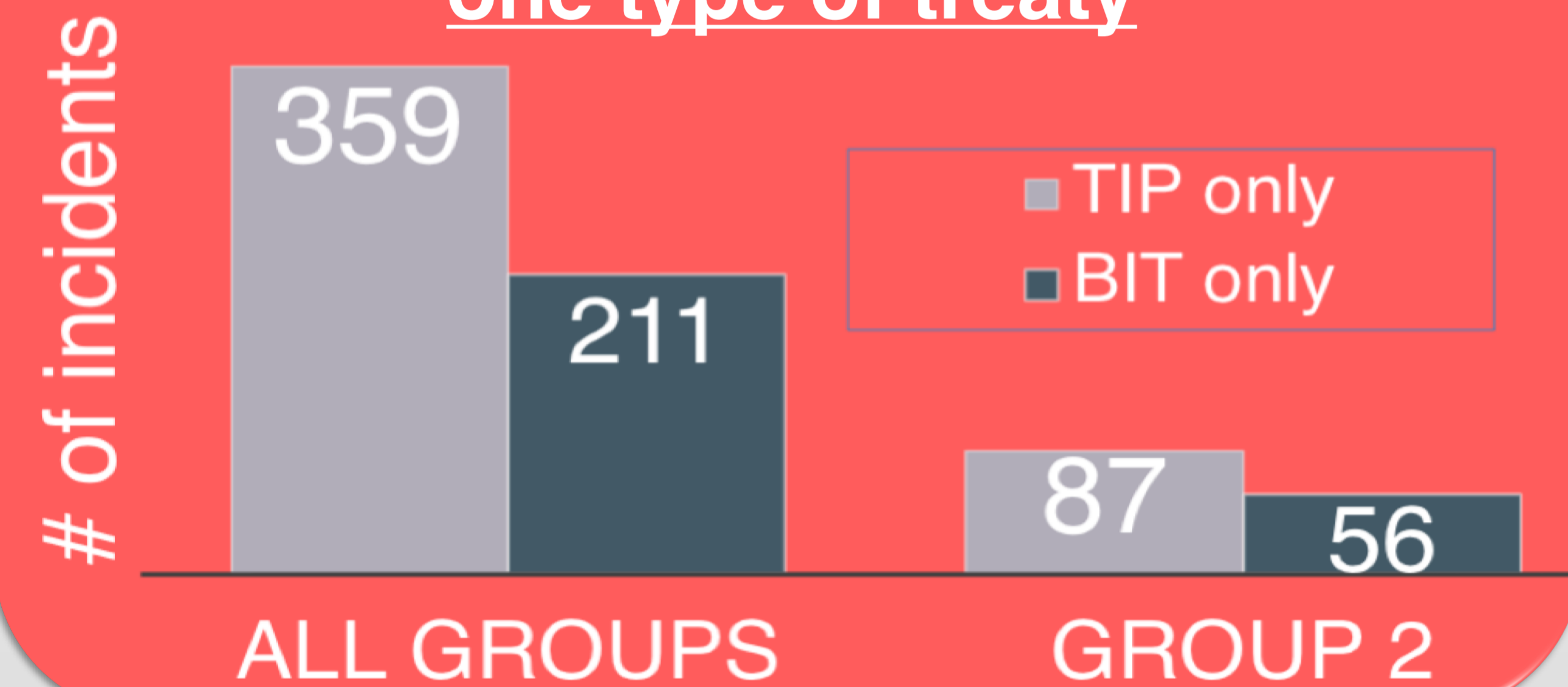
- Disagreement within legal & economic policy circles → should investment regulation be part of larger trade agreements (TIP) – such as NAFTA – or self-standing, specific agreements – Bilateral Investment Treaties (BIT).
 - This debate is mostly theoretical.
 - My research uses empirical framework
 - Analyzing occurrence of provisions such as: *Reference to environmental aspects* or *definition of investors*
 - Over **3000 international agreements**.
- Finding
- Rules largely do not differ between types of agreements
 - Closer in time two agreements are → less likely to differ.
 - More variables held constant → more similarity in treaties
- Debate more marginal than currently understood.**

3. Results

Results Set 1

241 Provisions x 14 Groups = 3344 Variables

of Provisions that only show up in one type of treaty



Provisions with **7(50%)** or more occurrences
*all in TIPs not BITs:

- Scope and definitions limiting substantive scope of the treaty & subject matter (7/14)
- Institutional issues framework committee (7/14)
- Treaty duration amendment & termination: indefinite (9/14)
- Treaty duration amendment & termination: automatic renewal (10/14)
- Treaty duration amendment & termination: six months prior notice (8/10)

2. Methodology

All data scraped from **UNCTAD**
Coded on provisions in binary system
BITs treated as discrete data set

2947
Bilateral
Investment
Treaties (BITs)



377
Treaties with
Investment
Provisions (TIPs)

Data Set 1

241 Provisions
No TIPs pre 2006 → All BITs pre 2006 removed to increase accuracy
14 Comparison Groups

Each TIP/BIT Comparison grouped in order of similarity



Group 1	Group 2	Group 3
All parties are same	One party is same, 2 nd party is similar (GDP, Socioeconomic Standing, Population, Economy)	No parties are same, but both are similar (GDP, Socioeconomic Standing, Population, Economy)

*no comparisons fit group 1

Results Set 2

62 provisions x 10 groups = 620 variables
Only **17** showed a consistent pattern

of Provisions ONLY in TIPs: **16**

1) Closed list of remedies (7/10)	5) Feature linked CIL (9/10)	8/10
2) Compulsory license carve out (7/10)	6) Indirect Feature breach carve out (7/10)	13) Subsidies Carve out (7/10)
3) Creditor Protection (7/10)	7) Investment Characteristics (7/10)	14) Arbitration (9/10)
4) Environmental Measures Clause (7/10)	8) Liberalization (8/10)	15) Exception (8/10)
	9) Loss or Damage (7/10)	16) Cumulative (9/10)
	10) Non-conforming measures (7/10)	
	11) Notice of intent (9/10)	# of Provisions ONLY in BITs: 1
	12) Procurement Carve out	1) REIO (9/10)

Data Set 2

62 coded provisions
10 Perfect Comparison Groups
both parties identical

- | | |
|-------------|-------------|
| 1) AUS-CHIL | 6) KOR-PER |
| 2) CAN-PAN | 7) KOR-CHL |
| 3) CAN-PER | 8) SGP=PER |
| 4) CHN-PER | 9) USA-MAR |
| 5) IND-MYS | 10) USA-PAN |

Data Set 3

3 Perfect Comparison Groups
237 Provisions
All within 5 years of one another

- | |
|------------|
| 1) CAN-PER |
| 2) COL-KOR |
| 3) PER-SGP |

Results Set 3

In all TIPs but 0 BITs: Investor Information
In all BITs but 0 TIPs: Public Order
Two pre-establishment clauses showed up in 2/3 of TIPS

4. Conclusion

The more variables are reduced, the less differences occur.
TIPs usually have more provision but they are random.
Next Steps: Deeper look at differences & politics

5. References & Acknowledgements

- Alschner, Wolfgang, and Dmitriy Skougarevskiy. "Mapping the Universe of International Investment Agreements." *Journal of International Economic Law*, 19, no. 8 (2016).
- PTA Analysis http://unctad.org/en/PublicationsLibrary/ser_rp2017d5_en.pdf
- UNCTAD Database: <http://investmentpolicyhub.unctad.org/IIA>
- Rudolf, D., & Christoph, S. (2012). X Settling Investment Disputes. *Principles of International Investment Law*. doi:10.1093/law/9780199651795.003.0010

Thank you to Dr. Alschner, the Centre for Law and Technology, UROP Grant and Olivier Champagne.

