

Balancing Public Health and Investment Protections – COVID-19 Treaty Claims and the Role of General Public Policy Exceptions in IIAs

On 27 December 2024, the Centre for Chinese and Comparative Law (CCCL) at City University of Hong Kong successfully hosted an insightful seminar titled “Balancing Public Health and Investment Protections: COVID-19 Treaty Claims and the Role of General Public Policy Exceptions in IIAs.” This timely and thought-provoking event focused on the tensions between public health imperatives and foreign investment protections during global crises, with a particular emphasis on the COVID-19 pandemic.

The seminar featured Yi Tang, a PhD candidate from the University of Hong Kong Faculty of Law, as the keynote speaker. The session was moderated by Professor Martin Lai, with Professor Chen Yu serving as the discussant. Together, they provided a comprehensive analysis of how International Investment Agreements (IIAs) and arbitral practices can adapt to better address global health emergencies.

Yi Tang is a rising scholar in international investment law, investor-state arbitration, and comparative law. She holds an MPhil and Double Bachelor’s degrees (BSocSc (Government & Laws) & LLB) from the University of Hong Kong. Her research has been widely published in journals such as the Asian Journal of WTO & International Health Law and Policy and the Chinese (Taiwan) Yearbook of International Law and Affairs. Yi’s essays have been recognized with several awards, including the prestigious Wellington Koo Prize at the 2023 ILA-ASIL Research Forum.

Her current PhD research focuses on the conflict between public and private interests in investor-state dispute settlement mechanisms during global health crises, making her uniquely positioned to address this critical topic.

Yi Tang’s presentation explored two core dimensions of the COVID-19 pandemic’s impact on investment treaty law:

1. **Investment Treaty Claims and COVID-19 Regulatory Measures:**
Yi mapped out the potential surge in investment treaty claims triggered by pandemic-related measures, such as lockdowns, travel restrictions, and emergency healthcare regulations. She highlighted how these measures might conflict with IIA obligations, particularly the Fair and Equitable Treatment (FET) standard, which is increasingly invoked due to its broader application and lighter evidentiary burden.
2. **Public Policy Exceptions in IIAs:**
The central focus of the seminar was on the general public policy exceptions in IIAs and their role in safeguarding states’ regulatory autonomy during crises. Yi explored how these exceptions can be used to balance public health imperatives with investor protections. While newer-generation investment treaties increasingly incorporate such exceptions, she noted that their effectiveness is often undermined by inconsistent application and interpretative ambiguities in arbitral practice.

Yi argued that for IIAs to remain effective and relevant in addressing global emergencies, they must evolve to provide clearer protections for states’ regulatory autonomy while maintaining fairness for investors. Her analysis underscored the need for a more consistent and transparent application of public policy exceptions in arbitral decisions.

The seminar concluded with a lively discussion moderated by Professor Martin Lai. Professor Chen Yu, as the discussant, provided critical insights into the broader implications of Yi's research. She emphasized the importance of reforming IIAs to better reflect the realities of global health crises and the growing need for flexibility in balancing public and private interests.

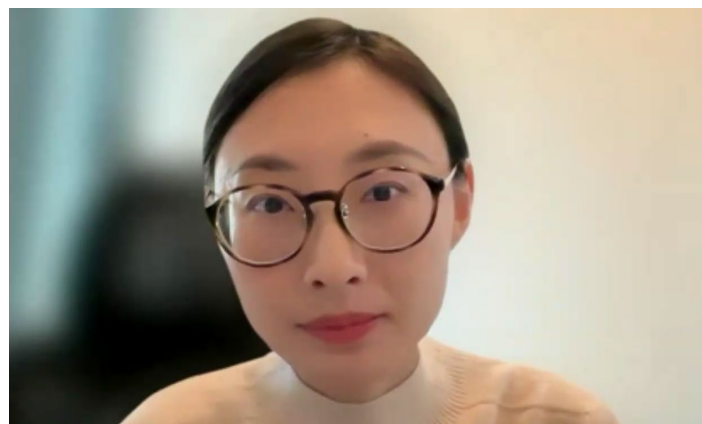
The audience, including academics, legal practitioners, and students, actively participated in the Q&A session, raising pertinent questions about the future of investment treaty reform and the challenges of balancing investor rights with state sovereignty during emergencies.

The seminar provided a valuable platform for exploring the intersection of public health and international investment law in light of the COVID-19 pandemic. Yi Tang's research not only shed light on the challenges posed by global crises but also offered actionable insights for policymakers, arbitrators, and scholars seeking to reform IIAs to address these challenges effectively.

This event reaffirmed CCCL as a leading hub for critical discussions on contemporary legal challenges, fostering deeper understanding and collaboration among experts in international investment law.



Tang Yi



Professor Yu Chen



Professor Martin Lai