Adjudicating While Fighting:
Political Implications of the Ukraine-Russia Bilateral Investment Treaty[1]

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Abstract

Russia's 2014 seizure of parts of Ukraine, notably the Crimean Peninsula, set in motion a flurry of legal activity. Ukraine's "lawfare" strategy, which aims to fight Russia via international legal means, has included explicit encouragement of Ukrainian investors to file disputes under the Ukraine-Russia Bilateral Investment Treaty. We consider the resulting investor-state dispute settlement (ISDS) arbitrations, the first instances of ISDS in which the state parties to the treaty are actively engaged in armed conflict. Although Ukrainian actors have consistently won at ISDS, Ukraine moved to formally withdraw from the treaty a year after the full-scale Russian invasion of 2022. Developments before and since the full-scale invasion point to the hurdles wartime adjudication generate for war efforts and a reconsideration of treaty-based commitments to international investor protections, especially if interstate territorial conflict is thinkable.

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Introduction

When Russia seized the Crimean Peninsula and other Ukrainian territory in 2014, Ukraine initiated a variety of international legal challenges against Russia in different fora in what Ukraine has called its "Lawfare Project."[2] Ukraine's terminology comes from a 21st century body of thought by scholars, military strategists, and practitioners as to whether and how international law can be used as a weapon of war.[3] The repurposing of international dispute settlement mechanisms for national security interests is not new, but Ukraine's inclusion of international investment law as an instrument of lawfare is.

Contemporary international economic law and institutions that are designed to protect foreign investors' property rights were predicated on an unspoken but crucial assumption: the era of territorial conquest is over. Now, however, interstate war has broken out between two states that are bound by treaty obligations to protect each other's investors via the Ukraine-Russia Bilateral Investment Treaty (BIT). While international law still recognizes Ukraine's sovereignty over Crimea, previously domestic Ukrainian firms in Crimea became internationalized overnight once Russia gained de facto control. Since 2014, private Ukrainian investors and the Ukrainian state via its state-owned enterprises have invoked the BIT to sue Russia for property rights infringement, a "lawfare" strategy that has led to dozens of arbitrations and amassed billions of dollars in binding legal awards to date. In this article, we examine the aftermath of Ukraine's use of international investment law during wartime, and we ask whether adjudicating investment disputes while fighting is a viable strategy. After myriad complications of a decade of adjudicating while fighting,

[2] "About Lawfare Project." https://lawfare.gov.ua/about. Last accessed 5 November 2023.
[3] See Chang (2022); Ohanesian (2023); and, in general, the publication "Lawfare" (lawfaremedia.org).

Ukraine has moved to unilaterally withdraw from the BIT effective 2025, though a 10-year sunset clause will continue its relevance. In short, Ukraine appears to have dropped investment disputes as part of its lawfare toolkit.

The implications stretch far beyond just Ukraine and Russia. During an active interstate war between treaty signatories, arbitration panels created to hear disputes have been walking a legal tightrope in ruling on damages to property while sidestepping issues of sovereignty. Arbitrators' willingness to rule on these cases has overturned the principle of leaving decisions over reparations and compensation for wartime damage until after the violence ends. Ongoing wartime legal machinations are generating a series of consequences pertinent to scholars of international relations, on both the economic and security side, as well as scholars of comparative politics and public law concerned with war, peace, and the durability of institutional solutions to political problems. For one, the continuity of contemporary international economic law during wartime is up for debate, given both a deeply integrated global economy and the increasing prevalence of interstate war. Not just states but also investors might reasonably question whether embedding foreign investors' property rights protections in international treaties is a preferrable means of solving time-inconsistency problems. When relations between would-be home and host states are volatile, why would states commit to institutions that insulate each other's commercial actors from that volatility? The contemporary international investment treaty regime, consisting of some 2600 active BITs and other international investment agreements (IIAs), is already controversial. The wartime operation of the Ukraine-Russia BIT amounts to a high-

speed version of the unraveling of the contemporary treaty-based regime in a deglobalizing world.[4]

Unfortunately, the wartime operation of the Ukraine-Russia BIT is of even wider scholarly as well as public interest, as investment arbitration during armed conflict could easily occur between other states. International relations scholars keep track of militarized interstate disputes (MIDs), which are active militarized conflicts between states that have not risen to full-scale war (Maoz et al., 2019).[5] Since 2014, Russia has a MID and a BIT with thirteen states other than Ukraine.[6] Additionally, China has a MID and a BIT with five states;[7] Iran has a MID and a BIT with three states;[8] and there are six other dyads with a MID and BIT.[9] We hope that the treaty-based investment arbitrations between Ukrainian and Russian actors are the only ones ever between warring states, but others may very well materialize.

In what follows, we explore what have come to be known as the "Crimea cases," the dozens of investment arbitrations brought by Ukrainian investors in Investor-State Dispute Settlement (ISDS) enabled by the Ukraine-Russia BIT, and the growing slate of post-Crimea cases that have emerged around Russia's 2022 full-scale invasion of Ukraine. We contextualize these cases with primary source documents from both Russia and Ukraine, as well as analysis from both legal and political science scholars. Among the myriad consequences of the Crimea cases, we highlight two: first, these cases have elevated

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[4] We are in debt to an anonymous reviewer for this terse characterization of the issue.
[5] MIDs involve "the threat, display or use of military force short of war by one member state…explicitly directed towards the government, official representatives, official forces, property, or territory of another state" (Jones et al. 1996: 163).
[6] Canada, Denmark, Finland, France, Germany, Japan, Lithuania, Netherlands, Norway, South Korea, Sweden, Turkey, United Kingdom.
[7] India, South Korea, Taiwan, Vietnam, Philippines.
[8] Afghanistan, Pakistan, Turkey.
[9] Greece-Turkey, Turkey-Syria, Lebanon-Syria, Tajikistan-Kyrgyzstan, Thailand-Cambodia, Malaysia-Indonesia.

Ukrainian domestic politics to the inter-state stage, making domestic public-private tensions consequential for issues of international security and economic integration. Second, we explain how the symmetry inherent in treaty-based investment protections means that Russian interests, too, are filing "lawfare" cases against Ukraine under the BIT. The turmoil is so consequential that in 2023 Ukraine moved to unilaterally withdraw from the BIT. We then broach larger questions of what this case-study-in-progress means for legalized economic integration, as well as a variety of literatures, on institutional design, compliance, investor behavior, "lawfare," and more.[10]

The contemporary investment treaty regime

The Ukraine-Russia Bilateral Investment Treaty (BIT) is one of thousands of international investment agreements (IIAs) (Bonnitcha et al 2017, Arias et al 2018). A large body of scholarship documents how BITs skyrocketed in popularity in the 1990s, as they became more than just a solution to time-inconsistency problems between foreign investors and host states and instead the "global standard governing foreign investment" (Jandhyala, Henisz, and Mansfield 2011). Signing them has been *de rigeour* whenever states were interested in deepening economic relations, and many BIT texts are based on templates and have copy-and-paste qualities (Poulsen 2015, Alschner and Skougarevskiy 2016). While the number of treaties approached 3000 at its peak in the 2010s, the controversial system has

[10] Several blogs and other opinion pieces have made similar arguments since we initially presented these ideas in March 2023. Please refer to the Appendix for an extended bibliography of legal news, blog posts, and other non-scholarly sources that have discussed issues pertinent to this article and have informed our understanding. For readers new to this topic area, the Appendix also includes a detailed timeline of key events over the 10-year period since Russian aggression against Ukraine began (2014-2024), which provides context beyond that discussed in the main text. For readers already familiar with this topic area, our article takes a cumulative perspective on this ten-year period and innovates by synthesizing legal proceedings with political context before pivoting to relevance of these wartime adjudications for political science writ large.

seen increasing numbers of renegotiations and withdrawals, leaving around 2600 active IIAs today (Thompson, Brouder, and Haftel 2019, Huikuri 2023).

Key to the controversy around contemporary investment treaties is Investor-State Dispute Settlement (ISDS), the system by which foreign investors alleging treaty violations have standing to sue the contracting host state for monetary compensation (Moehlecke and Wellhausen 2022). Ad hoc three-person tribunals adjudicate disputes without a substantive appeals system, and arbitrators have considerable autonomy owing to the ambiguity of treaty language and the absence of binding precedent. Under international law, investors who win an award can pursue enforcement and recovery of sovereign host-state assets in a wide variety of domestic courts worldwide, on their own initiative, and on timelines determined by each tribunal. Because these processes are established in interstate treaties that give standing to investors, the state parties to the treaties have little recourse to limit investors' use of ISDS when investors' choices conflict with state interests.

Moreover, the dominant scholarly view has been that investment treaties apply in wartime.[11] In his book on the topic, Zrilič (2019) thoroughly examines treaty texts and documents only one clause stating that the treaty is suspended during wartime – in the Germany-Papua New Guinea BIT signed in 1980.[12] But the difficulties of enforcing investment law during peacetime become magnified during interstate conflict. If territorial jurisdictions are known and unchanging, it is straightforward to identify which property is

[11] Some IIAs explicitly consider damage to property resulting from violence, politically motivated or otherwise, covered under "full protection and security" clauses (Dolzer and Schreuer 2008, p. 149; see also Lowenfeld 2008, p. 558). To date, a few ISDS cases concern armed conflict within states (e.g. *AADL v. Sri Lanka* [1987]) and notable cases concerning political violence emerged around the Arab Spring (e.g. *Ampal v. Egypt* [2012]; *Tekfen Insaat I v. Libya* [2016]).

[12] Zrilič (2019) argues that the view that investment treaties apply in wartime is "hasty" and advocates for a middle-ground interpretation by which some aspects of IIAs could be suspended through the principle of separability (p 62).

foreign-owned and which is not, and institutions designed to protect foreign property rights are easily overlaid on this stable foundation. Since 2014, the Ukraine-Russia BIT has been appealed to and applied in a very different situation, in which interstate territorial war has broken out between the signatory states.

The case of the Ukraine-Russia BIT

The Ukrainian and Russian economies have long been interdependent, and both countries embraced integration into the global economy after the Cold War. Immediately after the dissolution of the Soviet Union, a series of treaties created a legal foundation for the continuation and extension of their economic relationship. Those treaties were updated in the 1998 Ukraine-Russia BIT, which per its preamble seeks to "develop the basic provisions" established in a previous bilateral agreement intended to promote bilateral investment activity, signed in 1993.[13]

The diplomatic history around the Ukraine-Russia BIT negotiations has not been recorded, but the BIT is quite like the hundreds of other BITs enacted around the same time. The protections afforded to investors in the Ukraine-Russia BIT are typical of BITs, namely, expropriation, national treatment, most-favored nation treatment, and equal protection.[14] Its ISDS provisions are also typical: the BIT affords aggrieved investors from one state standing to file for investment arbitration against the other state in pursuit of compensation for violations of treaty protections. The investor must notify the host state where the

[13] Ukraine-Russia BIT, Preamble, which refers to the "Agreement on Cooperation in the Sphere of Investment Activity" of 24 December 1993.

[14] The text does not mention "indirect" expropriation, an issue of increasing importance for the treaty regime as a whole. The text regarding equal protection (Article 2) is atypical, and the BIT does not include a clause on fair and equitable treatment (FET).

investment is located, in writing, of its intention to file. In the subsequent six months, the parties are expected to "exert their best efforts" to negotiate a settlement.[15] Should they fail, the investor can pursue arbitration against the state at any of the forums outlined in the treaty.[16] A resulting arbitration award "shall be final and binding upon both parties." Additionally, as is typical in investment treaties, investors with rights under the BIT can be natural persons or legal entities, including state-owned enterprises (SOEs).[17]

Without any language to the contrary, the Ukraine-Russia BIT does not exempt state parties during war or include special provisions for the treaty's operation in case of war.[18] Nor does the Ukraine-Russia BIT foresee the contestation of territory. The mention of "territory" applies the Ukraine-Russia BIT to investments "on the territory" of one of the contracting states, without more precise delineation.[19] Ad hoc tribunals applying the BIT text have therefore had to walk a fine line between the principles of investment protection and international law concerning sovereignty and non-recognition. In very broad strokes, the various tribunals' legal reasoning to date follows the logic that "an investment treaty is…able to be interpreted as to also apply to foreign territory under effective and relatively stable control by a State Party," but, absent international recognition, the occupying state "merely

[15] Article 9(1).
[16] Russia is not party to the World Bank's International Center for the Settlement of Investment Disputes (ICSID), but Article 9 allows adjudication by a "competent" domestic court, by the Arbitration Institute of the Stockholm Chamber of Commerce, or via ad hoc arbitration under the UNCITRAL rules.
[17] The Ukraine-Russia BIT includes provisions for direct dispute settlement between the state parties over "the interpretation and application" of the BIT (Articles 10 and 11). In principle, investors from one state could renounce standing and allow their home state to espouse all cases in direct negotiations. Alscher and Haftel (2023) painstakingly gathered data on state-to-state dispute clauses in BITs, but despite their prevalence, they have been essentially ignored in practice.
[18] The one mention of war is in Article 6. Should investors from one state suffer damage in the other resulting from war, the treaty calls for them to be subject to "a regime no less favorable than the one" that the state grants to investors from third-party states. For example, if Ukraine were to devise measures around wartime damage to investors from the US and the European Union, the treaty requires it to offer equivalent measures to Russian investors in Ukraine that had suffered wartime damage.
[19] Article 1(4).

administers" BIT obligations (Ackermann 2019, p. 88, 76). Although again, as tribunals make ad hoc decisions and are not bound by precedent, it remains possible that interpretations of "territory" could differ in other cases involving Ukraine and Russia, or indeed another situation in which investments in contested territory between IIA signatories are at stake.

The Ukraine-Russia BIT's lack of precision is unsurprising because, like other treaties of its time, the Ukraine-Russia BIT is rather short: in English, it runs around 2,300 words. To compare, the 2012 US Model BIT is over 14,000 words. Such short treaties are notoriously ambiguous and incomplete. By design, they depend on arbitrators to adjudicate disputes in line with the overall goals of the treaty, which here are protecting investment, and not specifically national security or the conduct of war. Legal scholars have taken up this issue, and a growing number argue that arbitral tribunals should incorporate international humanitarian law and other relevant international law in their decision-making (e.g. Ackermann and Wuschka 2023; Zrilič 2019, pp. 40-47; Schreuer 2019, ft. 6). In general, arbitrators with jurisdiction via the Ukraine-Russia BIT face a difficult task, to interpret its vague definitions and commitments considering the peacetime intentions of the two states that are now in an active war.

Ukraine and Russia are both sophisticated users of international investment law, meaning that they and their investors are well-positioned to leverage the Ukraine-Russia BIT. Each state has over 60 IIAs in force. Russian and Ukrainian investors are among the most prolific users of ISDS, each ranking in the top 20 most common claimant nationalities. Both countries are in the top 15 most common respondent states as well.[20] Russia has

[20] Alschner, Elsig, and Polanco (2021), and UNCTAD Investment Dispute Settlement Navigator.

positioned itself as a champion of the status quo system.[21] And yet, Russia is widely viewed as the most persistent non-complier when it loses in ISDS arbitration, with outstanding arbitral awards amounting to billions of dollars owed to investors and subject to scores of enforcement hearings around the world. Today, Ukraine's reputation for compliance is strong, as it has complied in recent years with adverse awards to investors from Austria, the US, the Netherlands, and Germany – although two adverse awards involving Russian-linked claimants, rendered before Russian aggression began, remain unresolved.[22]

Adjudicating while Fighting

Here, we investigate the wartime operation of the Ukraine-Russia BIT and the progression of ISDS cases, since the 2014 Russian occupation of Crimea and through mid-2024. As we show, over time and especially since the full-scale Russian invasion of Ukraine beginning 24 February 2022, both Russia and Ukraine's attitudes toward the BIT and ISDS have changed. After eschewing them for years, Russia became an active participant in the Crimea cases since 2019, and Russian investors are also taking advantage of the BIT's symmetry by filing cases against Ukraine. Ukraine's attitudes have changed so much that Ukraine has rethought ISDS as part of its "lawfare" strategy, and in 2023 Ukraine moved to unilaterally withdraw from the BIT. See the Appendix for a fuller timeline of events and key non-academic sources for news reporting and legal analysis.

[21] See, for example, Russian positions at the United Nations Commission on International Trade Law's (UNCITRAL) Working Group III considering ISDS reform (2017-present).
[22] PCA Case No. 2008-8 and SCC Case No. V116/2008, as documented in Strain et al (2024). In contrast, Ukraine was repeatedly non-compliant with awards due to US investors in the early 2000s (Wellhausen 2015, Ch. 5).

Our portrayal of these cases highlights two sets of consequences that emerge from the changing constellation of interests. The shared state and commercial interests that encouraged the 1998 Ukraine-Russia BIT have fallen out of alignment, to say the least. First, because treaty-based ISDS gives MNCs standing to pursue binding arbitration on their own timeline and without the involvement of state signatories to the treaty, ISDS as an international institution has elevated domestic politics to the international stage in ways that complicate war efforts. Second, each of the Ukrainian and Russian states have incorporated property rights issues concerning various commercial enterprises into their conduct of the war. The BIT's symmetrical application allows ISDS by both sides, and Russia's embrace of ISDS tactics has led Ukraine to reconsider it as a weapon. Ukraine's experience may also lead Western states that have long championed ISDS to reconsider it as well.

As summarized in Table 1, at least 51 Ukrainian investors have used the Ukraine-Russia BIT to sue Russia for compensation over expropriation of their property in Crimea.[23] The Russian-controlled Republic of Crimea government cancelled Ukrainian-granted property rights in Crimea as of February 2014. A swath of cases was filed quickly in 2015. The investments at stake in the various cases are immobile, meaning that their assets are locked into the territorial jurisdiction of Crimea and were thus readily exposed to expropriation by the new government.[24] In fact, Russia tried unsuccessfully to prevent Ukrainian actors' claims with a plan to force its passports on all residents of Crimea (Olmos Giuponni 2019). The Ukrainian government celebrated pro-investor jurisdiction rulings in

[23] As ISDS arbitrations can be private, all publicly available data constitute a lower-bound (Moehlecke and Wellhausen 2022).
[24] The finance and banking investments at stake include accounts for Crimean residents and businesses. For more on foreign investment in finance especially in Central and Eastern Europe, see Grittersova (2014).

the early cases, and it called "on all companies that have lost their property in Crimea to actively fight for compensation for losses."[25] Moreover, the Ukrainian state directly filed a number of cases through its SOEs. Rulings to date have favored Ukrainian investors, and the Russian state owes billions of dollars in binding arbitral awards to investors, with USD 150 million enforced and myriad enforcement procedures ongoing regarding other binding awards at the time of writing. Several cases are still pending.

Table 1: Crimea cases

Case	Year filed	Claimant type	Claimant count	Investment	Award
Kolomoisky and Aeroport Belbek v. Russia	2015	Non-state (K)	2	Airport operations	Pending
Privatbank v. Russia	2015	Non-state (K)	2	Banking	Pending
Stabil and others v. Russia	2015	Non-state (K)	11	Petrol stations	USD 35 mil.
Ukrnafta v. Russia	2015	Non-state (K)	1	Petrol stations	USD 45 mil.
Everest Estate and others v. Russia	2015	Non-state (K)	19	Real estate	USD 150 mil.*
LLC Lugzor v. Russia	2015	Non-state (K)	5	Real estate	(In progress)
Naftogaz v. Russia	2016	SOE	5	Oil and gas	USD 5 bil.
Oschadbank v. Russia	2016	SOE	1	Finance	USD 1.1 bil.
DTEK Krymenergo v. Russia	2018 [revealed 2020]	Non-state (A)	1	Electric power	USD 267 mil.
Akhmetov & Investio v. Russia	2019 [revealed 2024]	Non-state (A)	2	(Unknown)	(In progress)
Ukrenergo v. Russia	2019	SOE	1	Electric power	(In progress)
Energoatom v. Russia	2021	SOE	1	Wind power plant	(In progress)

Notes: *As of March 2024. (K) = Case involving Kolomoisky. (A) = Case involving Akhmetov. * = Award enforced; all other awards unpaid. All cases at the Permanent Court of Arbitration (PCA) and brought under the Ukraine-Russia BIT. Jurisdiction upheld in all cases. See Appendix for timeline and detail on sources.*

[25] Following the first Crimea case award, the Deputy Foreign Minister for European Integration said, "This is only the first victory. A lot of cases of Ukrainian companies…are already under consideration." Interfax: Ukraine Business Weekly, 21 May 2018. "Economic Policy; Ukrainian Diplomat Calls on Companies That Lost Property In Crimea To File Lawsuits Against Russia."

The problem of commercial actors as wartime decision-makers

As the Crimea cases have unfolded, cases filed by private Ukrainian claimants have become a burr in the side of the Zelensky government – specifically, the 2015 cases filed by investors linked to a then-pivotal, now-ostracized Ukrainian oligarch, Ihor Kolomoisky. Kolomoisky was a top oligarch who played a key role in Zelensky's rise, as the owner of the television station that aired Zelensky's hit show, and as his key financial backer in his election campaign against the incumbent Poroshenko, with whom Kolomoisky had fallen out.[26] However, starting in late 2021, Kolomoisky fell out of favor with the Zelensky government. Kolomoisky was stripped of Ukrainian citizenship (July 2022), had the bulk of his Ukrainian assets nationalized (November 2022), and became the subject of active Ukrainian criminal investigations including a headline-grabbing raid on his home (February 2023) and detention (September 2023). Prosecutions of Kolomoisky for fraud are ongoing not only in Ukraine but also the US, Cyprus, and the UK, the last of which enabled the freezing of USD 3 billion in Kolomoisky assets (February 2023).

The drama around one of the arbitrations in which an award is pending, *PrivatBank v. Russia*, demonstrates just how far the interests of Ukraine and its private investor pursuing ISDS can diverge. PrivatBank, founded by Kolomoisky and partners in 1992, is a household name as one of Ukraine's first commercial banks. PrivatBank went on to fail spectacularly and, to abate deep financial crisis, Ukraine nationalized it with the IMF's blessing in December 2016 – two years after its Crimean assets were expropriated. The tribunal in *PrivatBank v. Russia* found Russia liable for PrivatBank's expropriation in Crimea, and the

[26] For more on Kolomoisky and Zelensky's history, see Maheshwari, Vijai. 17 April 2019. "The Comedian and the Oligarch." Politico. https://www.politico.eu/article/volodomyr-zelenskiy-ihor-kolomoisky-the-comedian-and-the-oligarch-ukraine-presidential-election/

tribunal decided to only consider the context of fraud in the quantum phase, which is ongoing at the time of writing.[27] Claimants are seeking USD 1 billion. In terms of optics, the Ukraine-Russia BIT led to a legally binding ruling in favor of the Kolomoisky-owned version of PrivatBank, so mired in fraud that it nearly collapsed the Ukrainian economy; the size and timing of the announcement of the monetary award (if any) are in the hands of the tribunal; and if an award is rendered, Kolomoisky has standing under international law to enforce it, just as he already has standing to enforce his other outstanding awards against Russia.

The interactions between Ukrainian domestic politics and its international relations are multilayered here. Western pressure to reduce corruption helped sour Zelensky on Kolomoisky, even as Kolomoisky gained power with the accumulation of arbitral awards in his favor.[28] The enormous political pressure on Kolomoisky might encourage him to withdraw continuing cases, but completed cases with awards have legal implications that are virtually impossible to pull back. Further, Ukraine's interests in the enforcement of Kolomoisky awards against Russia are complex: successful enforcement during wartime might help drain the Russian war chest, but it would also increase the scarcity of Russian assets when it comes to settlement and reparations, and any moneys recovered would go to benefit an individual who is *persona non grata*. In any case, because Ukraine does not have standing in these processes, the state must persuade or coerce Kolomoisky to affect outcomes. Ukraine's Western backers, who also have an interest in the allocation of Russian

[27] Although Russia sought a set-aside of the ruling – citing the issue of fraud, among other things – their request was denied at the Hague (19 July 2022).

[28] Kolomoisky and affiliates are pursuing multiple ISDS cases against the United States under the Ukraine-United States BIT, over claims arising from US law enforcement actions around Kolomoisky's alleged financial crimes. See Appendix timeline for details.

assets, are yet another step removed.[29] The upshot is that, even from prison, Kolomoisky remains a relevant decision-maker during the war.

The centrality of oligarchs to the Ukrainian (not to mention Russian) economy means that a few individuals can have an outsized impact on the compatibility of private investor-driven arbitration and the state's national interests, for worse or better.[30] Rinat Akhmetov, currently Ukraine's richest oligarch, has also pursued Crimea cases against Russia (see again Table 1). Notably, Akhmetov kept his cases private for years, whereas Kolomoisky made his highly public. Again, ISDS elevates the relevance of commercial actors in international relations, taking control out of the hands of the home state that might prefer different choices over transparency (Hafner-Burton, Steinert-Threlkeld, and Victor 2016).

Akhmetov has been a strong supporter of the Zelensky government and its ongoing war effort, and shortly after the full-scale Russian invasion announced his intention to sue Russia "in all international and national courts," consistent with Ukraine's "Lawfare Project." Akhmetov-linked claimants won a USD 270 million award in a Crimea case, with another still pending, and in 2023 filed the first public case over damage to property resulting from the war in eastern Ukraine (*SCM Group v. Russia,* see Table 2). While Akhmetov's interests currently align with Ukraine's government, the Kolomoisky-related Crimea cases serve as a

[29] While outside our scope, Western actors also have complicated interests in other ongoing enforcement efforts against Russia. The biggest effort involves the Russian oil company Yukos, whose owners lost control of the company because of Russian actions in the mid-2000s. Shareholders won USD 50 billion in awards as of 2014 and have been seeking to enforce them since, in a myriad of courts worldwide. The 2012 Magnitsky Act includes a clause that the US commits to "advocating for United States investors in the Russian Federation, including by promoting the claims of United States investors in Yukos Oil Company" (Public Law 112-208, Page 126 STAT. 1499, (a)(1)(b)).

[30] Although consider just how different this state of affairs is from that around international trade, in which firms must rely on their states to take up their cause in dispute settlement mechanisms, and factors outside firms' control generate variation in their states' interests in doing so (e.g. Johns and Pelc 2018). In remarks to legal practitioners, one advocate for financially backing post-invasion ISDS cases against Russia saw "a moral argument about funding cases regarding access to justice" (Washington Arbitration Week, December 2022).

cautionary tale of the difficulties states face to rein in private investors if their use of a BIT should conflict with national interests.

The problem of symmetric treaty protections

In describing its "Lawfare Project," Ukraine argues that on the "legal front…Ukraine (state bodies and state-owned enterprises) is fighting quite well."[31] The parenthetical reference to state-owned enterprises connects back to Crimea cases initiated by Ukrainian SOEs that have resulted in billions of dollars in awards (Table 1). SOEs are covered investors under typical IIAs, including the Ukraine-Russia BIT, although their rise as claimants has been controversial (Moehlecke and Wellhausen 2022).[32] We expect that a state can use ISDS to pursue political goals by choosing to have its SOEs file cases, settle, or waive awards. Given that the home state has managerial control over the business, SOEs should rarely have conflicts of interest with their home state during wartime, much less act on them. SOE-led "lawfare" is thus inoculated from the risks of misalignment between ISDS claimant behavior and national security that can arise when investors are privately owned.

Table 2 summarizes the post-Crimea cases, or ISDS arbitrations that have been filed over property rights violations after the Crimean occupation. Since its full-scale invasion of Ukraine in 2022, Russia has faced several additional public cases, and at the time of writing legal observers predict a wave of cases to come. Ukrainian SOEs have continued "lawfare" by

[31] See footnote 1.

[32] SOEs have long engaged in contract-based international commercial arbitration (ICA), in which SOEs litigate against respondent firms (SOEs or otherwise) over commercial disputes, rather than a respondent state (Hale 2015). The Russian SOE Gazprom and Ukrainian SOE Naftogaz have been involved in repeated commercial arbitrations against each other, for example. To date, at least ten states have been sued by SOEs in ISDS (Behn et al, 2019). The Energy Community Secretariat hosts a platform for the international legal community to provide pro bono support to Ukrainian public energy companies (https://www.energy-community.org/Ukraine/platform.html, last accessed 27 November 2024).

filing new cases against Russia. Notably, so too have SOEs from Germany and Finland, which raises the possibility that SOE-led "lawfare" is another avenue by which Ukraine's Western backers might support its war effort.[33]

Table 2: Post-Crimea cases

Case	Treaty	Year	Claimant type	Investment
Cases against Ukraine:				
VEB v. Ukraine	Ukraine-Russia BIT	2019	SOE (Russia)	Finance
Sberbank v. Ukraine	Ukraine-Russia BIT	2022	SOE (Russia)	Finance
VEB v. Ukraine (II)	Ukraine-Russia BIT	2022	SOE (Russia)	Finance
ABH Holdings v. Ukraine	Belgium-Luxembourg-Ukraine BIT	2023	Non-state, part-owned by sanctioned Russian individuals (Luxembourg)	Finance
RNKB Bank v. Ukraine	Ukraine-Russia BIT	2024	SOE (Russia)	Finance
Cases against Russia:				
SCM Group v. Russia	Ukraine-Russia BIT	2023	Non-state	Various
Energoatom v. Russia (II)	Ukraine-Russia BIT	2023	SOE (Ukraine)	Energy
Uniper v. Russia	Germany-Russia BIT	2023	SOE (Germany)*	Energy
Carlsberg v. Russia	Denmark-Russia BIT	2023	Non-state	Brewing
Carlsberg v. Russia	Sweden-Russia BIT	2023	Non-state	Brewing
Carlsberg v. Russia	Germany-Russia BIT	2023	Non-state	Brewing
Fortum v. Russia	Netherlands-Russia BIT	2024	SOE (Finland)	Energy
Fortum v. Russia	Sweden-Russia BIT	2024	SOE (Finland)	Energy
Ukrenergo v. Russia (II)	Ukraine-Russia BIT	2024	SOE (Ukraine)	Energy
Ukrhydroenergo v. Russia	Ukraine-Russia BIT	2024	SOE (Ukraine)	Energy

***Notes**: As of March 2024. Criteria for inclusion are that claims have to do with Ukraine-Russia war, and that the investor has publicly stated its intent to file under the treaty referenced. See Appendix for timeline and detail on sources. *German state ownership since Dec 2022*.

However, because BITs are symmetric, they can be used for lawfare by SOEs from both contracting parties. This is Ukraine's situation, as Russian entities have also leveraged

[33] Carlsberg, which has filed cases under three different BITs to which it has access, is private (Table 2). In explaining its actions, the CEO announced that "there is no way around the fact that they have stolen our business in Russia." While Russia has interfered with sales by MNCs looking to exit in various ways, it has mostly done this through legalized means, making its outright expropriation of Carlsberg exceptional (Wellhausen and Zhu, 2024). Gronholt-Pedersen, Jacob. "Carlsberg CEO: Russia has 'stolen our business'." 31 October 2023. Reuters.

the BIT to file claims against it, as summarized in the top of Table 2. The 2019 case *VEB v. Ukraine* arose because of the enforcement of a Kolomoisky Crimea case. In its 2019 filing, Russian state-owned Vnesheconombank (VEB) claimed that, for years, Ukraine had taken "deliberate and successive steps to oust it from the country." Key to the timing of the filing, Ukrainian court rulings had just allowed VEB assets in Ukraine to be seized and turned over to Kolomoisky affiliates to enforce their USD 150 million award in the Crimea case *Everest v. Russia* (Table 1).[34] *VEB v. Ukraine* is the most advanced of the Russian SOE-led ISDS arbitrations against Ukraine at the time of writing. In 2021, the tribunal ruled on jurisdiction. Ukraine argued, in broad strokes, that the context of Russian aggression means that Russian SOEs are not covered as investors. However, the tribunal returned to the text of the BIT to reject that argument: SOEs are granted standing, and there is no wartime or aggression exception suggesting otherwise.[35]

Ukraine's exposure to Russian ISDS claims grew significantly with the Ukrainian parliament's unanimous decision to expropriate (only) Russian-owned assets in Ukraine in the immediate aftermath of the full-scale Russian invasion.[36] The law instructs the Cabinet of Ministers to reassign ownership and/or liquidate Russian assets, with proceeds going to the Ukrainian state budget for war financing. Shortly thereafter, both the Russian state-owned banks Sberbank and VEB (for a second time) announced that they initiated ISDS against Ukraine over the seizure of their assets. Additionally, Ukraine's decision to place a

[34] The seizure and asset transfer took place several months after Zelensky's March 2019 election, following rulings by multiple layers of Ukrainian courts, and two years before Kolomoisky's fall out of favor with the Zelensky government.
[35] For a legal analysis of this and other issues at stake in the ruling, see in particular Braun, Johanna. 22 September 2021. "Revealed: Tribunal in VEB v Ukraine upholds jurisdiction…" IAReporter. See again the Appendix for additional sources.
[36] It is unclear how well the parliament foresaw the possible consequences of the expropriation law under the Ukraine-Russia BIT and/or considered it in relation to Ukraine's "lawfare" strategy.

partially Russian-owned bank on its sanctions list, as well as the pursuit of criminal proceedings against one of its owners for financing Russia's war, led to the case *ABH Holdings v. Ukraine.* Thus, Ukrainian state decisions over the treatment of enemy property, sanctions, and criminal law – all made in a wartime, national security context – are all publicly being challenged under the auspices of the Ukraine-Russia BIT even as fighting continues.

Whatever the outcome of these arbitrations, it is costly to Ukraine to devote resources to defend against Russia and Russian interests on the "legal front" enabled by the symmetric BIT, whether politically, financially, or militarily. Indeed, the Security Service of Ukraine publicly advocated for the termination of the BIT. Ukraine moved to do so in April 2023, though only finalized termination in August and did not make it effective until January 2025. Further, Ukraine announced it will abide by the BIT's 10-year sunset clause, meaning protections are in place until 2035, virtually guaranteeing additional cases against it. Whether Ukraine's formal withdrawal will have political force separate from its limited legal impact remains to be seen. Nonetheless, that Ukraine remains interested in abiding by the rules of international treaty law, even in these circumstances, suggests a remarkable durability of its commitment. As it balances between rule of law commitments and national security, tracing Ukraine's choices over the BIT are even more relevant to scholarship considering the tradeoffs states face in persisting in or exiting international institutions (Huikuri 2023; Gray 2024).

The other way in which symmetric treaty protections have come to compromise the usefulness of the BIT to Ukraine's "lawfare" strategy is via the complications inherent in legalized dispute settlement. In the Crimea cases, Russia initially sent a letter to each tribunal rejecting jurisdiction and declining to participate whatsoever. Russia kept to that stance until

around 2019, when the first awards emerged. It then appointed counsel and, in each instance, sought to reopen questions of jurisdiction, submit arguments, set aside awards, and generally make up for its years of non-participation. As a result, each tribunal has had to make decisions regarding the extent to which Russia's newfound enthusiasm could reopen issues and delay proceedings. Variation in tribunals' decisions over Russian participation is one factor in why Crimea cases have been completed on such different timelines (see again Table 1). Legalization has made it possible for Russia to strategically drag its feet while still being technically in compliance with its treaty commitments.

Since the full-scale invasion of Ukraine, practitioners in the tight-knit investment arbitration community have by and large declined to represent Russia. Under economic sanctions, the Russian state has not had access to foreign currency to pay for legal representation, either. However, in a landmark decision, a Dutch court ruled that Russia was entitled to have counsel appointed for it, if it is unable to find (or afford) representation. That Russia has both committed to economic integration and been willing to exploit commitments when it is of political interest is not new (Logvinenko 2019). What is new is that, while operating as designed, wartime adjudication through ISDS has provided Russia points of leverage in tension with the interests not just of Ukraine but of Ukraine's Western backers – the designers of the contemporary investment treaty regime (St. John 2018). Indeed, Ukraine's Western backers are broadly reconsidering their views on the inviolability of property rights protections, evidenced by discussions about what to do with seized Russian assets, which could arguably be considered the kind of assets that the contemporary legalized approach to investment protection was designed to protect.

Implications for scholarship

While elements of the Crimea and post-Crimea cases may be unique to the Ukraine-Russia conflict, we expect the cases will resonate for years in ways that are important to scholars of political science and international relations. We have focused on two key consequences of treaty-based commitments to foreign property rights protections: first, commercial actors as wartime decision-makers, and second, the implications of symmetric treaty protections. We expound on scholarship touched by these issues, as well as broadening our discussion to at least some of the many literatures in political science and international relations for which the current case study carries implications.

First, the status quo in Investor-State Dispute Settlement (ISDS) gives private commercial actors standing to pursue an interstate dispute and leaves their home state no institutional authority to forestall the process. Overlaying war on domestic political economies characterized by oligarchs and SOEs creates a perfect storm, in terms of misalignment between not just private and public interests but also economic and security goals. And yet, this extreme setting reflects bigger questions about the antecedents and outcomes of divergent interests between home states and their private investors on the international stage (Maurer 2013, Bucheli, et al. 2024). If institutions (like IIAs) that tie the hands of their state parties limit home states' ability to overrule their own commercial actors' competing interests on the international stage, then the durability of state commitments to those institutions is certainly at risk (Johns, Pelc, and Wellhausen, 2019).

Second, the Ukraine-Russia BIT locked in the states' mutual interests in reciprocal investment promotion, protection, and accountability for violations. From a national security point of view, that peacetime commitment to symmetrical protections seems absurd when the conduct of the war could benefit from strategic non-compliance. Perhaps more specific treaty language, that considers the protection of property rights in wartime, is the way forward? Indeed, the broader investment treaty regime is already the subject of myriad reform efforts as states chafe at the deference to foreign investors over domestic interests that it implies (Peinhardt and Wellhausen 2016, Roberts and St John 2022). Many suggested reforms highlight the need to prevent claims that challenge legitimate public policy interests (Moehlecke 2020), and a significant literature has arisen on reclaiming state regulatory space in IIAs (Thompson, et al. 2019). Empirically, investment treaty negotiators in recent decades have carved out more and more precise exemptions, inspired especially by tensions between investor protections and environmental, health, and fiscal policy (Manger and Peinhardt 2017, Haftel and Thompson 2018, Polanco 2019). Some newer IIAs contain more detailed language in Full Protection and Security (FPS) clauses, which can task host states with exercising due diligence for the physical protection of foreign investments (Zrilič 2019, pp. 99-106).[37] Separately, armed conflict clauses can set remedies for losses due to war and can circumscribe state immunity (Zrilič 2019, pp. 107-120). However, any hopes that treaty revisions can resolve wartime disputes should be tempered by Alschner's (2022) finding that even when thoughtful revisions have been included in IIAs, arbitrators often ignore

[37] While the Ukraine-Russia BIT's Article 2 includes a reference to "legal protection of investments," it stops short of a more complete statement on physical protection of foreign investments, as in FPS clauses.

them in favor of more established standards. As a result, we are pessimistic that contracting parties can wordsmith themselves out of wartime complications ex ante.[38]

What if ISDS were simply suspended during war? Doing so would alleviate the tension facing Ukraine in that it is defending itself against Russian aggression, while also incurring costs by participating in wartime arbitrations brought by Russian investors and choosing to respect the 10-year sunset clause of the BIT. On the Russian side, avoiding binding arbitral awards piling up during wartime would clearly be an advantage.[39] When given the option, it is unsurprising that warring states would prioritize national security and strategic considerations over peacetime commitments to each other's commercial enterprises. And yet, the prospect of suspending ISDS in wartime brings forth perennial questions about the interrelationships between commercial interests, states, and war (Morrow 1999, Gartzke and Li 2001, McDonald 2009). For example, McDonald (2007) argues that the greatest hopes of a commercial peace dividend might rest on investments involving rivalrous home and host states. To design ISDS such that it is to be suspended during wartime would be to make property rights protections fragile for exactly investors between rivals.[40]

What of foreign investors? Although international relations scholarship often portrays firms as objects rather than subjects when it comes to wartime behavior (e.g. Simonelli and Osgood 2023; Barry 2018), with access to ISDS investors' decision-making can become consequential for the fighting itself. We highlight the impact of differing time

[38] Although see both Ukraine and Russian actions in relation to the Energy Charter Treaty in Danojevič (2023) "Investment Protection in the Times of War under the Energy Charter Treaty." Lexology. 10 March 2023.
[39] If Putin once believed that Crimean assets could easily be distributed to supportive oligarchs, arbitrators in the "Crimea cases" have increased the costs of those asset seizures in ways that the Putin regime likely did not foresee.
[40] Notably, though, deep bilateral economic integration did not deter Russia from invading Ukraine in this case.

horizons for compensation as a source of tension between investors and states, in a system that requires states to turn to coercion or persuasion to influence the independent decisions of private investors. Broadly, the Crimea cases and their fallout demonstrate that one-time overlapping interests between investors, home states, and host states can cleave, form, and reform in dramatic and unpredictable ways. Although political scientists have done much work on relationships among these three actors, we tend to overlook that their constellation of interests is an empirical question. Assuming stable alignment is problematic if pro-economic integration interests are challenged by more competitive, zero-sum approaches to foreign economic policy such as those inherent in contemporary economic statecraft and the revival of industrial policy (Drezner, Farrell, and Newman 2021; Allan and Nahm 2024). While interests can change endogenously, they may also react to external shocks – the biggest of which may be the outbreak of violent armed conflict over territory. If investors come to believe that support for overseas economic activity is unstable, investors may reduce their trust in not only international legal remedies but even in fallback principles of diplomatic protection, in which the home state directly fights for the investors' claim.

Last, while we have taken Ukraine's chosen term "lawfare" at face value, the boundaries of this concept are up for debate. For Ukraine, "lawfare" has meant pursuing formal, legal cases against Russia. More fundamental questions in international relations surround the ability of prewar commitments to these sorts of international legal institutions to survive in wartime, with international humanitarian law of special normative importance (Morrow 2007; Kinsella and Mantilla 2020).[41] On the economic side, there is a long history

[41] Concerning violations of humanitarian and other non-economic international law, Ukraine has filed cases against Russia in venues including the International Court of Justice, the International Criminal Court, the European Court of Human Rights, and the International Tribunal for the Law of the Sea (ITLOS). In June 2024

of states using trade institutions in pursuit of national security goals that might fall under a "lawfare" umbrella.[42] The relative usefulness of different international fora as an avenue for "lawfare" is an open question. Further, defining "lawfare" via the use of formal institutions might be too limiting. The popularity of economic sanctions and economic statecraft suggest that legalized economic integration is being leveraged for foreign policy purposes in ways beyond "lawfare" in the courtroom.

Conclusions

To conclude, we reflect on the conceit of this article. As scholars, we all can and should leverage our respective comparative advantages when the literature becomes newsworthy – in this case unfortunately. After Russia's occupation of Crimea and parts of Donbas in 2014, and since the conflict has escalated with the 2022 invasion, investors from each side are using the Ukraine-Russia BIT to pursue compensation for seized or damaged assets. Adjudicating commercial property rights claims of an enemy while fighting that enemy has become a reality. At the time of writing, the war drags on. So too do wartime property rights violations, and the wartime operation of the investment treaty regime that is creating a myriad of binding rulings and awards that determine the fate of assets linked to each warring state.

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the European Court of Human Rights ruled unanimously that Russia's extension of its laws to Crimea was a violation of international humanitarian law and "this illegality tainted" Russia's expropriation of Crimean assets; however, the ECtHR "was not yet in a position to rule on Ukraine's request for just satisfaction." Brouwer, Erik. 25 June 2024. "European Court of Human Rights finds Russia liable…" IAReporter.

[42] Ukraine's 2017 WTO complaint against Russia (regarding transit restrictions, WT/DS532/1) came up against Russia's response that its policy changes served a national security purposes and thus were covered by GATT Article XXI, self-judging, and not subject to review by the WTO. Whether Article XXI is indeed entirely self-judging is subject to considerable debate (e.g. Voon 2019).

A final reason to acknowledge and understand this unfolding case study is that virtually all prior compensation for property rights damage has occurred only after a conflict ends. Important scholarly literatures, not to mention practical experience by post-war negotiators, speak to the changing norms around peace negotiations and variation in post-war lump sum payments, the use of dedicated claims commissions, and other processes to determine compensation, though as Dolzer (2002, ft. 15) notes, "reparation is usually the most controversial aspect of peacemaking."[43] Now, however, commercial claims are being adjudicated while fighting continues, potentially disrupting norms of postwar compensation and further complicating peace negotiations.

[43] See, among others, Alschner (2013), Vandevelde (2017), and Parlett (2013). Westin, Bederman, and Lillich (1999) report around 200 agreements on lump sum payments to be distributed by the home state of the injured parties between 1946 and 1995.

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Adjudicating While Fighting:
Political Implications of the Ukraine-Russia Bilateral Investment Treaty

Appendix

Contents:

1. **Timeline of key events**
2. **Additional sources: News reporting, legal analysis, and blog posts**

1. Timeline of key events: March 2014 – November 2024

Notes on dates: News of ISDS arbitrations associated with the earliest available date, so that dates in this timeline reflect public knowledge of these events rather than the actual date on which tribunals were appointed, awards issued, or other legal activities officially documented. For legal records, see especially IAReporter.

Russia	Year	Ukraine (West)	Cases (Treaty)
Mar: Russia occupies Crimea	**2014**		
Begins "passportization," forcing Russian passports on residents of Crimea		Mar: Kolomoisky personally funds Ukrainian militias and feuds with Putin; Putin accuses of defrauding Russian oligarch Abramovich	
		Jul-Oct: 35 Kolomoisky affiliates put Russia on notice of Crimea case filings	
	2015	Jan-Jun: ISDS: Kolomoisky-affiliated Crimea cases	*Kolomoisky and Aeroport Belbek v. Russia; Privatbank and Finilon v. Russia; Stabil and others v. Russia; Ukrnafta v. Russia; Everest Estate and others v. Russia*
Jan-onward: After each Crimea case filing, Russia sends letter to tribunal rejecting jurisdiction and declining to participate			
		Mar: Kolomoisky fired as regional governor by Ukrainian Pres. Poroshenko	
	2016	Jan: ISDS filing: Ukrainian SOE Oschadbank Crimea case	*Oschadbank v. Russia*
		Mar: ISDS filing: Kolomoisky-affiliated Crimea case	*Lugzor v. Russia*[44]
		Oct: ISDS filing: Ukrainian SOE Naftogaz Crimea case	*Naftogaz v. Russia*
Dec: Crimean law back-dating elimination of Ukrainian property rights to Feb 2014; establishing no compensation due to SOEs or individuals against whom a Russian case regarding an "extremist crime" had been brought (i.e., Kolomoisky)[45]		Dec: Ukraine nationalizes Kolomoisky-owned PrivatBank, lauded by IMF	

[44] The connections between Kolomoisky and claimants in *Lugzor v. Russia* are less clear than the other cases; *Luzgor* was also not immediately publicly disclosed. We categorize this as a Kolomoisky-affiliated case as Kolomoisky-controlled Ukrnafta is reported to have leased the DniproAzot chemical plant from at least 2011 to 2019; DniproAzot is one of the claimants. "Privat Empire: What Does Oligarch Ihor Kolomoisky Own in Ukraine?" 21 May 2019. Hromadske.ua, https://hromadske.ua/en/posts/privat-empire-what-does-oligarch-ihor-kolomoisky-own-in-ukraine.

[45] "On the peculiarities of regulation in the Republic of Crimea regarding individual property relations." Law of the Republic of Crimea (No. 345-ZRK/2016). 28 December 2016.

	2017	*Around this time, tribunals begin upholding jurisdiction in Crimea cases*	
Dec: US-Russian Ihor Boyko files v. Ukraine re: 2015-16 treatment of chocolate factory investment[46]			*Ihor Boyko v. Ukraine*
	2018	May: First Crimea case award: USD 150 million	*Everest v. Russia*
		Sept: Ukrainian courts uphold seizure of Russian state-owned bank assets in Ukraine to enforce USD 150 mil award	*Everest v. Russia*
Sept: Russian state-owned bank VEB puts Ukraine on notice of ISDS			*VEB v. Ukraine*
		Nov: ISDS: Akhmetov-affiliated Crimea case [Note: public in 2020]	*DTEK Krymenergo v. Russia*
		Nov: Award in Ukrainian SOE Crimea case: USD 1.1 bil	*Oschadbank v. Russia*
Around this time, Russia begins to participate in Crimea cases	**2019**	Feb: ISDS filing: Akhmetov-affiliated Crimea case [Note: public in 2024]	*Akhmetov & Investio v. Russia*
		Apr: Awards in 2 Kolomoisky-affiliated Crimea cases: USD 35 mil *(Stabil)* and USD 45 mil *(Ukrnafta)*	*Stabil v. Russia, Ukrnafta v. Russia*
		Apr: Zelensky elected president	
Jun: ISDS: Russian state-owned bank VEB lodges official case			*VEB v. Ukraine*
		Sept: ISDS: Ukrainian SOE Ukrenergo Crimea case	*Ukrenergo v. Russia*
	2020	Dec: Ukrainian SOE Energoatom threatens to file Crimea case (actual filing in May 2021)	*Energoatom v. Russia (I)*
	2021	Feb: ISDS filings: Kolomoisky affiliates v. United States re: actions borne of PrivatBank financial crimes investigations	*Optima (I) and (II) v. United States (Ukraine-US BIT)*
		Mar: US State Dept makes Kolomoisky ineligible to enter US	
Mar: Russia successful in getting award to Ukrainian SOE set aside [later reinstated Dec 2022]			*Oschadbank v. Russia*
		Oct: Pandora Papers reveal Zelensky and affiliates offshore holdings, trigger accusations of PrivatBank money laundering involvement Nov: "Anti-oligarch" legislation signals Zelensky's full split from Kolomoisky	

[46] As this is not a Crimea case, we do not discuss it in the main text, although it also proceeds under the Ukraine-Russia BIT. Boyko claimed USD 100 million in compensation.

24 Feb: Russia begins full-scale invasion of Ukraine	**2022**		
2 Mar: To assuage Ukrainian national security concerns, Tatneft and Ukraine agree to moratorium on discovery-related proceedings in ongoing enforcement case against Ukraine.[47]		7 Mar: Ukraine adopts law expropriating Russian-owned property without compensation[48]	
		Apr: Crimea case claimants petitioned US courts in April 2022 for confirmation of award to aid in enforcement	*Stabil v. Russia*
May: Russian SOEs Sberbank and VEB each announce intent to initiate arbitration against Ukraine			*Sberbank v. Ukraine, VEB v. Ukraine (II)*
		May: Kolomoisky affiliates threaten third ISDS filing v. United States re: actions borne of PrivatBank financial crimes investigations	[follow-through to formal case unclear]
		Jul: Kolomoisky stripped of Ukrainian citizenship	
Aug: Russian-linked gas station chain AMIC Energy chain threatens to file under Austria-Ukraine BIT			[follow-through to formal case unclear]
		Aug: Ukraine triggers denial of benefits clause under Energy Charter Treaty with regard to Russia[49]	*(Energy Charter Treaty)*
Sept: Hague ruling that counsel must be appointed for Russia			*(Hof von Discipline case)*
		Nov: Ukraine uses martial law to nationalize 5 defense-related firms, 2 with Kolomoisky assets, including Ukrnafta	
Dec: Set-aside decision of March 2021 overturned and award to Ukrainian SOE reaffirmed			*Oschadbank v. Russia*
Dec: Russian Duma deputies suggest denouncing BITs with "unfriendly" states[50]; Ukraine's security service suggests withdrawing from BIT			
	2023	Feb: UK proceedings enable freezing of USD 3 billion Kolomoisky assets re: PrivatBank litigation enforcement	

[47] As reported by Bohmer, Lisa. 2 March 2022. "Ukraine Accuses Russia of…" IAReporter.
[48] "On the Basic Principles of the Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine." 7 March 2022. (https://zakon.rada.gov.ua/laws/show/2116-IX#n21)
[49] Ukraine argued that it could do this, and no sunset clause applies, because Russia is a non-contracting (third party) state to the ECT. However, although Russia withdrew from the ECT in 2009, its sunset clause means that Russia's commitments as a contracting state apply through 2029, muddying the situation.
[50] No further action taken on BITs as of the time of writing (August 2024). However, Russia suspended Double Taxation Treaties (DTTs) with "unfriendly" states in August 2023. (Decree of the President of the Russian Federation, 08.08.2023 No. 585 "On Suspension by the Russian Federation of Certain Provisions of International Tax Treaties of the Russian Federation.")

		Mar: ISDS filing: Energoatom (Ukraine SOE), regarding Zaporizhia nuclear plant violations since Mar 2022	*Energoatom v. Russia* (II)
25 Apr: Russian decree No. 302 expropriates Fortum (Finland SOE) and Uniper SE (Germany SOE)		***19 Apr: Ukraine moves to withdraw from the Ukraine-Russia BIT; confirms adherence to 10-year sunset clause***[51]	*(Ukraine-Russia BIT)*
		Apr: Award in Ukrainian SOE Crimea case: USD 5 billion	*Naftogaz v. Russia*
June: ISDS: Bank (Luxembourg; part-owned by sanctioned Russian individuals), re: poor treatment + forced sale			*ABH Holdings v. Ukraine (Belgium-Luxembourg-Ukraine BIT)*
		10 Aug: Ukraine finalizes withdrawal from Ukraine-Russia BIT effective Jan 2025, with 10-year sunset clause in place through 2035[52]	*(Ukraine-Russia BIT)*
		Sept: Ukraine moves to withdraw from BIT with Syria	*(Ukraine-Syria BIT)*
June: LSR group, Russian parent of firm sanctioned by Ukraine, threatens filing under Germany-Ukraine BIT			*(Germany-Ukraine BIT)*
Oct: Russia successfully disqualifies two Crimea case arbiters due to views on full-scale Russian invasion			*Akhmetov & Investio v. Russia*
		Nov: Award in Akhmetov-linked Crimea case: USD 267 million	*DTEK Krymenergo v. Russia*
		Dec: Ukraine moves to withdraw from BIT with Belarus	*(Ukraine-Belarus BIT)*
	2024	*Enforcement proceedings ongoing in Washington, DC courts*	*Oschadbank, Naftogaz, DTEK Krymenergo, Yukos*[55]
Jan: Belgium threatened with Russian claims re: sanctions			*(Belgium-Luxembourg-Russia BIT)*
		Feb: ISDS filings: Several filings v. Russia by foreign investors under treaties other than Ukraine-Russia BIT	*Fortum v. Russia (Netherlands-Russia BIT)* *Fortum v. Russia*

[51] Explanatory note to the draft Law of Ukraine "On Termination of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Encouragement and Mutual Protection of Investments," Section 2. 19 April 2023.
[52] "On the termination of the agreement…" No. 3329-IX. 10 August 2023. (https://zakon.rada.gov.ua/laws/show/3329-20#Text)
[55] While outside our scope, the biggest effort to enforce awards against Russia involves the oil company Yukos, whose owners lost control of the company because of Russian actions in the mid-2000s. Shareholders won USD 50 billion in awards as of 2014 and have been seeking to enforce them since, in a myriad of courts worldwide. The 2012 Magnitsky Act includes a clause that the US commits to "advocating for United States investors in the Russian Federation, including by promoting the claims of United States investors in Yukos Oil Company" (Public Law 112-208, Page 126 STAT. 1499, (a)(1)(b)).

			(Sweden-Russia BIT) *Uniper v. Russia* *(Germany-Russia BIT)*
Feb: Russia fails to set aside USD 50 billion in Yukos awards; owes EUR 120,000 in fees to Dutch courts.			*Yukos*
		Feb-Mar: ISDS filings: Filings in progress by Ukrainian SOEs	*Ukrenergo v. Russia (II)* *Ukrhydroenergo v. Russia*
Jun: RNKB Bank (largest Russian SOE in Crimea) puts Ukraine on notice			*RNKB Bank v. Ukraine*
		Jun: European Court of Human Rights finds Russia liable for human rights violations in Crimea, including through expropriation	*(Case of Ukraine v. Russia [RE Crimea])*
Aug: Russian-Israeli Mikhail Fridman files for ISDS v. Luxembourg re: EU sanctions, claims USD 16 billion			*(Fridman v. Luxembourg, Belgium/Luxembourg-Russia BIT)*
Sept: US court stays enforcement of USD 1.1 billion award while Russia pursues annulment again			*Oschadbank v. Russia*
		Oct: Ukrhydroenergo cancels tender for legal services for ISDS case[53]	*Ukrhydroenergo v. Russia*
		Oct: Naftogaz announces court order freezing Russian state-owned assets in Finland[54]	*Naftogaz v. Russia*
		Nov: Ukraine announces that it has won (non-Crimea case) *Boyko v. Ukraine* ongoing under Ukraine-Russia BIT since 2017	*Ihor Boyko v. Ukraine*

[53] Ukrhydroenergo wrote that the cancellation was "made to ensure that the company's actions align with the broader national strategy of Ukraine," and that "additional consultations will be held with the government and other key stakeholders to determine the most appropriate course of action in line with the national approach, which is being coordinated in partnership with Ukraine's international allies." As reported by Bohmer, Lisa. 15 Oct 2024. "Ukrhydroenergo cancels…" IAReporter.

[54] Naftogaz announced tens of millions of dollars in frozen Russian state-owned assets in Finland, writing in their press release that it is "the first publicly known successful asset freeze outside Ukraine in the enforcement of arbitration awards filed by Ukrainian companies against Russia for the expropriation of property in Crimea in 2014." As reported by Dall' Agnola, Giovanni. 28 October 2024. "Ukraine's Naftogaz freezes…" IAReporter.

2. Additional sources: News reporting, legal analysis, and blog posts

For news reporting and legal analysis, we are especially indebted to Investment Arbitration Reporter (IAReporter).[56] We have also benefitted from discussions at Washington Arbitration Week,[57] on the Young-OGEMID/Transnational Dispute Management listserv,[58] and on the platform Lawfare.[59] Below are specific sources on which we draw in telling narratives in the text (in chronological order):

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[56] https://www.iareporter.com/
[57] https://washingtonarbitrationweek.com/
[58] https://www.transnational-dispute-management.com/young-ogemid/
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