

Professor Freya Baetens

Special Counsel



CONTACT INFORMATION

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PROFESSIONAL BACKGROUND

- Fietta LLP, Special Counsel (2024 onward)
- University of Oxford, Full Professor of Public International Law, Research Director of the Oxford Human Rights Hub and GIC+ Project Director (2022 onward)
- University of Leiden, Europa Institute, Chair in EU External Economic Law (2023 onward)
- University of Oslo, Full Professor of Public International Law, PluriCourts Centre of Excellence (2016-2022)
- University of Leiden, Director LUC Research Centre; Assistant / Associate Professor of Law (2009-2016)
- Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Research Fellow (2008-2009)
- University of Cambridge, LL.B. / M.Phil. lecturer and tutor (2006-2008)

AREAS OF EXPERTISE

Professor Freya Baetens is a Special Counsel at Fietta LLP and Member of the Brussels Bar, focusing on state-state disputes as well as investor-State arbitration. Previously as an independent practitioner, and Member of the Brussels Bar, she represented and advised international and regional organisations (including EU Commission and Parliament; multilateral development banks), state and local governments, and private clients (corporations, NGOs and individuals) in negotiations and before domestic, EU and international courts and tribunals.

She is also a Full Professor of Public International Law, Research Director of the Oxford Human Rights Hub and GIC+ Project Director at the University of Oxford and holds the Chair in EU External Economic Law within the Europa Institute at the University of Leiden.

Her work has related to matters including but not limited to interaction between EU and international law, law of treaties, responsibility of states and international organisations, privileges and immunities, human rights, investment law, territorial and maritime boundaries, law of the sea, WTO law, natural resources law, sustainable development.

She is listed on the EU Roster of Arbitrators and Trade & Sustainable Development (TSD) experts, the Panel of Arbitrators and Conciliators of the International Centre for the Settlement of Investment Disputes (ICSID), the South China International Economic and Trade Arbitration Commission (Shenzhen Court of International Arbitration), the Xi'An Arbitration Commission, and the Hong Kong International Arbitration Centre (HKIAC).

She holds a *Cand. Jur./Lic.Jur.* (LL.B./LL.M. equivalent) from the University of Ghent, an *LL.M.* from the University of Columbia, a *Ph.D. in Law* from the University of Cambridge, and an *M.A. in Law* (by Resolution) and a *D.Phil. in Law* (by Incorporation) from the University of Oxford.

REPRESENTATIVE MATTERS

Highlights of Professor Baetens' contentious and advisory practice have included:

For State governments and sub-national authorities:

- Representing the Republic of Azerbaijan in two separate but parallel proceedings against the Republic of Armenia before the International Court of Justice with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- Representing a Middle Eastern State in a contentious proceeding before the International Court of Justice
- Representing a Middle Eastern State in an advisory opinion proceeding before the International Court of Justice
- North-South cooperation in relation to global value chains
- Incorporation of human rights and environmental standards in free trade agreements
- Implementation of human rights, corporate social responsibility and sustainable development rules
- Immunities and jurisdiction of officials working for national and regional development banks
- International status, rights and obligations of sovereign wealth funds and state-owned enterprises
- Foreign investment protection, including co-drafting a model bilateral investment treaty, interpretation of jurisdictional scope, investment protection standards, damages, interaction with domestic and EU law, shareholder claims, continuous nationality issues, immunity waivers
- Cybersecurity and forced technology transfer
- State aid for research, development and innovation
- Market-distorting subsidies, trade remedies, export controls and WTO enforcement cooperation
- Provisional application and ratification of various investment and trade treaties
- Implementation of international judgments and arbitral awards, including a PCA award, ICJ judgments and rephrasing of optional clause *déclarations*
- Lawfulness of the EU's Anti-Coercion Instrument (economic coercion and retaliatory action)
- Implementation of EU regulation regarding environmental standards (single-use plastics)
- Election to and work of the UN Peacebuilding Commission
- Maritime boundary delimitation of an archipelago state
- Dispute settlement under UNCLOS and WTO law for an autonomous subnational entity
- Shared international responsibility for damage arising decades after conclusion of a peace agreement
- Shared responsibility of international organisations (particularly the EU) and their member states

For international organisations:

- European Court of Human Rights, regarding the implementation and execution of judgments
- African Court on Human and People's Rights, regarding alternative dispute resolution (ADR) rules
- Inter-American Court of Human Rights, regarding reproductive rights and expulsion of aliens
- European Parliament's Committee on International Trade (INTA), regarding the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA)
- European Commission, regarding the development of an Anti-Coercion Instrument, and regarding initiating public dialogue on environment protection in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations
- UN Committee on International Trade Law (UNCITRAL), regarding the establishment of an Investment Court System and Multilateral Investment Court (incl. financial accountability)
- World Bank, on the implementation of the New York Convention and capacity-building in Iraq

For private parties:

- A nuclear power plant operator, on energy security and investment protection
- A mining company, on the impact of water and sanitation rights of indigenous communities

- A beverage company, on the application of an EU treaty on geographical indications, incl. horizontal direct effect and subsequent practice as a means of treaty interpretation
- A construction firm, on foreign investment protection in the context of an international airport
- A construction firm, on foreign investment protection of residential housing projects
- A beverage firm, on foreign investment protection in the context of termination of a state contract
- A coalition of European industry federations, on the compatibility of proposed EU carbon border adjustment mechanisms with the rules of the World Trade Organisation (WTO)
- Telecom firms, on conduct inconsistent with WTO and EU competition law
- A state-owned oil and gas company, on extraterritorial application of EU law
- A financial services firm, on financial prudential measures
- A cement company, on matters of EU and domestic competition and contract law
- A car parts producer, on matters of EU and domestic competition and contract law
- A bank, on international and domestic rules regarding bank mergers
- A law firm, on market access, freedom of establishment and recognition of qualifications
- A law firm and accountancy firm, on professional due diligence and conflicts of interest
- A maritime company, on law of the sea rules concerning ocean container shipping
- A film company, on EU market access
- A European industry federation, on the right to access to information vs the protection of confidential business information under the Aarhus Convention and EU law
- An international non-profit organisation, on consultative status with UN ECOSOC and AAAS
- An international non-profit organisation, on intervention rules before the ICJ

PUBLICATIONS AND SPEAKING ENGAGEMENTS

Selected books and book chapters

- *The EU and the WTO: Ever the Twain Shall Meet – Liber Amicorum Marco Bronckers*, co-edited with S. Van den Bogaert (KLI 2023)
- ‘Agents of cross-fertilisation: abusive forum shopping or legitimate forum choice?’, in: C. Giorgetti and M. Pollack [Eds.], *Beyond Fragmentation: Cross-Fertilisation, Cooperation and Competition among International Courts and Tribunals* (CUP 2022) 242-274
- *Identity and Diversity on the International Bench: Who is the Judge?* (OUP 2020)
- *Legitimacy of Unseen Actors in International Adjudication* (CUP 2019)
- ‘Invoking human rights: A useful line of attack or a defence tool for States in investor-State dispute settlement?’ in: M. Scheinin, et al. [Eds.], *Human Rights Norms in ‘Other’ International Courts and Tribunals* (CUP 2019) 227-262
- ‘*Ejusdem Generis* and *Noscitur a Sociis*’, in: J. Klingler, Y. Parkhomenko, C. Salonidis [Eds.], *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law* (Wolters Kluwer 2019) 133-160
- ‘Strengths, Weaknesses, Opportunities and Threats of Investor-State Dispute Settlement as compared to WTO Dispute Settlement’, in J. Bourgeois, M. Bronckers, R. Quick [Eds.] *WTO Dispute Settlement: A Check-Up* (College of Europe Studies, Peter Lang 2017) 145-164
- ‘Keeping the Status Quo or Embarking on a New Course? Setting Aside, Refusal of Enforcement, Annulment and Appeal’, in: A. Kulick [Ed.], *Reassertion of Control over the Investment Treaty Regime* (CUP 2016) 103-127

- ‘Invoking, establishing and remedying state responsibility in mixed multi-party disputes: Lessons from Eurotunnel’, in: C. Chinkin, F. Baetens [Eds.], *Sovereignty, Statehood and State Responsibility – Essays in Honour of James Crawford* (CUP 2015) 421-441

Selected journal articles

- ‘World Trade Organization Rules before Investment Tribunals: Facilitating Cross-Fertilisation while Appreciating Particularities’, 24 *JWIT* 1 (2023) 1-36
- ‘Transparency across International Courts and Tribunals: Enhancing Legitimacy or Disrupting the Adjudicative Process?’, 91 *NJIL* (2022) 595-636
- ‘The Transitional Mechanism Regulating Extra-EU Bilateral Investment Treaties Has Turned Ten: High Time to Re-Assess’, 47 *E.L.Rev.* 4 (2022) 437-462
- ‘Protecting Foreign Investment and Public Health Through Arbitral Balancing and Treaty Design’, 71 *ICLQ* 1 (2022) 139-182
- ‘The ILC Articles on State Responsibility: More than a “Plank in a Shipwreck”?’, co-authored with J. Crawford, 36 *ICSID Review - Special Issue on the 20th anniversary of ARSIWA* (2021) 1-7
- ‘No Deal is Better Than a Bad Deal? The Fallacy of the WTO Fall-Back Option as a post-Brexit Safety Net’, 55 *Common Market Law Review* 2/1 (2018) 133 – 174
- ‘Judicial Review of International Adjudicatory Decisions: A Cross-Regime Comparison of Annulment and Appellate Mechanisms’, 8 *Journal of International Dispute Settlement* 3 (2017) 432-459
- ‘The European Union’s Proposed Investment Court System: Addressing Criticisms of Investor-State Arbitration while Raising New Challenges’, 43 *Legal Issues of Economic Integration* 4 (2016) 367-384
- ‘Multi-party investment arbitration: determining breach and compensation under the new extra-EU investment agreements’, co-authored with G. Kreijen and A. Varga, 47 *Vanderbilt Journal of Transnational Law* 5 (2014) 1203-1260
- ‘Reconsidering financial remedies in WTO dispute settlement proceedings’, co-authored with M. Bronckers, 16 *JIEL* 2 (2013) 1-31
- ‘Procedural Issues Relating to Shared Responsibility in Arbitral Proceedings’, 4 *Journal of International Dispute Settlement* 2 (2013) 319-341
- ‘The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?’, co-authored with R. Yotova, 3 *Goettingen Journal of International Law* 1 (2011) 417-446

Selected speaking engagements

- 8 May 2024, ‘China as an emerging law-maker in international law’, *China and the Future of the International Legal Order*, Florence School of Transnational Governance, EUI
- 16 November 2023, ‘Non-adjudicative mechanisms in inter-State dispute resolution: Countering the backlash with a return to the past?’, Conference *ADR in International and EU Law*, ILA Italy
- 20 October 2023, ‘Interaction between advisory opinion proceedings: procedural and substantive implications’, Conference *Resort to International Advisory Proceedings*, LCIL Cambridge University
- 19 June 2023, ‘Abuse of rights and process before international courts and tribunals’, ILA Paris
- 8 September 2022, ‘The Energy Charter Treaty and international climate goals’, *The ECT at Crossroads*, Copenhagen University
- 7 June 2022, ‘Comparative Costs and Financing of Permanent Dispute Settlement Mechanisms’, UNCITRAL Academic Forum on ISDS
- 11 September 2021, ‘Must the age of the individual end? The push for collective rights in international lawmaking’, ESIL Annual Conference *Changes in international lawmaking: actors, processes, impact*, Stockholm
- 27 May 2021, ‘Public health rights vs international trade rules: how to resolve the tension’, *States of Emergency: Notable Issues in the Context of a Pandemic*, Academy on Human Rights and International Humanitarian Law, American University Washington College of Law

- 17 March 2021, 'Lifting the Corporate Veil between China and its State-Owned Enterprises', USALI presentation, NYU
- 10 February 2020, 'Regionalism, Universalism and State Consent: Custom and the International Court of Justice', Conference on *Regionalism in International Law*, Université Paris I (Panthéon Sorbonne), Paris
- 28 March 2019, 'UNCLOS: a tool for regional peace, stability and sustainable use of resources?', ASIL Annual Meeting, Washington DC
- 15 December 2017, 'Re-designing international law to improve its enforcement: international *erga omnes* actions and domestic direct effect', Symposium *The Dynamic Evolution of International Law*, Victoria University of Wellington, New Zealand

PROFESSIONAL AND ACADEMIC QUALIFICATIONS

Admitted to practise in the EU (Member of the Brussels Bar)

LANGUAGE PROFICIENCY

English (fluent), Dutch (fluent), French (advanced), German (advanced), Italian (intermediate), Spanish (basic), Norwegian (basic)