

## INDEX

- Abacha, Sani, 40–41
- abuse of functions, in anti-corruption treaties, 82–83
- accessibility, in cooperative confiscation laws, 204–207
- active nationality principle, discretionary jurisdiction and, 60–61
- Additional Protocol to the Criminal Law Convention on Corruption (COECrimCC-AP), 16t
- Ad Hoc Committee for the Negotiation of a Convention against Corruption (GA), asset recovery and, 23–27
- administrative law, private sector bribery in, 77–80
- Advocaten voor de Wereld VZW v. Leden van de Minsterraad*, 209
- African Charter on Human and Peoples' Rights (AfCHPR)
  - collective right to wealth and resources under, 281–288
  - group property rights and, 10–11
  - interference and its justification, Art. 14 provisions concerning, 279–281
  - procedural guarantees in, 95–96
  - property rights in, 276–288
  - property rights issues and, 291–292
  - scope of rights under Art. 14, 276–279
  - summary of property rights in, 288
- African Commission on Human and Peoples' Rights (AfCmHPR), 276–277
- collective right to wealth and resources and, 286–288
- fairness of enforcement and, 295
- on interference in property rights cases, 279–281
- property rights issues and, 291–292
- scope of property rights and, 276–279
- African Court on Human and Peoples' Rights (AfCtHPR), 276–277
- summary of property rights in rulings of, 288
- African Union (AU)
  - anti-corruption treaties and, 1–3
  - discretionary assumptions of jurisdiction, 61–62
  - foreign versus domestic bribery provisions in treaties of, 66–70
  - private sector bribery in, 77–80
- African Union Convention on Preventing and Combating Corruption (AUCPCC), 16t
  - abuse of functions and breach of duty provisions in, 82–83
  - active nationality principle, discretionary jurisdiction, 60–61
  - asset diversion and misuse provisions, 83–84
  - bribee definitions in, 66–70
  - briber identity, in public bribery provisions, 65–66
  - confiscation provisions in, 103–105
  - consideration for the bribe, 73–74
  - contents of bribery provisions, 72–73
  - corruption definition in, 20–22
  - duty to cooperate for the purposes of confiscation in, 124–126
  - illicit wealth provisions, 84–87
  - mandatory assumptions of jurisdiction in, 59–60

- African Union Convention (cont.)  
 mental elements of bribery, 74–76  
 money laundering and concealment provisions, 87–89  
*ne bis in idem* (double jeopardy)  
 in, 99  
 object- and value-based confiscation provisions in, 114–116  
 passive personality/protective principles, discretionary jurisdiction, 61–62  
 penalties for corruption in, 92  
 prevention and investigation of corruption in, 94–95  
 private sector bribery in, 77–80  
 procedural guarantees in, 95–96  
 proceeds, concept in confiscation provisions, 109–111  
 public sector bribery offenses provisions, 64–76  
 trading and abusing influence provisions in, 80–82  
*Ahorugeze v. Sweden*, 156–162, 166–169  
*Air Canada v. UK*  
 foreign proceeds confiscation in, 189–190  
*in rem* property in, 175–177  
 interference rules in, 190–195  
 local confiscation orders in, 186–187  
 procedural fairness and proportionality in asset recovery and, 248–252  
 proportionality in domestic confiscation law and, 234–235  
 protection of *bona fide* third parties in, 252–254  
 value of foreign confiscation orders in, 223–228  
 Al Barakaat International Foundation, 245–248  
 alien property rights, sovereignty issues and, 33–35  
*Al-Jedda v. UK*, 162–166  
 Alldridge, Peter, 109–111  
*Allgemeine Gold- und Silberscheideanstalt AG (AGOSI) v. UK*, 175–177, 186–187, 189–195, 234–235  
 procedural fairness and proportionality in asset recovery and, 248–252  
 protection of *bona fide* third parties in, 252–254  
 Al-Qaida, 243–248  
 frozen assets of, 46–47  
 Al-Qaida Sanction Committee, 46–47  
*Al-Saadoon and Mufdhi v. UK*, 166–170, 171–172  
*Al-Skeini and Others v. UK*, 147–148  
 American Convention on Human Rights (ACHR)  
 Art. 21, 10–11  
 collective dimension in asset recovery and, 275  
 interference in property rights under, 270–271  
 justification for interference in, 271–275  
 personal scope of property rights in, 266–267  
 property rights issues and, 291–292  
 property rights under, 264–276  
 substantive scope of property rights and, 269–270  
 summary of enforcement orders applicability, 275–276  
 temporal scope of property rights in, 266  
 territorial scope of property rights and, 267–269  
 American Declaration of the Rights and Duties of Man (ADRDM), 264–276  
 anti-corruption treaties  
 abuse of functions and breach of duty provisions in, 82–83  
 abuse of processes, political offenses, and political prosecution exceptions, 212–217  
 asset diversion and misuse in, 83–84  
 bribee identity in, 66–70  
 briber's role in, 65–66  
 compatibility with human rights, 140–141  
 confiscation of instrumentalities and, 111–112  
 confiscation orders enforcement, 121

- connection between thing and offense in confiscation instruments, 115–116
- contents of bribery provisions, 72–73
- criminalization of corruption and, 8, 63, 100
- defenses contained in, 90–92
- detection instruments in, 93–94
- discretionary assumptions of jurisdiction, 60–63
- discretion not to confiscate, 121
- double jeopardy and legal certainty in, 210–212
- dual criminality requirement in cooperative confiscation and, 209
- duty to cooperate for purposes of confiscation in, 123–129
- duty to enable confiscation content in, 106–123
- enforcement of, 93–100
- foreign versus domestic bribery provisions in, 66–70
- historical development of, 1–3
- illicit enrichment provisions in, 84–87
- immunity from jurisdiction in, 97–98
- international confiscation standards and, 129–137
- lawfulness requirement and, 196–197
- liability of things to confiscation in, 109–116
- mandatory assumptions of jurisdiction in, 59–60
- money laundering and concealment provisions, 87–89
- ne bis in idem* (double jeopardy) principle in, 99
- non-enforcement of, 96–100
- norm conflicts in asset recovery and, 169–172
- obstruction of justice provisions in, 90
- penalties in, 92
- persons affected by confiscation, 116–120
- predicate offenses to confiscation in, 107–109
- prescriptive provisions for criminalization in, 63–93
- prevention and investigation procedures in, 94–95
- private sector bribery in, 77–80
- procedural guarantees in, 95–96
- proceeds and instrumentalities as property in, 112–114
- property liable to confiscation, identification and preservation of, 121–122
- protection of *bona fide* third parties in, 252–254
- public sector bribery offenses, 64–76
- social, political, and intellectual developments and, 3–5
- sovereignty principle in, 99
- statutes of limitations, 98
- substantive scope of property rights in, 172–183
- summary of provisions in, 93
- suppression conventions as, 13–17
- third party beneficiaries and intermediaries, public sector bribery, 70–71
- trade and abuse of influence in, 80–82
- Apostolakis v. Greece*, 223–228
- Arab Charter on Human Rights (ArCHR), 288–290, 291–292
- Arab Forum on Asset Recovery, 54
- Arab Human Rights Committee (ArHRCmte), 288–290
- Arab Spring. *See also specific countries*
- asset recovery and, 9, 47–54
- property rights in wake of, 288–290
- arbitrariness
- accessibility, precision, and foreseeability in cooperative confiscation and, 204–207
- mutual legal assistance powers
- compatibility with rule of law and, 203–217
- refusal of assistance, grounds for, 207–217
- Arcuri and Others v. Italy*, 187–189, 195, 236–237, 252–254
- Asaad, Bashar al-, 47–54
- ASEAN Human Rights Declaration (AHRD), 290–291
- Asian Development Bank (ADB), anti-corruption efforts in, 17–20

- Asia-Pacific region
  - absence of human rights treaty in, 31–33
  - anti-corruption efforts in, 17–20
  - human rights to property, 290–291
- asset diversion and misuse, in
  - anti-corruption treaties, 83–84
- asset recovery
  - abuse of processes, political offenses, and political prosecution exceptions, 212–217
  - in Arab Spring, 47–54
  - assurances, effect in, 166–169
  - case studies in, 38–56
  - collective and individual interests in, 9
  - collective dimension in, 275
  - compensation provision and, 257
  - cooperative confiscation as tool for, 101
  - counter-terrorist sanctions regimes, 46–47
  - criminalization of corruption and, 299–301
  - in customary international law, 33–35
  - definitions of, 9, 22–29, 56–57, 293–294
  - deterrence of corruption and, 140–141
  - double jeopardy and legal certainty in cases of, 210–212
  - dual criminality requirement in cooperative confiscation and, 209
  - duty to cooperate for purposes of confiscation and, 124
  - duty to cooperate in disposal of confiscated illicit wealth, 137–138
  - equality, interaction with rights to property, 259–261
  - in failed states, 42–46
  - fairness of enforcement proceeding in, 228–252
  - flagrant denial of rights criteria and, 156–162
  - foreign confiscation orders, value of, 223–228
  - fragmentation of international law and, 293
  - human rights and, 1, 140–141
  - international law and, 5, 294
  - jurisdiction rules and, 58–63
  - justification for interference and, 273–275
  - lawfulness requirement and, 196–197
  - legal basis for enforcement and, 198–203
  - literature sources on, 23n.65
  - narrow definition of, 27–28
  - new Arab property rights and, 288–290
  - norm conflicts in public international law and, 169–172
  - peoples' rights to property and, 35–37
  - personal scope of property rights, 145–146
  - practical challenges to, 54–55
  - preventative confiscation and, 237–239
  - property in cases of, 182–183
  - property rights and, 6–8, 56–57
  - proportionality in cases of, 10–11, 248–252
  - public interest in confiscation and, 219–222
  - regional property rights and, 264
  - requested state responsibilities in, 153–172
  - sanctions case law and, 193–195
  - substantive scope of property rights and, 269–270
  - successful recovery cases, 38–42
  - temporal scope in, 255–256
  - temporal scope of property rights, 144–145
  - UNCAC definition of, 23–27
- assistance in confiscations
  - compatibility with rule of law, 203–217
  - grounds for refusal, 207–217
- Association of Southeast Asian Nations (ASEAN), property rights issues and, 31–33, 290–291
- assurances, flagrant denial of justice and effect of, 166–169
- asylum rights, due diligence standard and requesting state trustworthiness and, 162–166

- aut dedere aut judicare* principle,  
 mandatory assumptions of  
 jurisdiction and, 59–60  
 Axen, Hermann, 145–146, 178–181,  
 230  
*Azinas v. Cyprus*, 223–228
- Babar Ahmad and Others v. UK*,  
 156–162, 166
- background corruption, trade and abuse  
 of influence and, 80–82
- Baklanov v. Russia*, 201–202
- Balkan v. Russia*, 195
- Banfield v. UK*, 223–228
- Bank for International Settlements  
 (BIS), *Nigeria v. Sani Abacha* case  
 and, 40–41
- banking secrecy  
 asset recovery responsibilities and,  
 23–27  
 duty to cooperate for the purposes of  
 confiscation and, 124–126  
 Swiss laws on, 12
- Banković v. Belgium*, 147–148
- bare possession of property, as property  
 right, 178
- Ben Ali, Zine El-Abidine, 47–54
- Benet Czech, spo. s.r.o. v. Czech Republic*,  
 177, 255–256
- Beyeler v. Italy*, 178, 182–183
- bilateral mutual legal assistance treaties  
 (MLATs), confiscation provisions,  
 134–136
- bin Laden, Usama, 46–47,  
 243–248
- Blake v. UK*, 239
- bona fide* third parties, 122  
 bilateral mutual legal assistance  
 treaties on confiscation and,  
 134–136  
 duty to cooperate in disposal of  
 confiscated illicit wealth, 137–138  
 EU framework decisions on  
 confiscation and, 131–133  
 persons affected by confiscation and,  
 116–120  
 protection of, 252–254  
 SADC-MLAP confiscation  
 requirements concerning, 134
- Bosphorus Hava Yollari Turizm Ve  
 Ticaret Anonim Sirketi v. Ireland*,  
 162–166, 169–170, 171–172
- Bozano v. Switzerland*, 198–199
- breach of duty  
 abuse of functions and, 82–83  
 in private sector bribery, 78–79
- bribery  
 Arab Spring asset recovery cases  
 and, 49  
 confiscation of instrumentalities and,  
 111–112  
 consideration for the bribe, 73–74  
 contents of bribery provisions, 72–73  
 definitions of, 12–13  
 foreign versus domestic bribery  
 provisions, bribee identification,  
 66–70  
*in personam* rights and, 177  
 in private sector, 77–80  
 mental elements of, 74–76  
*Nigeria v. Sani Abacha* case, 40–41  
 objective elements in, 71–72  
 OECD Convention, 20–22  
 proceeds and instrumentalities as  
 property and, 112–114  
 proceeds-not-profits doctrine and,  
 109–111  
 in public sector, 64–76  
 territorial scope of property rights  
 and, 267–269  
 third party beneficiaries and  
 intermediaries, 70–71
- burden of proof  
 connection between thing and  
 offense in confiscation  
 instruments, 115–116  
 flagrant denial of rights and degree  
 of injustice criteria and,  
 156–162  
 lawfulness of interference and,  
 196–219
- Butler v. UK*, 190, 195, 202–203,  
 237–239, 254
- Cairo Declaration on Islamic Human  
 Rights (CDIHR), 288–290
- Calvo Doctrine, alien property rights  
 and, 33–35

- Canada, Arab Spring asset recovery supported by, 54
- Cantos v. Argentina*, 266
- Carter, Jimmy, Foreign Corrupt Practices Act and, 1–3
- case studies in asset recovery, 38–56. *See also specific cases*
- sanctions case law and, 193–195
- Cayman Islands banks, *Peru v. Vladimiro Lenin Montesinos Torres* case, 41–42
- Cebotari v. Moldova*, 215–216
- censorship laws, confiscation under, 186–187
- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 279–281, 286–288, 296–298
- Chahal v. UK*, 166–169
- Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, 266–267, 270–271, 273–275, 291–292, 295–298
- Charter of Fundamental Rights of the European Union (EUCFR), European human rights to property and, 141–143
- Charter of the United Nations (UNC), counter-terrorist sanctions regimes and, 46–47
- civil law
  - limits of state power and, 293
  - persons affected by confiscation in, 116–120
  - private sector bribery in, 77–80
  - procedural fairness and proportionality in asset recovery and, 248–252
  - qualified rights, flagrant denials and, 166
- Civil Law Convention on Corruption (COECivCC), 16t
  - active nationality principle, discretionary jurisdiction, 60–61
  - mandatory assumptions of jurisdiction in, 59–60
- civil proceedings, in *Nigeria v. Sani Abacha* case, 40–41
- civil rights and obligations
  - proportionality of cooperative confiscation and, 228–230
  - right to fair trial and international cooperation and, 149–150
- Clinton, Bill, Foreign Corrupt Practices Act and, 1–3
- Çoban, Ali Rıza, 190–195
- COECivCC. *See* Civil Law Convention on Corruption
- COECrimCC. *See* Criminal Law Convention on Corruption (COECrimCC)
- COECrimCC-AP. *See* Additional Protocol to the Criminal Law Convention on Corruption (COECrimCC-AP)
- COEMLC 1990. *See* Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (COEMLC 1990)
- COEMLC 2005. *See* Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- Cold War, treaty-based human rights to property after, 31–33
- collective wealth
  - AfCHPR property rights provisions and, 281–288
  - indigenous and tribal property claims, 275
  - peoples' rights to property and, 35–37
- colonialism, property rights and, 6–8
- COM(2012) 85
  - connection between thing and offense in confiscation instruments, 115–116
  - decisions on confiscation and, 131–133
  - enforcement or non-enforcement of confiscation orders, 121
  - persons affected by confiscation in, 116–120
  - procedure for proof of predicate offense in, 108–109
  - proceeds, concept in confiscation provisions, 109–111

- commercial transactions, public sector  
   bribery and intent of, 74–76
- Commission, Council, United Kingdom  
   v. Yassin Abdullah Kadi (Kadi  
   No. 4)*, 193–195, 245–248
- Commonwealth of Independent States  
   (CIS)  
     Convention on Legal Assistance and  
     Legal Relations in Civil, Family  
     and Criminal Matters (Minsk  
     Convention), 204–207  
     property rights and, 141–143
- Commonwealth of Independent States  
   Convention on Human Rights  
   and Fundamental Freedoms  
   (CISCHR), property rights and,  
   141–143, 143n.14
- communal property, human rights and,  
   29–31
- competing obligations, norm conflicts  
   in asset recovery and, 170–171
- compliance presumption  
   due diligence standard and  
   requesting state trustworthiness  
   and, 165–166  
   legal basis for enforcement and,  
   198–203
- compulsory acquisition, bare  
   possession of tangible things  
   as property, 178
- Conference of States Parties (COSP),  
   asset recovery and, 27
- confiscation. *See also* cooperative  
   confiscation; duty to enable  
   confiscation  
   in anti-corruption treaties, 294  
   asset recovery and, 5  
   concept of, 107  
   connection between thing and  
   offense rules, 115–116  
   cooperative confiscation, 9  
   in customary international law,  
   33–35  
   degree of injustice and flagrant denial  
   of rights, 156–162  
   discretion not to confiscate, 121  
   domestic law to enable, 105–106  
   duty to cooperate for purposes of,  
   123–137  
   duty to cooperate in disposal of illicit  
   wealth, 137–138  
   duty to enable confiscation, 102–123  
   effect on property, 114–116  
   enforcement of order, 121  
   exceptional circumstances with,  
   257–258  
   fairness of enforcement proceeding  
   in, 228–252  
   human rights versus, 140–141  
   instrumentalities concept in, 111–112  
   interference rules concerning,  
   184–196  
   international standards, 102–106,  
   129–137  
   liability of things to, 109–116  
   new Arab property rights and,  
   288–290  
   object-based confiscation provisions,  
   114–116  
   offenses predicate to, 107–109  
   persons affected by, 116–120  
   *Philippines v. Ferdinand and Imelda  
   Marcos* asset case, 38–40  
   proceeds and instrumentalities as  
   property and, 112–114  
   proceeds concept and, 109–111  
   of property, in asset recovery cases,  
   182–183  
   property as legitimate expectation  
   and, 181–182  
   property liable to, identification and  
   preservation of, 121–122  
   property rights and, 8, 144–184  
   proportionality to general interest in,  
   219–259  
   requested state responsibility for  
   foreign confiscation orders,  
   152–153  
   temporal scope of property rights in,  
   255–256
- conflict-resolution techniques, right to  
   corruption-free society and,  
   283–286
- constitutional property, illicit wealth as  
   property and, 174–175
- Convention on the Civil Aspects of  
   International Child Abduction  
   (Hague Convention), 170–171

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD-ABC), 16t
- active nationality principle, discretionary jurisdiction, 60–61
- bribee identity in, 66–70
- briber identity in, 65–66
- concept of confiscation in, 107
- confiscation standards in, 102–106
- consideration for the bribe, 73–74
- defenses to corruption charges in, 90–92
- duty to cooperate for purposes of confiscation in, 124
- foreign versus domestic bribery provisions in, 66–70
- investigative and prosecutorial discretion in, 96–97
- mandatory assumptions of jurisdiction in, 59–60
- mental elements of bribery, 74–76
- money laundering and concealment provisions, 87–89
- ne bis in idem* (double jeopardy) in, 99
- penalties for corruption in, 92
- persons affected by confiscation in, 116–120
- predicate offenses to confiscation and, 107–109
- proceeds, concept in confiscation provisions, 109–111
- public sector bribery provisions, 64–76
- statutes of limitations in, 98
- third party beneficiaries and intermediaries, 70–71
- Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union (EUOCC) confiscation provisions in, 103–105
- consideration for the bribe, 73–74
- contents of bribery provisions, 72–73
- corruption definition, 16, 20–22
- domestic versus foreign bribery in, 66–70
- double jeopardy and legal certainty in, 210–212
- duty to cooperate for the purposes of confiscation in, 124–126
- mandatory assumptions of jurisdiction and, 59–60
- mental elements of bribery, 74–76
- ne bis in idem* (double jeopardy) in, 99
- passive personality/protective principles, discretionary jurisdiction, 61–62
- penalties for corruption in, 92
- persons affected by confiscation in, 116–120
- third party beneficiaries and intermediaries, passive bribery involving, 70–71
- Convention on the protection of the European Communities' financial interests (EUCPFI), 16t
- active nationality principle, discretionary jurisdiction, 60–61
- corruption definition, 20–22
- double jeopardy and legal certainty in, 210–212
- mandatory assumptions of jurisdiction in, 59–60
- ne bis in idem* (double jeopardy) in, 99
- penalties for corruption in, 92
- conviction-based confiscation
- procedural fairness and proportionality in asset recovery and, 248–252
- proof of predicate offense and, 108–109
- cooperative confiscation. *See also* confiscation
- abuse of processes, political offenses, and political prosecution exceptions, 212–217
- accessibility, precision, and foreseeability in laws concerning, 204–207
- in anti-corruption treaties, 9, 101
- asset recovery and, 5
- barriers to, 54–55
- compatibility with human rights, 140–141



- compensation provision and, 257
- competing obligations in, 170–171
- in customary international law, 33–35
- democratic legitimacy as condition for, 217
- domestic law on duty to cooperate, 105–106
- double jeopardy and legal certainty in, 210–212
- dual criminality requirement, 209
- duty to cooperate for purposes of, 123–137
- duty to enable confiscation, 102–123
- ECHR jurisdiction concept and, 154–162
- illicit wealth as property and, 174–175
- interference with, 186–190
- international law principles and, 218
- lawfulness requirement and, 196–197
- legal basis for enforcement and, 198–203
- norm conflicts in asset recovery and, 169–172
- personal scope of property rights and, 145–146
- prescriptive provisions, 63–93
- procedural fairness and proportionality in, 248–252
- proportionality in ECtHR case law concerning, 228–230
- public interest in confiscation and, 219–222
- refusal of assistance, grounds for, 207–217
- regional treaties and, 295, 298–299
- requested state responsibilities in asset recovery, 153–172
- requesting state hearing proportionality and, 240–245
- summary of legal basis for, 218–219
- temporal scope of property rights, 144–145, 255–256
- territorial scope of property rights, 146–172
- corporate offenders
  - active nationality principle and, 60–61
  - anti-corruption treaties and, 8
  - in bribery offenses, 65–66
  - foreign confiscation orders and, 295
  - international versus transnational law concerning, 13–17
  - personal scope of property rights of, 145–146
  - political prosecution of, 212–217
  - proceeds as property in, 178–181
  - property as legitimate expectation for, 181–182
  - public international law on corruption and, 20–22
  - value of foreign confiscation and, 223–228
- corruption and corrupt practices.
  - See also* criminalization of corruption
  - asset recovery as deterrent to, 140–141
  - bribery in public sector, 64–76
  - criminalization of, 58
  - definitions of, 9, 12–22, 293–294
  - human rights and, 1
  - international definitions of, 20–22, 56–57
  - international treaties and supranational legislative instruments, 16t
  - lack of agreed meaning for, 22
  - offenses, categories of, 64–90
  - public international law common definition, 20–22
  - soft law norms on, 17–20
  - suppression conventions and, 13–17
- corruption-free society, right to, Kofele-Kale's concept of, 283–286
- corrupt trilateral relationship, trade or abuse of influence as, 80–82
- Council Framework Decision EU 2003/568/JHA, 16t
  - active nationality principle, discretionary jurisdiction, 60–61
  - breach of duty in private sector bribery and, 78–79
  - confiscation standards and, 103–105
  - connection between thing and offense in confiscation instruments, 115–116

- Council Framework Decision EU 2003/568/JHA (cont.)
  - context and consequences of private sector bribery, 79–80
  - mandatory assumptions of jurisdiction and, 59–60
  - penalties for corruption in, 92
  - private sector bribery in, 77–80
  - proceeds concept in confiscation and, 109–111
- Council Framework Decision EU 2003/577/JHA, decisions on confiscation and, 131–133
- Council Framework Decision EU 2005/212/JHA
  - confiscation standards and, 103–105
  - persons affected by confiscation in, 116–120
  - proceeds concept in, 109–111
  - thing and offense connection in confiscation procedures, 115–116
- Council Framework Decision EU 2006/783/JHA, confiscation cooperation standards and, 131–133, 136–137
- Council of Europe (COE)
  - anti-corruption treaties and, 1–3, 17–20
  - briber identity in public bribery treaties, 65–66
  - confiscation standards and, 102–106
  - contents of bribery provisions in treaties of, 72–73
  - Convention on Extradition, 198–203
  - discretionary assumptions of jurisdiction, 61–62
  - domestic versus foreign bribery in treaties of, 66–70
  - European human rights to property and, 141–143
  - framework decisions on confiscation and, 131–133
  - money laundering convention, 87–89
  - object-based confiscation provisions and, 114–116
  - persons affected by confiscation and, 116–120
  - private sector bribery in, 77–80
  - property definitions of, 112–114
  - public sector bribery offenses, 64–76
  - terrorism financing convention, 87–89
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (COEMLC 1990)
  - confiscation provisions in, 103–105
  - enforcement or non-enforcement of confiscation order, 121
  - international confiscation standards and, 129–131
  - money laundering and concealment provisions, 87–89
  - persons affected by confiscation in, 116–120
  - procedure for proof of predicate offense in, 108–109
  - proceeds, concept in confiscation provisions, 109–111
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (COEMLC 2005)
  - connection between thing and offense in confiscation instruments, 115–116
  - enforcement or non-enforcement of confiscation orders, 121
  - international confiscation standards and, 129–131
  - money laundering and concealment provisions, 87–89
  - procedure for proof of predicate offense in, 108–109
  - proceeds, concept in confiscation provisions, 109–111
- counter-terrorist sanctions regimes
  - asset recovery and, 46–47
  - property liable to confiscation, identification and preservation of, 121–122
- criminal expenditures, definitions in confiscation provisions, 109–111
- criminalization of corruption
  - ambiguity concerning, 58
  - in anti-corruption treaties, 9

- defenses to, 90–92
- double jeopardy and legal certainty
  - in, 210–212
- flagrant denial of justice in foreign
  - penalty enforcement, 150–152
- illicit wealth provisions, 84–87
- immunity from jurisdiction and, 97–98
- impact of anti-corruption treaties on, 100
- international issues in, 299–301
- investigative and prosecutorial discretion and, 96–97
- jurisdiction and, 58–63
- legal basis for enforcement and, 198–203
- money laundering and concealment, 87–89
- ne bis in idem* (double jeopardy)
  - principle, 99
- obstruction of justice offense, 90
- offense categories, 64–90
- penalties for, 92
- predicate offenses to confiscation, 107–109
- prescriptive provisions for, 63–93
- private sector bribery, 77–80
- procedural fairness and
  - proportionality in asset recovery and, 248–252
- proceeds and instrumentalities as
  - property in confiscation provisions, 112–114
- property liable to confiscation,
  - identification and preservation of, 121–122
- proportionality requirement and, 296–298
- public sector bribery, 64–76
- right to fair trial and international cooperation and, 149–150
- soft law norms and, 17–20
- sovereignty principle and, 99
- statutes of limitations, 98
- trade and abuse of influence and, 80–82
- criminal law
  - barriers to prosecution, in asset recovery cases, 54–55
  - dual criminality requirement for extradition and, 209
  - international versus transnational law, 13–17
  - qualified rights, flagrant denials and, 166
  - soft law norms and, 17–20
- Criminal Law Convention on Corruption (COECrimCC), 16t
  - active nationality principle, 60–61
  - breach of duty in private sector bribery and, 78–79
  - bribee identity in private sector bribery, 78
  - briber identity in public bribery provisions, 65–66
  - confiscation provisions in, 103–105
  - consideration for the bribe, 73–74
  - contents of bribery provisions, 72–73
  - context and consequences of private sector bribery, 79–80
  - corruption definition in, 20–22
  - discretionary jurisdiction under, 60–63
  - domestic versus foreign bribery in, 66–70
  - duty to cooperate for the purposes of confiscation in, 124–126
  - immunity from jurisdiction in, 97–98
  - mandatory jurisdiction assumptions, 59–60
  - mental elements of bribery, 74–76
  - money laundering and concealment provisions, 87–89
  - passive personality and protective principles, 61–62
  - penalties for corruption in, 92
  - persons affected by confiscation in, 116–120
  - predicate offenses to confiscation and, 107–109
  - prevention and investigation of corruption in, 94–95
  - private sector bribery in, 77–80
  - proceeds, concept in confiscation provisions, 109–111
  - statutes of limitations in, 98

- Criminal Law Convention on
- Corruption (cont.)
  - third party beneficiaries and intermediaries, passive bribery involving, 70–71
  - trading and abusing influence provisions in, 80–82
  - value- and object-based confiscation provisions in, 114–116
- criminal organizations
  - anti-corruption treaties and, 3–5
  - proceeds as property and, 178–181
  - proceeds from local offenses, confiscation of, 187–189
  - proportionality in domestic confiscation law and, 230–232, 236–237
  - protection of *bona fide* third parties and, 252–254
- Crowther v. UK*, 232–233
- cultural defenses, to corruption charges, 90–92
- custodial sentencing, for corruption, 92
- customary international law, property rights in, 33–35
- damage to public interest principle, in public sector bribery, 76
- Dassa Foundation v. Liechtenstein*, 255–256
- Deauville Partnership with Arab Countries in Transition, 54
- de facto* possession
  - jurisdiction in cooperative compensation and, 155–156
  - property in asset recovery, 182–183
  - regional treaty comparisons concerning, 295
- defense, in criminalization of corruption, 90–92
  - procedural guarantees and, 95–96
  - requesting state hearing proportionality concerning, 240–245
- degree of injustice, flagrant denial of rights and, 156–162
- de jure* possession, jurisdiction in cooperative compensation and, 155–156
- de minimis* value, predicate offenses to confiscation based on, 107–109
- democratic legitimacy, cooperative confiscation and, 217
- Democratic Republic of Congo, asset recovery case involving, 43
- Denisova and Moiseyeva v. Russia*, 181–182, 193–195, 239–240
- deportation decision
  - abuse of processes, political offenses, and political prosecution exceptions and, 212–217
  - flagrant denial of rights and degree of injustice concerning, 156–162
- detection of corruption, anti-corruption treaty provisions for, 93–94
- detention for extradition, accessibility, precision, and foreseeability requirements, 204–207
- developmental defenses, to corruption charges, 90–92
- Dimitar Krastev v. Bulgaria*, 239–240
- Dino Noca v. DRC*, 279–281, 283–286
- diplomatic protection
  - customary human rights under, 33–35
  - public interest in confiscation and, 219–222
- direct proceeds, definitions in confiscation provisions, 109–111
- discretionary jurisdiction
  - active nationality principle and, 60–61
  - in anti-corruption treaties, 60–63
  - bribery, investigative/prosecutorial discretion, 96–97
  - duty to cooperate for the purposes of confiscation, 127–128
  - grounds for assumption, 60–63
  - interference rules and, 193–195
  - non-confiscation discretion, 121
  - passive personality/protective principles, 61–62
  - public interest in confiscation of possessions and, 219–222
- discretionary prosecution, double jeopardy and legal certainty and, 210–212
- discriminatory prosecutions
  - public interest in confiscation of possessions and, 219–222

- refusal of assistance in cooperative confiscation cases based on, 207–217
- “disguised extradition” principle, 212–217
- disproportionate confiscation, interference rules and, 193–195
- domestic bribery
  - criminalization of, 66–70
  - private sector bribery, 77–80
  - third party beneficiaries and intermediaries, 70–71
- domestic law
  - accessibility, precision, and foreseeability in cooperative confiscation and, 204–207
  - anti-corruption treaties and, 9
  - confiscation standards and, 105–106
  - discretionary jurisdiction based on, 62–63
  - duty to cooperate for purposes of confiscation in, 123–137
  - duty to enable confiscation content in, 106–123
  - effects of confiscation on property in, 114–116
  - illicit enrichment offenses and, 84–87
  - illicit wealth as property and, 174–175
  - legal basis for enforcement and, 198–203
  - objects and instrumentalities of confiscation under, 186–187
  - predicate offenses to confiscation in, 107–109
  - private sector bribery in, 77–80
  - proportionality in ECtHR case law concerning, 230–240, 258–259
  - public interest in confiscation and, 219–222
  - right to fair trial and international cooperation and, 149–150
- double jeopardy
  - bilateral mutual legal assistance treaties on confiscation and, 134–136
  - connection between thing and offense in confiscation instruments, 115–116
  - criminalization of corruption and, 99
  - duty to cooperate for the purposes of confiscation and, 124–126
  - EU framework decisions on confiscation and, 131–133
  - international confiscation standards, 129–131
  - justification for interference and, 296
  - persons affected by confiscation and, 116–120
  - refusal of assistance in cooperative confiscation cases based on, 210–212
  - “double punishment/double payment” argument, double jeopardy and legal certainty in confiscation and, 210–212
  - “double recovery” principle, proportionality of lawfulness and, 227–228
- DRC v. Mobutu Seso Seko* case, 43
- Drozd and Janousek v. France and Spain*, 150–153, 154–166
- drug trafficking
  - anti-corruption treaties and, 3–5
  - in rem* property rights and, 175–177
  - instrumentalities of local offenses and, 186–187
  - interference to the general interest in, 219–222, 295–296
  - international versus transnational criminal law and, 13–17
  - legal basis for enforcement and, 202–203
  - liability for possession of, 240–245
  - preventative confiscations and, 237–239
  - proceeds from, confiscation of, 187–189
  - proportionality in domestic confiscation law, 230–232
  - value of foreign confiscation order and, 223–224
- dual criminality requirement
  - active nationality principle, discretionary jurisdiction, 60–61
  - duty to cooperate for the purposes of confiscation and, 127–128

- dual criminality requirement (cont.)
  - justification for interference and, 296
  - principle *in abstracto*, 207–210
  - principle *in concreto*, 207–210
  - refusal of assistance in cooperative confiscation cases based on, 209
- Dublin Regulation, 162–166
- Duboc v. Austria*, 152–153, 154–162, 169–172
  - arbitrariness in, 203
- dual criminality requirement and lawfulness in, 209
- illicit wealth as property in, 174–175
- in personam* rights in, 177
- legal basis for enforcement in, 198–199
- procedural fairness and proportionality in asset recovery and, 251–252
- property in asset recovery in, 182–183
- proportionality of cooperative confiscation in, 228–230, 296–298
- proportionality of lawfulness to general interest in, 219–222, 226
- protection of *bona fide* third parties in, 252–254
- temporal scope issues in, 255–256
- due diligence standard, requesting state trustworthiness and, 162–166
- due process rights, illicit enrichment offenses and, 84–87
- duty to cooperate for purposes of confiscation, 123–137
- duty to cooperate in disposal of confiscated illicit wealth, 137–138
- duty to enable confiscation
  - content of, 106–123
  - cooperative confiscation agreements in, 102–123
  - international standards, 102–106
  - OECD-ABC template for, 102
  - persons affected by confiscation, 116–120
  - regional treaties and instruments, 103–105
  - UNCAC/UNTOC provisions, 105–106
- Duvalier, Jean-Claude (“Baby Doc”), 43–46
- EC Convention between Member States of the European Communities on Double Jeopardy, 210–212
- ECHR. *See* European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECHR-P1. *See* Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECHR-P7. *See* European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Protocol No. 7
- Economic and Social Council of the United Nations (ESC)
  - asset recovery terminology in, 23–27
  - soft law norms on corruption and, 17–20
- Economic Community of West African States (ECOWAS), anti-corruption treaties and, 1–3
- economic policies
  - collective right to wealth and resources and, 286–288
  - corruption and, 3–5
- Egypt, asset recovery in, 47–54
- El-Masri* doctrine, flagrant denial of rights and degree of injustice and, 156–162
- Embargos Act (Switzerland) (EmBA), Arab Spring asset recovery and, 47–54
- embezzlement
  - Arab Spring asset recovery cases and, 49
  - criminalization of, 83–84
  - duty to cooperate in disposal of confiscated illicit wealth and, 137–138
  - legal basis for enforcement in cases of, 198–203
  - Nigeria v. Sani Abacha* case, 40–41
  - Peru v. Vladimiro Lenin Montesinos Torres* case, 41–42
  - proceeds and instrumentalities as property and, 112–114

- value of foreign confiscation in cases of, 223–228
- “emergence” standard for flagrant injustice, 162–166
- encroachment principles, in AfCHPR provisions on interference, 279–281
- enemy combatants category, assurances, effect of in violations cases, 166–169
- enforcement proceedings. *See also* non-enforcement of
  - anti-corruption treaties in AfCHPR provisions on interference, 279–281
  - in anti-corruption treaties, 93–100, 295
  - of confiscation, 121
  - fairness of, 228–252
  - flagrant denial of justice in foreign penalty enforcement, 150–152
  - foreign confiscation orders and, 261–263
  - legal basis for, 198–203
  - protection of *bona fide* third parties in, 252–254
  - requested state responsibilities in asset recovery, 153–172
- Engel and Others v. Netherlands*, 149–150, 230–232, 248–252
- entry into force, temporal scope of property rights and, 144–145, 266
- equality, property and, 259–261
- equivalent protection presumption
  - due diligence standard and requesting state trustworthiness and, 165–166
  - norm conflict in asset recovery and, 171–172
- Eskinazi and Cheluche v. Turkey*, 170–171, 243–245, 251–252
- EUCFR. *See* Charter of Fundamental Rights of the European Union (EUCFR)
- EUCPFI. *See* Convention on the protection of the European Communities’ financial interests
- EUCPFI-P1 and P2. *See* Protocol and Second Protocol to the Convention on the protection of the European Communities’ financial interests
- EU Dec. 2003/568/JHA. *See* Council Framework Decision EU 2003/568/JHA
- EUOCC. *See* Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union
- Euro-crimes concept, connection between thing and offense in confiscation instruments, 115–116
- European Arrest Warrant, 162–166
  - dual criminality requirement and lawfulness in enforcement of, 209
- European Commission of Human Rights (ECmHR)
  - human rights versus confiscation orders and, 140–141
  - legal basis for enforcement and, 198–203
  - proceeds from local offenses and, 187–189
- European Communities (EC), anti-corruption treaties and, 1–3
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
  - abuse of processes, political offenses, and political prosecution exceptions and, 212–217
  - adverse consequences of extradition and, 148
  - Art. 5(1)(f) cases and, 193–195, 204–207, 212–217
  - Art. 6, fairness of enforcement proceeding in, 228–252, 258–259
  - degree of injustice criteria, 156–162
  - dual criminality requirement and lawfulness in, 209
  - due diligence standard and state trustworthiness, 162–166
  - European human rights to property and, 141–143
  - flagrant denial of rights under, 150–152, 156–162



- European Convention (cont.)  
 foreign penalty enforcement under,  
 150–152, 295  
 in *Haiti v. Jean-Claude “Baby Doc”  
 Duvalier* case, 43–46  
 jurisdiction concept in, 147–148,  
 154–162  
 lawfulness requirement and, 196–197  
 legal basis for enforcement and,  
 198–203  
 norm conflicts in asset recovery  
 and, 169–172  
 personal scope of property rights  
 under, 145–146  
 procedural fairness and  
 proportionality in asset recovery  
 and, 248–252  
 property and equality under, 259–261  
 Protocol No. 7, 210–212  
 public interest in confiscation of  
 possessions and, 219–222  
 qualified rights, flagrant denials and,  
 166  
 requested state responsibility for  
 foreign confiscation orders,  
 152–153  
 right to fair trial and international  
 cooperation in, 149–150  
 European Court of Human Rights  
 (ECtHR)  
 abuse of processes, political offenses,  
 and political prosecution  
 exceptions and, 212–217  
 accessibility, precision, and  
 foreseeability in cooperative  
 confiscation and, 204–207  
 confiscation orders and, 9–10  
 democratic legitimacy and  
 cooperative confiscation in, 217  
 detention for extradition cases,  
 204–207  
 double jeopardy and legal certainty in  
 cases of, 210–212  
 dual criminality requirement and  
 lawfulness and, 209  
 due diligence standard and state  
 trustworthiness, 162–166  
 equality, interaction with rights to  
 property, 259–261  
 exceptional circumstances in  
 confiscation and, 257–258  
 fairness of enforcement proceeding  
 and, 228–252  
 flagrant denial of rights and degree of  
 injustice rulings, 156–162  
 foreign confiscation orders and, 295  
 human rights versus confiscation  
 orders and, 140–141  
 illicit wealth as property and,  
 174–175  
*in personam* rights and, 177  
*in rem* property rights and, 175–177  
 interference rules interpretations  
 summary, 195–196  
 international law principles and, 218  
 lawfulness requirement and, 196–197  
 legal basis for enforcement and,  
 198–203  
 local confiscation orders, objects and  
 instrumentalities, 186–187  
 nature of interference in rules of,  
 184–196  
 norm conflicts in asset recovery and,  
 169–170  
 personal scope of property rights and,  
 145–146  
 procedural fairness and  
 proportionality in asset recovery  
 and, 248–252  
 proceeds as property principle and,  
 178–181  
 proceeds from local offenses and,  
 187–189  
 proceeds of foreign corruption,  
 confiscation of, 189–190  
 property and possessions defined by,  
 173–174  
 property as legitimate expectation in,  
 181–182  
 proportionality in cooperative  
 confiscation case law of, 228–230,  
 296–298  
 protection of *bona fide* third parties  
 in rulings by, 252–254  
 public interest in confiscation and,  
 219–222  
 requested state responsibility for  
 foreign confiscation orders, 152–153



- requested state responsibility in asset recovery, 153–154
- summary of enforcement issues, 258–259
- temporal scope of property rights and, 144–145
- territorial jurisdiction rulings of, 147–148
- value of foreign confiscation orders and, 223–228
- European Court of Justice (ECJ)
  - European property rights and, 143
  - human rights versus confiscation orders and, 140–141
  - proportionality in targeted financial sanctions and, 245–248
  - sanctions case law and, 193–195
- European Union (EU)
  - anti-corruption treaties and, 1–3, 59–60
  - Arab Spring asset recovery and, 47–54
  - briber identity in public bribery treaties, 65–66
  - confiscation standards in framework decisions, 102–106
  - contents of bribery provisions in treaties of, 72–73
  - discretionary assumptions of jurisdiction, 61–62
  - domestic versus foreign bribery in treaties of, 66–70
  - framework decisions on confiscation, 131–133
  - object-based confiscation provisions and, 114–116
  - persons affected by confiscation and, 116–120
  - property definitions of, 112–114
  - public sector bribery offenses and, 64–76
  - targeted financial sanctions case law, proportionality in, 245–248
  - third party beneficiaries and intermediaries, passive bribery involving, 70–71
- European Union Council Directive 91/308/EEC, money laundering provisions, 87–89
- European Union General Court (EGC), human rights versus confiscation orders and, 140–141
- exceptional circumstances in confiscation, 257–258
- exequatur* proceedings
  - dual criminality requirement and, 209
- illicit wealth as property and, 174–175
- legal basis for enforcement and, 198–203
- proportionality of cooperative confiscation in, 228–230
- protection of *bona fide* third parties in, 252–254
- expropriation of property, in customary international law, 33–35
- expulsion cases, flagrant denial of rights and degree of injustice and, 156–162
- extended confiscation principle, connection between thing and offense in confiscation instruments, 115–116
- Extractive Industries Transparency Initiative (EITI), anti-corruption efforts of, 17–20
- extradition procedures
  - abuse of processes, political offenses, and political prosecution exceptions in, 212–217
  - accessibility, precision, and foreseeability in cooperative confiscation and, 204–207
  - adverse consequences of, 148
  - dual criminality requirement, 209
  - duty to cooperate for the purposes of confiscation and, 127–128
  - flagrant denial of rights and degree of injustice and, 156–162
  - legal basis for enforcement and, 198–203
  - mandatory assumptions of jurisdiction and, 59–60
  - regional treaty comparisons of, 295
  - right to fair trial and international cooperation and, 149–150
  - territorial scope of property rights and, 267–269

- extra-judicial transfer, flagrant denial of rights and degree of injustice and, 156–162
- extraterritorial jurisdiction
  - active nationality principle, discretionary jurisdiction, 60–61
  - cooperative confiscation and, 154–162
  - double jeopardy and legal certainty in proceedings involving, 210–212
  - flagrant denial of rights and degree of injustice and, 156–162
  - mandatory assumptions of jurisdiction and, 59–60
  - proportionality in domestic confiscation law and, 233–234
  - territorial scope of property rights and, 267–269
- facilitation payments, exemption from criminalization, 90–92
- failed states, asset recovery cases and, 42–46
- fairness of enforcement, in confiscation orders, 228–252
- fair trial standards
  - assurances, effect of, 166–169
  - flagrant denial of rights and degree of injustice criteria for, 156–162
  - procedural fairness and proportionality in asset recovery and, 248–252
  - proportionality in domestic confiscation law, 230–232
  - requesting state hearing proportionality and, 240–245
  - territorial scope of property rights and right to, 149–150
- Fawcett, James, 150–152
- Federal Act of March 20, 1981 (Switzerland)
  - Haiti v. Jean-Claude “Baby Doc” Duvalier* case and, 43–46
  - Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
- Federal Act on Freezing and Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Switzerland) (SRVG),
  - Arab Spring asset recovery and, 53–54
- Federal Department of Foreign Affairs (FDFA) (Switzerland), in *Haiti v. Jean-Claude “Baby Doc” Duvalier* case, 43–46
- final judgment waiver, duty to cooperate in disposal of confiscated illicit wealth and, 137–138
- Financial Action Task Force (FATF), asset recovery responsibilities and, 23–27
- financial institutions, asset recovery from, 23–27
- financial sanctions. *See* targeted financial sanctions
- “*Five Pensioners*” v. *Peru*, 273
- flagrant denial of justice
  - assurances, effect of, 166–169
  - degree of injustice and, 156–162
  - in foreign penalty enforcement, 150–152
  - norm conflicts and, 170
  - procedural fairness and proportionality in asset recovery and, 251–252
  - proportionality in domestic confiscation laws and, 239–240
  - qualified rights and, 166
  - requesting state hearing proportionality and, 240–245
  - requesting state trustworthiness and due diligence standard, 162–166, 183–184
- flagship principle, cooperative confiscation and jurisdiction issues, 154–162
- foreign bribery, criminalization of, 66–70
- foreign confiscation orders
  - abuse of processes, political offenses, and political prosecution exceptions in, 212–217
  - asset recovery, requested state responsibilities, 153–172
  - collective right to wealth and resources and, 286–288
  - compatibility with human rights, 140–141

- dual criminality requirement and  
   lawfulness in enforcement of, 209
- fairness of enforcement proceeding  
   in, 228–252
- flagrant denial of rights criteria and,  
   156–162
- interference in, 186–190, 261–263,  
   270–271
- legal basis for enforcement and,  
   198–203
- mutual legal assistance powers  
   compatibility with rule of law in,  
   203–217
- protection of *bona fide* third parties  
   and, 252–254
- qualified rights, flagrant denials and,  
   166
- regional human rights treaties and,  
   295
- requested state responsibility for,  
   152–153
- requesting state proportionality and,  
   243–245
- substantive scope of property rights  
   and, 269–270
- value of, 223–228
- foreign corruption offenses, confiscation  
   of proceeds from, 189–190
- Foreign Corrupt Practices Act (USA)  
   (FCPA)  
   impact of, 1–3
- Watergate scandal and, 3–5
- foreign penalty enforcement  
   flagrant denial of justice in,  
   150–152
- procedural fairness and  
   proportionality in asset recovery  
   and, 248–252
- foreign property-holders, AfCHPR Art.  
   14 on rights of, 276–279
- foreign public official, mandatory  
   jurisdiction in bribery of,  
   60–61
- foreseeability, in cooperative  
   confiscation laws, 204–207
- forfeiture procedures. *See* seizure  
   procedures
- The Former King of Greece and Others v.*  
*Greece*, 181–182
- Forminster Enterprises Limited v. Czech*  
*Republic*, 206–207, 255–256
- fragmentation  
   asset recovery and, 293
- right to corruption-free society and,  
   283–286
- free disposition  
   collective right to wealth and  
   resources and, 281–288
- peoples' rights to property and, 35–37
- Frizen v. Russia*, 178–182, 193–195,  
   201–202
- frozen assets  
   Arab Spring asset recovery and, 47–54
- collective right to wealth and  
   resources and, 281–288
- counter-terrorist sanctions regimes,  
   46–47
- double jeopardy and legal certainty in  
   proceedings involving, 210–212
- in *DRC v. Mobutu Seso Seko* case, 43
- in *Haiti v. Jean-Claude “Baby Doc”*  
*Duvalier* case, 43–46
- Nigeria v. Sani Abacha* case, 40–41
- Philippines v. Ferdinand and Imelda*  
*Marcos* asset recovery case, 38–40
- property liable to confiscation,  
   identification and preservation of,  
   121–122
- public interest in confiscation and,  
   219–222
- requesting state proportionality and,  
   243–245
- sanctions case law and, 193–195
- targeted financial sanctions and,  
   245–248
- temporal scope and, 255–256
- Fujimori, Alberto, 41–42
- Gabrić v. Croatia*, 223–224
- Garabayev v. Russia*, 200
- Geerings v. Netherlands*, 233–234,  
   248–252
- General Assembly of the United  
   Nations (GA)  
   asset recovery terminology in, 23–27
- bilateral mutual legal assistance  
   treaties on confiscation and,  
   134–136

- General Assembly of the United Nations (GA) (cont.)  
   Resolution 1803 (XVII) on  
     Permanent Sovereignty over  
     Natural Resources, 35–37  
   soft law norms on corruption and,  
   17–20  
 general interest principle, proportionality  
   of lawfulness to, 219–259  
 German Democratic Republic (GDR),  
   personal scope of property rights  
   and, 145–146  
 “global settlement,” in *Nigeria v. Sani  
 Abacha* case, 40–41  
 good faith requirement, abuse of  
   processes, political offenses, and  
   political prosecution exceptions  
   and, 212–217  
 governmental power, international legal  
   norms on limits of, 37–38  
*Grayson and Barnham v. UK*, 232–233  
*Grifhorst v. France*, 257–258  
 Group of Eight (G-8)  
   asset recovery and, 27  
   Deauville Partnership with Arab  
   Countries in Transition, 54  
 Group of States against Corruption  
   (GRECO) (COE), 17–20  
   breach of duty in private sector  
   bribery and, 78–79  
   confiscation standards and, 103–105  
   connection between thing and  
   offense in confiscation  
   instruments, 115–116  
   consideration for the bribe, 73–74  
   contents of bribery provisions in  
   treaties of, 72–73  
   discretionary assumptions of  
   jurisdiction, 62–63  
   enforcement or non-enforcement of  
   confiscation orders, 121  
   persons affected by confiscation and,  
   116–120  
   predicate offenses to confiscation  
   and, 107–109  
   proceeds, concept in confiscation  
   provisions, 109–111  
   on trade or abuse of influence, 80–82  
   value-based confiscation provisions  
   and, 114–116  
 Group of Twenty (G-20), asset recovery  
   and, 27  
 group rights  
   as human rights, 29–31  
   property rights as, 10–11  
   proportionality requirement and,  
   296–298  
   public interest in confiscation and,  
   219–222  
*Gunme and Others v. Cameroon*,  
   286–288  
*Gusinskiy v. Russia*, 215–216  
  
*Haiti v. Jean-Claude “Baby Doc”  
 Duvalier* case, 43–46  
*Handyside v. UK*, 175–177, 186–187,  
   190–195, 261–263  
 Harare Scheme in Relation to Mutual  
   Assistance in Criminal Matters  
   within the British Commonwealth,  
   134  
 harmonious interpretation principle,  
   norm conflicts in asset recovery  
   and, 170–171  
 harm to public interest principle, in  
   public sector bribery, 76  
*Hauer v. Rheinland Pfalz*, 143  
 haven jurisdictions  
   abuse of processes, political offenses,  
   and political prosecution  
   exceptions in, 212–217  
   Arab Spring asset recovery and, 54  
   due diligence standard for,  
   162–166  
   duty to cooperate in disposal of  
   confiscated illicit wealth and,  
   137–138  
   fairness of enforcement proceeding  
   in, 228–252  
   skepticism towards asset recovery in,  
   54–55  
   Switzerland as, 38  
   value of foreign confiscation orders  
   and, 223–228  
 Higgins, Rosalyn (Dame), 33–35,  
   299–301  
 high-value accounts, asset recovery  
   responsibilities concerning, 23–27  
*Hirsi Jamaa and Others v. Italy*,  
   154–162, 171–172

- Honecker, Erich, 145–146, 178–181, 230  
*Honecker and Others v. Germany*, 145–146, 178–181, 205–206, 230, 252–254, 257–258  
 Hull Formula, alien property rights and, 33–35  
 human dignity, property rights and, 37–38  
 human rights  
   anti-corruption efforts and, 5–6, 9–10  
   in Asia-Pacific region, 290–291  
   asset recovery and, 140–141  
   assurances, effect of, 166–169  
   confiscation orders and, 8  
   cooperative confiscation and, 298–299  
   criminalization of corruption and, 299–301  
   European property rights as, 141–143  
   flagrant denial of rights and, 156–162  
   fundamental entitlements in, 293  
   as group entitlements, 29–31  
   international standards for, 9–10  
   legal basis for enforcement and violation allegations, 198–203  
   persons affected by confiscation and, 116–120  
   procedural guarantees in anti-corruption treaties for, 95–96  
   property rights as, 29–38, 56–57  
   in public international law, 294  
   qualified rights, flagrant denials and, 166  
*Hurford v. UK*, 240–245  
 IACAC. *See* Inter-American Convention against Corruption (IACAC)  
 IACMACM. *See* Inter-American Convention on Mutual Assistance in Criminal Matters (IACMACM)  
*Ilașcu and Others v. Moldova and Russia*, 156–162  
 illegal gains, definitions in confiscation provisions, 109–111  
 illicit acquisition, connection between thing and offense in confiscation instruments, 115–116  
 illicit wealth  
   anti-corruption treaty provisions concerning, 84–87  
   challenges in recovery of, 54–55  
   compensation provision in confiscation of, 257  
   confiscation versus property rights standards, 9–10  
   duties to enable restraint and confiscation of, 102–106  
   duty to cooperate in disposal of confiscated wealth, 137–138  
   fairness of enforcement proceeding in confiscation of, 228–252  
*Haiti v. Jean-Claude “Baby Doc” Duvalier* case and, 43–46  
   inter-American and pan-African jurisprudence and, 10–11  
   lawfulness requirement and, 196–197  
*Nigeria v. Sani Abacha* case, 40–41  
   peoples’ rights to property and, 35–37, 145–146  
*Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40  
   as property, 174–175  
   property as legitimate expectation and, 181–182  
   property liable to confiscation, identification and preservation of, 121–122  
   public interest in confiscation and, 219–222  
   requesting state hearings and confiscation of, 240–245  
   state responsibilities concerning, 23–27  
   Switzerland as haven for, 38  
   territorial scope of property rights and, 146–172  
 immunity, from jurisdiction, 97–98  
 Implementation of international sanctions, Arab Spring asset recovery and, 47–54  
*in absentia* convictions, flagrant denial of rights and degree of injustice rulings, 156–162  
 indigenous claims, 272  
   collective dimension in, 275

- indigenous claims (cont.)
  - collective right to wealth and resources under AfCHPR and, 281–288
  - group property rights and, 10–11
  - interference rules and, 270–275, 279–281
  - territorial scope of property rights and, 267–269
- Indigenous Community of the Yakye Axa v. Paraguay*, 271–275
- influence, trading or abusing of, provisions against, 80–82
- Insanov v. Azerbaijan*, 162, 180–181, 182–183, 239–240
- instrumentalities
  - in confiscation provisions, 111–112
  - criticism of interference rules and, 190–195
  - in rem* property rights and, 175–177
  - liability attached to, 114–116
  - local confiscation orders, 186–187
  - property as, 112–114
  - third party offenses, proportionality in domestic confiscation law, 234–235
  - value of foreign confiscation orders and, 223–228
- instrumentum sceleris*, interference rules and, 190–195
- intent
  - illicit enrichment offenses, 84–87
  - in public sector bribery, 74–76
- Inter-American Commission on Human Rights (IACmHR)
  - property rights and, 291–292
  - property rights issues and, 264–276
  - territorial scope of property rights and, 267–269
- Inter-American Convention against Corruption (IACAC), 16t
  - abuse of functions and breach of duty provisions in, 82–83
  - active nationality principle, discretionary jurisdiction, 60–61
  - asset diversion and misuse provisions, 83–84
  - bribee definitions in, 66–70
  - briber identity in public bribery provisions, 65–66
  - concept of confiscation in, 107
  - confiscation provisions in, 103–105
  - consideration for the bribe, 73–74
  - contents of bribery provisions, 72–73
  - corruption definition in, 20–22
  - duty to cooperate for the purposes of confiscation in, 124–126
  - illicit wealth provisions, 84–87
  - mandatory assumptions of jurisdiction in, 59–60
  - mental elements of bribery, 74–76
  - money laundering provisions, 87–89
  - penalties for corruption in, 92
  - prevention and investigation of corruption in, 94–95
  - public sector bribery offenses provisions, 64–76
  - trading and abusing influence provisions in, 80–82
- Inter-American Convention on Mutual Assistance in Criminal Matters (IACMACM), confiscation provisions in, 103–105, 133
- Inter-American Court of Human Rights (IACtHR), 264–276
  - collective dimension in asset recovery and, 275, 286–288
  - extradition orders and, 295
  - interference in property rights and, 270–271
  - justification for interference in rulings of, 271–275
  - personal scope of property rights and, 266–267
  - property rights and, 291–292
  - substantive scope of property rights and, 269–270
  - summary of enforcement orders applicability, 275–276
  - territorial scope of property rights and, 267–269
- inter-American jurisprudence, asset recovery and, 10–11
- interference with property rights
  - accessibility, precision, and foreseeability in cooperative confiscation and, 204–207

- AfCHPR Art. 14 provisions concerning, 279–281
- Asia-Pacific conventions on justification for, 290–291
- compensation provision and, 257
- cooperative confiscations, rules applied to, 186–190
- criticism of three rules of, 190–195
- equality, interaction with rights to property, 259–261
- exceptional circumstances in confiscation and, 257–258
- fairness of enforcement proceedings under ECHR Art. 6, 228–252
- foreign confiscation orders and, 261–263, 295–296
- inter-American concepts of, 270–271
- international law principles and, 218
- justification for, in ACHR, 271–275
- lawfulness of, 196–219
- objects and instrumentalities, local offenses, 186–187
- personal scope of, 266–267
- procedural fairness and proportionality in asset recovery and, 248–252
- proceeds of foreign corruption, 189–190
- proceeds of local offenses, 187–189
- proportionality of, 219–259
- protection of *bona fide* third parties, 252–254
- protection of *bona fide* third parties and, 252–254
- summary of issues in, 258–259
- temporal scope of, 255–256
- “three rules” of, 184–196
- “two-pronged” test for interference, 286–288
- value of foreign confiscation order and, 223–228
- intergovernmental organizations, anti-corruption efforts by, 17–20
- Interights and Others v. Mauritania*, 279–281
- International Chamber of Commerce, Rules to Combat Extortion and Bribery in Business Transactions, 17–20
- international cooperation, territorial scope of property rights and right to, 149–150
- International Covenant on Civil and Political Rights (ICCPR)
  - collective right to wealth and resources under AfCHPR and, 281–288
  - omission of property rights in, 6–8, 31–33
  - peoples’ rights to property in, 35–37
- Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - collective right to wealth and resources under AfCHPR and, 281–288
  - omission of property rights in, 6–8, 31–33
  - peoples’ rights to property in, 35–37
- International Criminal Court (ICC), Syrian asset recovery and, 49
- international criminal law
  - soft law norms and, 17–20
  - transnational law versus, 13–17
- International Criminal Tribunal for Rwanda, flagrant denial of rights trials and, 156–162
- international human rights treaties, as sources of property rights, 31–37
- international law. *See also* customary international law, property rights in
  - collective right to wealth and resources and, 283–286
  - comparison of regional rights treaties with, 291–292
  - confiscation standards, 102–106, 129–137
  - cooperative confiscation and, 298–299
  - cooperative confiscation and principles of, 218
  - criminalization of corruption and, 299–301



- international law. (cont.)
  - duty to cooperate for purposes of confiscation in, 123–137
  - jurisdiction in criminal law and, 58–63
  - procedural fairness and proportionality in asset recovery and, 248–252
  - property rights in, 6–8
- International Law Commission (ILC), 283–286
- International Mutual Assistance in Criminal Matters (Swiss Federal Act) (IMAC)
  - Nigeria v. Sani Abacha* case, 40–41
  - Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
- international property guarantees, 11
- international standard of treatment
  - principle
  - persons affected by confiscation and, 116–120
  - property rights in, 6–8
- international standards on confiscation, 102–106
- investigation of corruption
  - anti-corruption treaties' provisions for, 94–95
  - investigative and prosecutorial discretion, 96–97
  - property liable to confiscation, identification and preservation of, 121–122
- investment treaties, alien property rights and, 33–35
- Isa, Hamad bin (King), 50
- Islamic terrorism, interdictions against, 46–47
- Ismayilov v. Russia*, 223–224
- Ivcher Bronstein v. Peru*, 266–267, 270–271, 273
- James v. UK*, 219–222
- jurisdiction
  - in anti-corruption treaties, 294
  - in cooperative confiscation, ECHR concept of, 154–162
  - criminalization of corruption and, 58–63
  - discretionary assumption of, 60–63
  - double jeopardy and legal certainty in multiple jurisdictions, 210–212
  - ECHR Art. 1 concept of, 147–148
  - foreign confiscation orders and issues of, 295
  - immunity from, 97–98
  - mandatory assumption of, 59–60
  - territorial scope of property rights and, 146–172, 267–269
- jury prejudice, flagrant denial of rights and, 156–162
- jus cogens* principle
  - peoples' rights to property and, 35–37
  - proportionality of confiscation and, 223–228
  - sanctions case law and, 193–195
  - targeted financial sanctions and, 245–248
- Kadi v. Council of the European Union and Commission of the European Communities (Kadi No. 1)*, 193–195, 245–248
- Kälin, Walter, 29–31
- Karamitrov and Others v. Bulgaria*, 144–145, 201–202
- Khodorkovskiy and Lebedev v. Russia*, 180–181, 182–183, 212–217, 225–226
- Khodorkovskiy v. Russia (Khodorkovskiy No. 1)*, 214
- Khuzhin and Others v. Russia*, 202–203
- Klip, André, 162–166
- Kofele-Kale, Ndiva, 283–286
- Konovalov v. Russia*, 193–195, 202–203
- Kopecky v. Slovakia*, 173–174
- Kreydich v. Ukraine*, 200
- Künzli, Jörg, 29–31
- language, definitions and, 12
- Lausanne Seminars on Asset Recovery, 54
- lawfulness requirement
  - abuse of processes, political offenses, and political prosecution exceptions and, 212–217



- accessibility, precision, and  
   foreseeability in cooperative  
   confiscation and, 204–207
- in AfCHPR Art. 14, 279–281
- democratic legitimacy and, 217
- dual criminality requirement in  
   cooperative confiscation and, 209
- enforcement rules, 198–203
- IACtHR emphasis on, 271–275
- interference in possession and,  
   196–219
- international law principles and, 218
- justification for interference and, 296
- refusal of assistance based on, 207–217
- summary of, 218–219
- League of Arab States, 288–290
- legal certainty principle, refusal of  
   cooperation in confiscation cases  
   due to, 210–212
- legal expenses exceptions  
   duty to cooperate in disposal of  
   confiscated illicit wealth and,  
   137–138
- property liable to confiscation,  
   identification and preservation of,  
   121–122
- legitimate expectations of property,  
   181–182
- in asset recovery cases, 182–183
- Lehavi, Amnon, 298–299
- lex posterior* principle, norm conflicts in  
   asset recovery and, 169–170
- liability  
   adverse consequences of extradition  
   and, 148
- of briber, in public bribery treaties,  
   65–66
- illicit enrichment offenses, 84–87
- instrumentality in confiscation and,  
   114–116
- things liable to confiscation, 109–116
- Libya, asset recovery in, 47–54
- Lindberg v. Sweden*, 166, 200–201
- lobbying, as trade or abuse of influence,  
   80–82
- local law. *See* domestic law
- locus regit actum* principle, duty to  
   cooperate in disposal of  
   confiscated illicit wealth, 137–138
- Loizidou v. Turkey*, 147–148
- Loukanov v. Bulgaria*, 219–222
- Low, Lucinda, 83–84
- Luchtman, Michiel, 148, 150–152
- Lutsenko v. Ukraine*, 216–217
- Mamatkulov and Askarov v. Turkey*,  
   166–169
- mandatory jurisdiction  
   double jeopardy and legal certainty  
   and, 210–212
- grounds for assumption, 59–60
- Marcos, Ferdinand and Imelda, asset  
   recovery case involving, 38–40
- Martelly, Michel, 43–46
- Mattei, Ugo, 298–299
- Mayagna (Sumo) Awas Tingni  
   Community v. Nicaragua*, 270–275
- Mechanism for Follow-up on the  
   Implementation of the IACAC  
   (MESICIC)  
   abuse of functions and breach of duty  
   provisions in, 82–83
- confiscation provisions in, 103–105
- mens rea* offenses, illicit enrichment as,  
   84–87
- MESICIC. *See* Mechanism for  
   Follow-up on the Implementation  
   of the IACAC
- Middle East  
   anti-corruption efforts in, 17–20
- Arab Spring asset recovery and,  
   47–54
- new property rights in, 288–290
- Milanovic, Marko, 155–156,  
   169–170, 172
- Milosavljev v. Serbia*, 223–228
- mini-MLAT, duty to cooperate for the  
   purposes of confiscation in  
   UNCAC and, 127–128
- minor fraud, criminalization of,  
   83–84
- Minsk Convention, 204–207
- money laundering  
   in anti-corruption treaties, 87–89
- anti-corruption treaties and, 4–5
- double jeopardy and legal certainty in  
   proceedings involving, 210–212
- dual criminality requirement and, 209

- money laundering (cont.)
  - duty to cooperate in disposal of
    - confiscated illicit wealth and, 137–138
  - exceptional circumstances in
    - confiscation and, 257–258
  - international confiscation standards and, 129–131
  - Nigeria v. Sani Abacha* case, 40–41
  - persons affected by confiscation and, 116–120
  - Peru v. Vladimiro Lenin Montesinos Torres* case and, 41–42
  - proportionality requirement and, 296–298
  - public interest in confiscation of possessions and, 219–222
  - requested state responsibility for foreign confiscation, 152–153
  - Swiss laws on, 12
- Montesinos Torres, Vladimiro Lenin, 41–42
- MSS v. Belgium and Greece*, 162–166, 170–171
- Mubarak, Hosni, 47–54
- multinational enterprise(s) (MNEs)
  - active nationality principle, discretionary jurisdiction, 60–61
  - corruption and, 3–5
- mutual legal assistance treaties (MLATs)
  - abuse of processes, political offenses, and political prosecution
    - exceptions in, 212–217
  - anti-corruption treaties and, 4–5
  - Arab Spring asset recovery and, 47–54
  - asset recovery requests, 23–27, 294
  - bilateral MLATs, confiscation
    - provisions, 134–136
  - compatibility with human rights, 140–141, 299–301
  - concept of confiscation in, 107
  - confiscation of instrumentalities and, 111–112
  - confiscation orders enforcement, 121
  - cooperative confiscation and, 101
  - counter-terrorist sanctions regimes and, 46–47
  - discretion not to confiscate, 121
  - double jeopardy and legal certainty
    - in, 210–212
  - dual criminality requirement and
    - lawfulness in, 209
  - duty to cooperate for purposes of
    - confiscation in, 123–137
  - duty to cooperate in disposal of
    - confiscated illicit wealth, 137–138
  - duty to enable confiscation in, 102–123
  - failed states and, 42–46
  - in *Haiti v. Jean-Claude “Baby Doc” Duvalier* case, 43–46
  - international confiscation standards and, 102–106, 129–137
  - lawfulness requirement and, 196–197
  - legal basis for enforcement and, 198–203
  - liability of things to confiscation in, 109–116
  - Nigeria v. Sani Abacha* case, 40–41
  - norm conflicts in asset recovery and, 169–172
  - persons affected by confiscation in, 116–120
  - Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
  - proceeds and instrumentalities as
    - property in, 112–114
  - property liable to confiscation,
    - identification and preservation of, 121–122
  - protection of *bona fide* third parties, 252–254
  - regional treaties, confiscation
    - provisions, 103–105
  - substantive scope of property rights
    - in, 172–183
  - Swiss laws on, 12
  - treaties and instruments for, 9
- mutual recognition principle, EU
  - framework decisions on
    - confiscation and, 131–133
- Nada v. Switzerland*, 154–162, 164–165, 170–172, 243–245
- Nasrulloev v. Russia*, 204–207
- nationality principle
  - mandatory jurisdiction based on, 60–61

- passive personality/protective principles, discretionary jurisdiction, 61–62
- nationalization of property, property as legitimate expectation and, 181–182
- national law. *See also* domestic law
  - accessibility, precision, and foreseeability in cooperative confiscation and, 204–207
  - duty to enable confiscation content in, 106–123
  - foreign public officials defined in, 66–70
  - legal basis for enforcement and, 198–203
  - procedural fairness and proportionality in asset recovery and, 248–252
  - territorial jurisdiction and, 147–148
- national standard of treatment
  - principle, property rights and, 6–8
- natural wealth and resources
  - collective dimension in recovery of, 275
  - collective right to, under AfCHPR property rights provisions, 281–288
  - group versus individual property rights and, 10–11
  - peoples' rights to property and, 35–37
  - property rights and, 9
- ne bis in idem* (double jeopardy)
  - principle
  - bilateral mutual legal assistance treaties on confiscation and, 134–136
  - connection between thing and offense in confiscation instruments, 115–116
  - cooperative confiscation and, 210–212
  - criminalization of corruption and, 99
  - duty to cooperate for the purposes of confiscation and, 124–126
  - EU framework decisions on confiscation and, 131–133
  - international confiscation standards, 129–131
  - justification for interference and, 296
  - persons affected by confiscation and, 116–120
  - refusal of assistance in cooperative confiscation cases based on, 207–217
- ne bis poena in idem*, cooperative confiscation and, 210–212
- necessary and sufficient treaty basis
  - principle, duty to cooperate for the purposes of confiscation and, 127–128
- negative rights, property rights as, 29–31
- net profit from crime, definitions in confiscation provisions, 109–111
- Neulinger and Shuruk v. Switzerland*, 201
- New International Economic Order (NIEO)
  - collective right to wealth and resources and, 35–37
  - natural resources resolutions, 35–37
- Nigeria v. Sani Abacha* asset recovery case, 40–41
- non-conviction-based confiscation
  - double jeopardy and legal certainty issues, 210–212
- international legal framework for, 138
- procedural fairness and proportionality in asset recovery and, 248–252
- proof of predicate offense and, 108–109
- proportionality in domestic confiscation law and, 233–234, 236–237
- UNCAC and UNTOC provisions concerning, 105–106
- non-criminal sanctions, for corruption, 92
- non-enforcement of anti-corruption treaties, 96–100
- non-governmental organizations (NGOs)
  - anti-corruption efforts by, 17–20
  - assurances, effect of, 166–169
  - corruption and, 3–5
  - flagrant denial of rights criteria and, 156–162

- non-judicial orders
  - assurances, effect in, 166–169
  - concept of confiscation and, 107
- non-refoulement* principle, asset recovery and, 169–170
- non-retroactivity principle, duty to cooperate for the purposes of confiscation and, 124–126
- non-torture-related flagrant denial of rights, criteria for, 156–162
- norm conflicts
  - asset recovery in public international law, 169–172
  - authorization of interference and, 206–207
  - collective right to wealth and resources and, 281–288
- North Africa. *See also* Arab Spring
- anti-corruption efforts in, 17–20
- “no separate issue” principle, qualified rights and flagrant denials and, 166
- Novikov v. Russia*, 181–182
- nulla poena sin lege*, dual criminality requirement and, 209
- OA O Neftyanaya Kompaniya Yukos v. Russia*, 198, 212–217
- object-based confiscation model
  - duty to cooperate for the purposes of confiscation and, 124–126
  - effects on property and, 114–116
  - international confiscation standards, 129–131
  - local offenses, interference under, 186–187
  - proportionality in domestic confiscation law and, 234–235
  - value of foreign confiscation orders and, 223–228
- objectum sceleris* principle, interference rules and, 190–195
- obstruction of justice offense, in anti-corruption treaties, 90
- OECD-ABC. *See* Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- offense categories, in criminalization of corruption, 64–90
  - abuse of functions and breach of duty, 82–83
  - asset diversion and misuse, 84
  - civil versus criminal offenses classification, 149–150
  - confiscation as presupposition of offense, 107–109
  - connection between thing and offense in confiscation instruments, 115–116
  - dual criminality requirement in cooperative confiscation and, 209
  - illicit enrichment, 84–87
  - in rem* property rights and, 175–177
  - local offenses, proceeds from, 187–189
  - money laundering and concealment, 87–89
  - obstruction of justice, 90
  - political offenses, 212–217
  - private sector bribery, 77–80
  - procedural fairness and proportionality in asset recovery and, 248–252
  - public sector bribery, 64–76
  - statutes of limitations and, 98
  - trading and abusing influence, 80–82
- Office of the Attorney General (OAG) (Switzerland), *Haiti v. Jean-Claude “Baby Doc” Duvalier* case and, 43–46
- Organisation for Economic Co-operation and Development (OECD)
  - anti-corruption treaties and, 1–3, 17–20
  - asset recovery and, 27–28
  - briber identity in public bribery treaties, 65–66
  - bribery conventions and protocols, 20–22
  - contents of bribery provisions in treaties of, 72–73
  - foreign versus domestic bribery provisions in treaties of, 66–70

- investigative and prosecutorial discretion conventions, 96–97
- object-based confiscation provisions and, 114–116
- Organisation for Economic Co-operation and Development Working Group on Bribery in International Business Transactions (OECD-WGB), 17–20
- contents of bribery provisions in treaties of, 72–73
- discretionary assumptions of jurisdiction, 62–63
- duty to cooperate for purposes of confiscation in, 124
- enforcement or non-enforcement of confiscation orders, 121
- intent in public sector bribery and, 74–76
- international confiscation standards and, 102–106
- ne bis in idem* (double jeopardy) in, 99
- persons affected by confiscation and, 116–120
- predicate offenses to confiscation and, 107–109
- proceeds, concept in confiscation provisions, 109–111
- Organization of African Unity, 276–277
- Organization of American States (OAS)
  - anti-corruption treaties and, 1–3
  - confiscation standards and, 102–106
  - foreign versus domestic bribery provisions in treaties of, 66–70
  - property definitions of, 112–114
  - property rights and, 291–292
  - regional property rights and, 264–276
- Organization of the Islamic Conference, 288–290
- Orwell, George, 12
- Othman (Abu Qatada) v. UK*, 156–162, 166–169
- out-of-court settlements, *Nigeria v. Sani Abacha* case, 40–41
- ownership restrictions, confiscation rule concerning, 186–190
- Oxford English Dictionary
  - asset recovery defined in, 22–23
  - corruption defined in, 12–22
  - human property rights in, 29
- Öztürk v. Germany*, 149–150, 230–232, 248–252
- pan-African property rights
  - asset recovery and, 10–11
  - jurisprudence concerning, 31–33, 276–288
- passive personality principle, discretionary jurisdiction assumption, 61–62
- Patricia v. Bulgaria*, 193–195
- Patrikova v. Bulgaria*, 201–202
- Pauwelyn, Joost, 170
- “peaceful enjoyment” of possession
  - AfCHPR Art. 14 provisions concerning, 279–281
  - confiscation rule concerning, 184–185
- Pelligrini v. Italy*, 150–153, 162–166
- people, definitions of, 35–37, 281–288
- peoples’ property rights in public international law, 35–37
  - collective right to wealth and resources and, 286–288
  - property encroachment and, 282
- permanent sovereignty, peoples’ rights to property and, 35–37
- Permanent Sovereignty over Natural Resources (GA Res. 1803), 35–37
- personal scope of property rights, 145–146, 183–184
  - ACHR Art. 21 provisions on, 266–267
  - cooperative confiscation and, 154–162
- Peru v. Vladimiro Lenin Montesinos Torres* case, 41–42
- Peukert, Wolfgang, 191–193
- Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
- Phillips v. UK*
  - interference rules in, 184–185, 195
  - procedural fairness and proportionality in asset recovery and, 248–252
- proceeds from local offenses
  - confiscation in, 187–189

- Phillips v. UK* (cont.)  
   proportionality in domestic  
     confiscation law in, 230–232,  
     233–234  
   *in rem* property rights in, 175–177  
 Pieth, Mark, 109–111  
 political instability, Arab Spring asset  
   recovery and, 47–54  
 politically exposed persons (PEPs)  
   abuse of processes, political offenses,  
     and political prosecution  
     exceptions and, 216–217  
   AfCHPR Art. 14 on rights of,  
     276–279  
   Arab Spring asset recovery and,  
     53–54  
   asset recovery and, 5, 8, 23–27,  
     28–29  
   double jeopardy and legal certainty in  
     proceedings of, 210–212  
   equality, interaction with rights to  
     property, 259–261  
   fairness of enforcement proceeding  
     and, 228–252  
   foreign confiscation orders and, 295  
   in *Haiti v. Jean-Claude “Baby Doc”*  
     *Duvalier* case, 43–46  
   *in rem* property rights of, 295  
   international law principles and, 218  
   justification for interference and, 296  
   Protocol to the European Convention  
     for the Protection of Human  
     Rights and Fundamental Freedoms  
     (ECHR-P1) and, 9–10  
   rights in customary international law  
     of, 33–35  
 political offense exception, cooperative  
   confiscation and, 212–217  
 political prosecution exception, in  
   cooperative confiscation, 212–217  
 political transitions in states  
   fairness of enforcement proceeding  
     and, 228–252  
   flagrant denial of rights in, 156–162  
 politics, anti-corruption treaties and,  
   3–5  
 “Politics and the English Language”  
   (Orwell), 12  
 positive rights, property rights as, 29–31  
 possessions  
   bare possession as property right  
     principle, 178  
   concept of property in ECHR-P1  
     Art. 1, 173–174  
   confiscation as control of, 190–195  
   *in rem* property rights and,  
     175–177  
   interference with peaceful enjoyment  
     of, 184–185  
   lawfulness of interference in, 196–219  
   legal basis for impairment of,  
     198–203  
   property as legitimate expectation  
     and, 181–182  
   proportionality of lawfulness to  
     general interest in confiscation of,  
     219–259  
   public interest in deprivation of,  
     219–222  
 post-conflict environments, flagrant  
   denial of rights and degree of  
     injustice criteria for, 156–162  
 precision, in cooperative confiscation  
   laws, 204–207  
 predicate offenses  
   to confiscation, 107–109  
   flagrant denial of rights criteria and,  
     156–162  
   procedural fairness and  
     proportionality in asset recovery  
     and, 248–252  
   procedure for proof of, 108–109  
   public interest in confiscation of  
     possessions and, 219–222  
   value of foreign confiscation orders  
     and, 223–228  
 prescriptive provisions for  
   criminalization of corruption,  
     63–93  
   illicit wealth provisions, 84–87  
 Presidential Commission on Good  
   Governance, *Philippines v.*  
   *Ferdinand and Imelda Marcos*  
   asset recovery case, 38–40  
 presumption of innocence  
   confiscation of illicit wealth and,  
     240–245  
   due diligence standard and, 162–166

- persons affected by confiscation and, 116–120
- preventative confiscation and, 239
- presumption of ownership
  - connection between thing and offense in confiscation instruments, 115–116
  - proceeds and instrumentalities as property and, 112–114
- prevention of corruption
  - anti-corruption treaties' provisions for, 94–95
  - proportionality in domestic confiscation law and, 237–239
- private property
  - asset recovery and, 6–8
  - collective rights and, 29–31
  - effects of confiscation on, 114–116
  - as legitimate expectation, 181–182
  - proceeds and instrumentalities as, 112–114
- private sector, bribery in, 77–80
  - abuse of processes, political offenses, and political prosecution exceptions and, 216–217
  - bribee identity, 78
  - consideration in, 78–79
  - context and consequences of, 79–80
- procedural fairness
  - abuse of, in cooperative confiscation, 212–217
  - in anti-corruption treaties, 95–96, 294
  - degree of injustice and flagrant denial of rights, 156–162
  - IACtHR emphasis on, 271–275
  - legal basis for enforcement and, 202–203
  - proportionality in asset recovery and, 248–252
  - proportionality in domestic confiscation law and, 239–240
- procedural proportionality. *See* proportionality
- “proceeds-not-profits” doctrine
  - in confiscation provisions, 109–111
  - proportionality of, 226
- proceeds of corruption
  - confiscation and concept of, 109–111
  - connection between thing and offense in confiscation instruments, 115–116
  - crime regime proceeds, 232–233
  - in foreign offenses, confiscation of, 189–190
  - in local offenses, interference in, 187–189
  - new Arab property rights and, 288–290
  - as property, 178–181
  - property as, 112–114
  - public interest in confiscation and, 219–222
- property of foreign origin, confiscation of, 105–106
- property rights
  - in Asia/Pacific region, 290–291
  - asset recovery and, 1, 6–8, 182–183
  - assurances, effect of, 166–169
  - bare possession of property, 178
  - comparison of international provisions for, 291–292
  - concept of property in ECHR-P1 Art.1, 173–174
  - confiscation of instrumentalities and, 111–112
  - in customary international law, 33–35
  - definitions of, 9, 293–294
  - effects of confiscation on, 114–116
  - equality under ECHR and, 259–261
  - European human rights to property, 141–143
  - group versus individual rights, 10–11
  - as human rights, 29–38
  - identification and preservation of property liable to confiscation, 121–122
  - illicit wealth as property, 174–175
  - in personam* rights, 177
  - international human rights sources, 31–37
  - international legal norms, 37–38
  - legitimate expectations of property, 181–182
  - nature of interference with, 184–196
  - new Arab property rights, 288–290
  - normative relationships and, 29–31



- property rights (cont.)
  - proceeds and instrumentalities as property, 112–114, 178–181
  - in public international law, 29–31, 294
  - rights *in rem*, 175–177
  - scope of rights, ECHR-P1 Art. 1, 144–184
  - treaty-based human rights to, 31–33
  - in Western hemisphere, 264–276
- proportionality
  - in AfCHPR Art. 14, 279–281
  - asset recovery and, 10–11, 248–252
  - in ECtHR cooperative confiscation case law, 228–230
  - in ECtHR domestic confiscation case law, 230–240
  - equality, interaction with rights to property, 259–261
  - exceptional circumstances in confiscation, 257–258
  - fairness of enforcement proceeding and, 228–252
  - foreign confiscation orders, value of, 223–228
  - in *Haiti v. Jean-Claude “Baby Doc” Duvalier* case, 43–46
  - of interference to general interest, 219–259
  - protection of *bona fide* third parties, 252–254
  - regional treaty comparisons concerning, 296–298
  - requesting state hearings and, 240–245
  - sanctions case law and, 193–195
  - summary of issues in, 258–259
  - targeted financial sanctions case law, 245–248
  - temporal scope and, 255–256
- prosecution in criminalization of corruption
  - barriers to, in asset recovery, 54–55
  - double jeopardy and legal certainty and, 210–212
  - of illicit enrichment offenses, 84–87
  - investigative and prosecutorial discretion, 96–97
  - non-enforcement issues, 96–100
  - political prosecutions, 212–217
  - prosecutorial delay, flagrant denial of rights and, 156–162
  - protective principles, discretionary jurisdiction assumption, 61–62
- Protocol Against Corruption to the Treaty of the South African Development Community (SADC-PAC)
  - abuse of functions and breach of duty provisions in, 82–83
  - active nationality principle, discretionary jurisdiction, 60–61
  - asset diversion and misuse provisions, 83–84
  - bribee definitions in, 66–70
  - briber identity in public bribery provisions, 65–66
  - confiscation provisions in, 103–105
  - consideration for the bribe, 73–74
  - contents of bribery provisions, 72–73
  - corruption definition of, 20–22
  - duty to cooperate for the purposes of confiscation in, 124–126
  - mandatory assumptions of jurisdiction in, 59–60
  - mental elements of bribery, 74–76
  - money laundering provisions, 87–89
  - ne bis in idem* (double jeopardy) in, 99
  - object- and value-based confiscation provisions in, 114–116
  - penalties for corruption in, 92
  - prevention and investigation of corruption in, 94–95
  - private sector bribery in, 77–80
  - public sector bribery offenses provisions, 64–76
  - trade and abuse of influence provisions in, 80–82
- Protocol on Mutual Legal Assistance in Criminal Matters to the Treaty of the Southern African Development Community (SADC-MLAP)
  - concept of confiscation in, 107
  - confiscation provisions in, 103–105, 134



- persons affected by confiscation and, 116–120
- proceeds, concept in confiscation provisions, 109–111
- Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR-P1), 16t
- criticism of interference rules and, 190–195
- double jeopardy and legal certainty in, 210–212
- dual criminality requirement and lawfulness in enforcement of, 209
- fairness of enforcement proceeding and, 228–252, 295
- human rights versus confiscation orders and, 140–141
- interference rules in Art. 1, 184–196
- international law principles and, 218
- lawfulness of interference in, 204–207
- local confiscation orders, objects and instrumentalities, Art. 1 provisions, 186–187
- norm conflicts in asset recovery and, 169–172
- proceeds as property principle and, 178–181
- proceeds from local offenses, measures concerning, 187–189
- proceeds of foreign corruption, confiscation of, 189–190
- property as legitimate expectation Art.1, 181–182
- property concept in Art. 1, 173–174
- property rights protections, 9–10
- proportionality of interference to general interest in, 219–259
- qualified rights and flagrant denials and, 166
- scope of property rights in, 144–184
- Protocol to the European Convention on the protection of the European Communities' financial interests (EUCPFI-P1), 16t
- active nationality principle, assumption of discretionary jurisdiction, 60–61
- asset diversion and misuse provisions, 83–84
- confiscation provisions in, 103–105
- consideration for the bribe, 73–74
- contents of bribery provisions, 72–73
- domestic versus foreign bribery in, 66–70
- duty to cooperate for the purposes of confiscation in, 124–126
- European human rights to property and, 141–143
- harm or damage to public interest in public sector bribery, requirement for, 76
- immunity from jurisdiction in, 97–98
- in rem* property rights and, 175–177
- lawfulness requirement and, 196–197
- mandatory jurisdiction assumptions, 59–60
- mental elements of bribery, 74–76
- passive personality/protective principles, discretionary jurisdiction, 61–62
- penalties for corruption in, 92
- property protections in Art. 1, 143
- requested state responsibility for foreign confiscation orders, 152–153
- third party beneficiaries and intermediaries, passive bribery involving, 70–71
- public interest
  - IACtHR emphasis on, 271–275
  - proportionality of lawfulness to general interest and, 219–222
- public international law
  - Arab property rights and, 288–290
  - corruption definitions in, 12–22
  - human property rights in, 29–31
  - international versus transnational criminal law and, 13–17
  - norm conflicts in, 169–172
  - peoples' rights to property under, 35–37, 294
  - personal scope of property rights and, 145–146
  - right to corruption-free society and, 283–286

- public officials, corruption involving
  - in personam* rights and, 177
  - value of foreign confiscation orders, 223–228
- public sector bribery
  - bribe contents, 72–73
  - bribee identity and, 66–70
  - briber identity, 65–66
  - consideration for the bribe, 73–74
  - criminalization of, 64–76
  - harm or damage to public interest and, 76
  - in personam* rights and, 177
  - mental elements of, 74–76
  - objective elements in, 71–72
  - third party beneficiaries and intermediaries, 70–71
  - value of foreign confiscation issues in, 223–228
- Qaddafi, Muammar el-, 47–54
- Qaddafi, Muatassim, 49
- Qaddafi, Seif al-Islam el-, 49, 276–279
- qualified rights, flagrant denials and, 166
- Quinn v. France*, 199–200
- Raimondo v. Italy*
  - interference rules in, 184–185, 195, 270–271
  - legal basis for enforcement in, 202–203
  - proceeds as property in, 178–181, 184–185
  - proceeds from local offenses in, 187–189
  - property as asset recovery in, 182–183
  - property as legitimate expectation in, 181–182
  - proportionality in domestic confiscation law and, 236–237, 239
- ratione loci* principle, territorial scope of
  - property rights and, 267–269
- ratione materiae* principle
  - new Arab property rights and, 288–290
  - proceeds as property and, 178–181
- ratione personae* principles
  - international law and, 218
  - territorial scope of property rights and, 267–269
- real risk standard, flagrant denial of
  - rights and degree of injustice criteria and, 156–162
- reasonable living expense exceptions,
  - property liable to confiscation, identification and preservation of, 121–122
- reasonable time principle, in
  - confiscation cases, 255–256
- regional anti-corruption treaties
  - absence in Asia-Pacific region of, 290–291
  - comparison of property rights provisions in, 291–292
  - confiscation provisions in, 103–105
  - cooperative confiscation and, 295, 298–299
  - duty to cooperate for purposes of confiscation and, 124–126
  - foreign confiscation orders and, 295
  - inter-American and pan-African jurisprudence, 10–11
  - international property guarantees and, 11
  - lawfulness requirement
    - comparisons, 296
  - peoples' rights to property and, 35–37
  - property rights and, 8, 9–10, 294
  - proportionality requirement
    - comparisons, 296–298
- regional property rights
  - asset recovery and, 264
  - in Western hemisphere, 264–276
- requested state responsibilities in
  - confiscation
    - abuse of process, political offenses, and political prosecution exceptions, 212–217
  - adverse consequences of extradition and, 148
  - asset recovery cases, 153–172
  - in bilateral MLATs, 134–136
  - challenges in, 54–55
  - COEMLC treaties and, 129–131

- domestic law referability in, 198–203, 218–219
- double jeopardy and legal certainty and, 210–212
- dual criminality principle and, 207–210
- fairness of enforcement proceeding and, 228–252
- foreign confiscation orders, 152–153
- fund sharing with requesting states, 23–27
- IACMACM treaty and, 133
- illicit wealth, cooperation duty, 137–138
- lawfulness of interference and, 196–197
- procedural fairness and
  - proportionality in asset recovery and, 251–252
- proportionality of interference in, 219–222, 240–245
- regional treaties and instruments and, 103–105, 124–126
- SADC-MLAP and, 134
- territorial scope of property rights and, 146–147, 183–184
- trustworthiness and due diligence standard, 162–166
- UNCAC and UNTOC provisions concerning, 127–128
- requesting state responsibilities in confiscation
  - abuse of process, political offenses, and political prosecution exceptions, 212–217
  - in bilateral MLATs, 134–136
  - COEMLC 1990/2005 treaties and, 129–131
  - dual criminality requirement and, 207–210
  - due diligence standard and trustworthiness of, 162–166
  - effect of assurances in, 166–169
  - EU framework decisions on, 131–133
  - fairness of enforcement proceeding in, 228–252
  - flagrant denial of rights and, 156–162, 166, 183–184
  - in IACMACM treaties, 133
  - illicit wealth disposal, duty to cooperate in, 137–138
  - lawfulness requirement and, 218–219
  - proportionality of interference and, 219–222, 240–245
  - qualified rights and, 166
  - regional treaties and instruments, 103–105, 136–137
  - UNCAC/UNTOC provisions concerning, 127–128
- Restitution of Illicit Assets Act (RIAA) (Switzerland)
  - Arab Spring asset recovery and, 53–54
  - criminalization of corruption and, 250n.772
  - in *Haiti v. Jean-Claude “Baby Doc” Duvalier* case, 43–46
- restraining orders
  - accessibility, precision, and foreseeability in cooperative confiscation and, 204–207
  - compensation provision and, 257
  - criticism of interference rules and, 190–195
  - interference rules and, 186–190
  - legal basis for enforcement, 201
  - local procedures, objects and instrumentalities, 186–187
  - proceeds of local offenses, 187–189
  - property confiscation identification and preservation, 121–122
  - temporal scope of, 255–256
- return of assets principle
  - double jeopardy and legal certainty in confiscation and, 210–212
  - public interest in confiscation and, 219–222
  - in UNCAC, 1, 4–5
- RIAA. *See* Restitution of Illicit Assets Act (RIAA)
- rights *in personam*, 177, 183–184
  - foreign confiscation orders and, 261–263
  - inter-American concepts of, 269–270
- rights *in rem*, 175–177
  - foreign confiscation orders and, 261–263

- rights *in rem*, (cont.)
  - inter-American concepts of, 269–270
  - regional treaty comparisons concerning, 295
- rule of law
  - abuse of processes, political offenses, and political prosecution exceptions and, 212–217
  - cooperative confiscation and, 101
  - democratic legitimacy and, 217
  - enforcement rules, 198–203
  - flagrant denial of rights and, 156–162
  - interference with possessions and, 196–219
  - international law principles and, 218
  - mutual legal assistance powers, compatibility with, 203–217
  - summary of principles of, 218–219
- Rwandan genocide, flagrant denial of rights trials and, 156–162
- Saadi v. Italy*, 166–169
- Saadi v. UK*, 212–217
- Saccoccia v. Austria*
  - arbitrariness in, 203
  - asset recovery and, 182–183
  - dual criminality requirement and lawfulness in, 209
  - due diligence and state trustworthiness in, 162–166
  - flagrant denial of rights in, 156–162
  - foreign confiscation in, 152–153, 184–185, 295
  - illicit wealth as property in, 174–175
  - in personam* rights in, 177
  - legal basis for enforcement in, 198–199
  - norm conflicts in asset recovery and, 169–172
  - procedural fairness and proportionality in asset recovery and, 248–252
  - proceeds as property in, 180–181
  - proceeds of foreign corruption offenses, confiscation of, 189–190
  - proportionality of cooperative confiscation in, 228–230, 296–298
  - proportionality of lawfulness to general interest in, 219–222, 226
  - protection of *bona fide* third parties under, 252–254
  - temporal scope issues in, 255–256
- SADC-MLAP. *See* Protocol on Mutual Legal Assistance in Criminal Matters to the Treaty of the Southern African Development Community
- SADC-PAC. *See* Protocol Against Corruption to the Treaty of the South African Development Community
- safe havens, cooperative confiscation and, 101
- Salabiaku v. France*, 240–245
- Saleh, Ali Abdullah, 50
- Salvador Chiriboga v. Ecuador*, 273
- sanctions case law. *See also* targeted financial sanctions
  - asset recovery and, 193–195
  - requesting state proportionality and, 243–245
- Saramaka People v. Suriname*, 271–275, 286–288
- Sawhoyamaxa Indigenous Community v. Paraguay*, 271–275
- Schengen Implementing Convention, 210–212
- Schilling, Theodor, 150–152
- scope of property rights
  - under ACHR Art. 21, 266–270
  - in AfCHPR, 276–279
  - in ECHR-P1 Art. 1, 144–184
  - legal basis for enforcement and, 198–203
  - personal scope, 145–146
  - sanctions case law and, 193–195
  - substantive scope, 172–183
  - temporal scope, 144–145
  - territorial scope, 146–172
  - value of foreign confiscation orders and, 223–228
- Second Protocol to the Convention on the protection of the European Communities' financial interests (EUCPFI-P2), 16t
- money laundering and concealment provisions, 87–89

- Security Council (SC) (United Nations)
  - Arab Spring asset recovery and, 47–54
  - counter-terrorist sanctions regimes and, 46–47
  - due diligence standard and
    - requesting state trustworthiness and, 162–166
  - proportionality in targeted financial sanctions cases and, 245–248
  - sanctions case law and resolutions of, 193–195
- seizure procedures
  - justification for interference in, 273–275
  - legal basis for enforcement, 198–203
  - objects and instrumentalities in local offenses, 186–187
  - proceeds as property and, 178–181
  - property liable to confiscation, identification and preservation of, 121–122
  - temporal scope in, 255–256
- self-determination, right of, peoples' rights to property and, 35–37
- Seso Seko, Mobutu, asset recovery case involving, 43
- Shelton, Dinah, 299–301
- Silickienė v. Lithuania*, 237–239, 248–254, 257–258
- smuggling cases
  - in rem* property rights and, 175–177
  - interference rules and, 193–195
  - legal basis for enforcement in, 201–202
  - local confiscation orders, 186–187
  - objectum sceleris* principle, 190–195
  - protection of *bona fide* third parties in, 252–254
  - territorial scope of property rights and, 267–269
  - value of foreign confiscation order and, 223–224
- social conditions, anti-corruption treaties and, 3–5
- socialist regimes, corruption in, 3–5
- Sodantenko v. Ukraine*, 204–207
- Soering v. UK*
  - adverse consequences of extradition in, 148
- extraterritorial jurisdiction in, 154–162
- flagrant denial of rights in, 150–152
- norm conflicts in asset recovery and, 169–170
- proportionality of lawfulness to general interest in, 219–222
- requested state responsibility for foreign confiscation in, 152–153
- soft laws
  - asset recovery duties and, 23–27
  - bribery offenses and, 65–66
  - corruption definitions in, 12–13
  - norms of corruption in, 17–20
- Southern African Development Community (SADC)
  - anti-corruption treaties and, 1–3
  - confiscation standards and, 102–106
  - foreign versus domestic bribery provisions in treaties of, 66–70
  - private sector bribery in, 77–80
  - property definitions of, 112–114
- sovereignty
  - criminalization of corruption and, 99
  - due diligence standard and
    - requesting state trustworthiness and, 162–166
  - indigenous and tribal property claims, 275
  - property rights in customary international law and, 33–35
  - property rights versus, 10–11
  - public international law and, 6–8, 22
  - right to corruption-free society and, 283–286
- Special Administrative Measures,
  - flagrant denial of rights and, 156–162
- Special Immigration Appeals
  - Commission (UK), 156–162
- SRVG. *See* Federal Act on Freezing and Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (SRVG) (Switzerland)
- stakeholders, personal scope of property rights and, 266–267
- Stapleton v. Ireland*, 162–166

- state institutions
  - anti-corruption efforts by, 17–20
  - asset recovery responsibilities of, 23–27
  - criminal conduct definitions, 9
  - mandatory assumptions of jurisdiction and, 59–126
  - peoples' rights to property in public international law and, 35–37
- statutes of limitations
  - criminalization of corruption, 98
  - in *DRC v. Mobutu Seso Seko* case, 43
  - duty to cooperate for the purposes of confiscation and, 124–126
  - failed states asset recovery barriers and, 42–46
  - legal basis for enforcement and, 198–203
- Stephenson, Kevin, 121–122
- Stessens, Guy, 78–79
- Stolen Asset Recovery Initiative (StAR),
  - asset recovery defined by, 27–28
- Strasbourg conventions
  - arbitrariness arguments and, 203
  - cooperative confiscation and, 298–299
  - counter-terrorist sanctions regimes and, 46–47
  - degree of injustice provisions, 156–162
  - ECHR-P1 Art. 1 and, 143
  - foreign penalty enforcement, flagrant denial of justice, 150–152
  - in rem* property rights, 175–177
  - interference with property rights, 184–185, 261–263, 295–296
  - norm conflicts in public international law and, 169–170
  - procedural fairness and
    - proportionality in asset recovery and, 248–252
  - proceeds as property under, 178–181
  - proportionality in, 258–259
  - protection of *bona fide* third parties in, 252–254
  - summary of lawfulness requirement and, 218–219
- substantive scope of property rights, 172–183
- inter-American concepts of, 269–270
- substitute assets, legal basis for enforcement and, 198–203
- Sudan Human Rights Organization and Another v. Sudan*, 279–281
- suppression conventions
  - duty to cooperate for purposes of confiscation in, 123–137
  - international crimes and, 13–17
- supranational organizations
  - due diligence standard and requesting state trustworthiness and, 165–166
  - procedural fairness and proportionality in asset recovery and, 248–252
- suspicious transactions, asset recovery responsibilities concerning, 23–27
- Swiss asset recovery system
  - Arab Spring cases, 47–54
  - case studies, 38–56
  - counter-terrorist sanctions regimes and, 46–47
  - failed states and, 42–46
  - Haiti v. Jean-Claude “Baby Doc” Duvalier* case and, 43–46
  - Nigeria v. Sani Abacha* case, 40–41
  - Peru v. Vladimiro Lenin Montesinos Torres* case, 41–42
  - Philippines v. Ferdinand and Imelda Marcos* asset recovery case, 38–40
  - special-purpose asset recovery law, 42–46
  - survey of, 9
- Syria, asset recovery in, 47–54
- Taliban, 243–248
  - frozen assets of, 46–47
- targeted financial sanctions
  - counter-terrorist sanctions regimes, 46–47
  - equality, interaction with rights to property, 259–261
  - norm conflicts in asset recovery and, 170–171
  - procedural proportionality in, 243–248

- technical assistance/technical cooperation principles, duty to cooperate for the purposes of confiscation and, 124–126
- temporal scope of property rights, 144–145, 183–184
  - under ACHR Art.21, 266
  - in confiscation orders, 255–256
- territoriality principle, mandatory assumptions of jurisdiction and, 59–60
- territorial scope of property rights, 146–172, 183–184
  - ACHR provisions concerning, 267–269
- adverse consequences of extradition and, 148
- in AfCHPR Art. 14 provisions, 276–279
- cooperative confiscations, ECHR concept of jurisdiction and, 154–162
- flagrant denial of justice in foreign penalty enforcement, 150–152
- right to fair trial and international cooperation and, 149–150
- terrorism financing
  - COE convention on, 87–89
  - requesting state proportionality and, 243–248
- thing-based confiscation
  - AfCHPR Art. 14 property rights provisions and, 276–279
  - asset recovery cases and, 182–183
  - bare possession as property, 178
  - bribery involving, 72–73
  - in COEMLC 1990/2005 treaties, 129–131
  - compensation provision and, 257
  - cooperative confiscation and, 298–299
  - corruption definitions and, 12–13
  - deprivation as result of, 107
  - diversion and misuse of assets and, 83–84
  - ECHR cooperative confiscation and, 154–162
  - in personam* property rights and, 173–174
  - in rem* property rights and, 173–174, 175–177
  - interference rules and, 190–195
  - in international law, 138
  - liability of things in, 109–116
  - money laundering and, 87–89
  - personal scope of property rights and, 116–120, 145–146
  - proceeds as property and, 178–181
  - proof of predicate offense and, 108–109
  - property as legitimate expectation and, 181–182
  - property rights and, 29–38
  - proportionality of interference and, 219–222
  - proportionality requirement and, 296–298
  - protection of *bona fide* third parties and, 252–254
  - in public international law, 29–31, 35–37
  - in regional treaties, 124–126
  - substantive scope of property rights and, 269–270
- third party rights. *See also bona fide* third parties; victim communities equality, interaction with rights to property, 259–261
  - EU framework decisions on confiscation and, 131–133
  - international confiscation standards and, 129–131
  - justification for interference and, 271–275
  - persons affected by confiscation, 116–120
  - procedural fairness and proportionality in asset recovery and, 248–252
  - proceeds and instrumentalities as property and, 112–114
  - proportionality in domestic confiscation law, in third-party offenses, 234–235
  - protection of *bona fide* third parties, 252–254
  - public sector bribery, 70–71



- third states
  - foreign confiscation orders and, 295
  - requesting state hearing
  - proportionality and, 240–245
- “three rules” approach to property rights interference, 184–196
- title to property
  - effects of confiscation on, 114–116
  - permanent removal, confiscation rule concerning, 184–185
  - proceeds and instrumentalities as property and, 112–114
- “torture evidence”
  - assurances, effect of, 166–169
  - flagrant denial of rights and degree of injustice rulings, 156–162
- trade and abuse of influence, in
  - anti-corruption treaties, 80–82
- transnational criminal law (TCL)
  - anti-corruption treaties and, 3–5
  - international criminal law versus, 13–17
  - objective elements in public sector bribery, 71–72
- Transparency International,
  - anti-corruption efforts of, 17–20
- transparency principle, persons affected by confiscation and, 116–120
- treaty-based obligations
  - duty to cooperate for the purposes of confiscation and, 127–128
  - European human rights to property and, 141–143
  - peoples’ rights to property and, 35–37
  - property rights as, 31–33
- Treaty of Lisbon, European human rights to property and, 141–143
- Treaty on European Union, persons affected by confiscation and, 116–120
- Treaty on the Functioning of the European Union, confiscation standards and, 103–105
- tribal land claims
  - collective dimension in, 275
  - collective right to wealth and resources under AfCHPR and, 281–288
  - group property rights and, 10–11
  - interference rules and, 270–275, 279–281
  - territorial scope of property rights and, 267–269
- Tsonyo Tsonev v. Bulgaria*, 156–162
- Tunisia, asset recovery in, 47–54
- “two-pronged” test for interference
  - collective right to wealth and resources and, 286–288
  - property encroachment and, 279
- Tymoshenko, Yuliya, 216
- UNC. *See* Charter of the United Nations (UNC)
- UNCATND. *See* United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- “undue advantage”
  - bribe contents and benefits, 72–73
  - consideration for the bribe, 73–74
  - mental elements of, 74–76
- unfairness, allegations of, flagrant denial of rights and degree of injustice and, 156–162
- UN Global Compact, anti-corruption efforts of, 17–20
- United Kingdom, *Nigeria v. Sani Abacha* case and, 40–41
- United Nations (UN)
  - anti-corruption treaties and, 1–3
  - briber identity in public bribery treaties, 65–66
  - contents of bribery provisions in treaties of, 72–73
  - discretionary assumptions of jurisdiction, 61–62
  - investigative and prosecutorial discretion in conventions, 96–97
  - object-based confiscation under instruments of, 114–116
  - public sector bribery offenses, 64–76
- United Nations Convention against Corruption (UNCAC), 16t
  - abuse of functions and breach of duty provisions in, 82–83
  - active nationality principle, discretionary jurisdiction, 60–61



- Arab Spring asset recovery and, 54
- asset diversion and misuse
  - provisions, 83–84
- asset recovery and, 294
- asset recovery definitions, 22–29
- bribe identity in private sector
  - bribery, 78
- concept of confiscation in, 107
- confiscation standards in, 102–106
- connection between thing and
  - offense in confiscation cases, 115–116
- consideration for the bribe, 73–74
- contents of bribery provisions in, 72–73
- context and consequences of private
  - sector bribery, 79–80
- cooperative confiscation and, 101
- corruption definition of, 20–22
- defenses to corruption charges in, 90–92
- definitions contained in, 9
- domestic versus foreign bribery in, 66–70
- dual criminality requirement in
  - cooperative confiscation and, 209
- duty to cooperate for the purposes of
  - confiscation and, 127–128
- duty to cooperate in disposal of
  - confiscated illicit wealth, 137–138
- duty to enable confiscation in, 102–123
- illicit wealth provisions, 84–87
- immunity from jurisdiction in, 97–98
- investigative and prosecutorial
  - discretion in, 96–97
- mandatory assumptions of
  - jurisdiction in, 59–60
- mental elements of bribery, 74–76
- money laundering and concealment
  - provisions, 87–89
- obstruction of justice provision
  - in, 90
- passive personality/protective
  - principles, discretionary jurisdiction, 61–62
- penalties for corruption in, 92
- persons affected by confiscation and, 116–120
- predicate offenses to confiscation in, 107–109
- prevention and investigation of
  - corruption in, 94–95
- private sector bribery in, 77–80
- procedural guarantees in, 95–96
- proceeds, concept in confiscation
  - provisions, 109–111
- property definitions in, 112–114
- public sector bribery offenses
  - provisions, 64–76
- return of assets principle, 1, 4–5
- right to corruption-free society and, 283–286
- sovereignty principle in, 99
- statutes of limitations in, 98
- trading and abusing influence
  - provisions in, 80–82
- United Nations Convention against
  - Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UNCATND), 87–89
- concept of confiscation in, 107
- cooperative confiscation and, 101
- duty to cooperate for the purposes of
  - confiscation and, 127–128
- duty to enable confiscation in, 102–123
- persons affected by confiscation and, 116–120
- United Nations Convention against
  - Transnational Organized Crime (UNTOC), 16t
- active nationality principle,
  - discretionary jurisdiction, 60–61
- concept of confiscation in, 107
- confiscation standards in, 102–106
- connection between thing and
  - offense in confiscation instruments, 115–116
- consideration for the bribe, 73–74
- contents of bribery provisions in, 72–73
- corruption definition in, 20–22
- defenses to corruption charges in, 90–92
- domestic versus foreign bribery in, 66–70
- duty to cooperate for the purposes of
  - confiscation and, 127–128

- United Nations Convention against Transnational Organized Crime (cont.)
  - investigative and prosecutorial discretion in, 96–97
  - mandatory assumptions of jurisdiction in, 59–60
  - mental elements of bribery, 74–76
  - money laundering and concealment provisions, 87–89
  - obstruction of justice provision in, 90
  - passive personality/protective principles, discretionary jurisdiction, 61–62
  - penalties for corruption in, 92
  - persons affected by confiscation and, 116–120
  - prevention and investigation of corruption in, 94–95
  - procedural guarantees in, 95–96
  - proceeds, concept in confiscation provisions, 109–111
  - property definitions in, 112–114
  - public sector bribery offenses in, 64–76
  - sovereignty principle in, 99
  - statutes of limitations in, 98
- Universal Declaration of Human Rights (UDHR)
  - deprivation defined in, 33–35
  - property rights in, 31–33, 37–38
- UN Office on Drugs and Crime (UNODC), asset recovery defined by, 27–28
- UNTOC. *See* United Nations Convention against Transnational Organized Crime
- US Alien Tort Claims Act, *Philippines v. Ferdinand and Imelda Marcos*
  - asset recovery case, 38–40
- US Racketeering and Corrupt Organizations Act, *Philippines v. Ferdinand and Imelda Marcos*
  - asset recovery case, 38–40
- value-based confiscation
  - in anti-corruption instruments, 114–116
  - foreign confiscation orders, 223–228
  - in rem* property rights and, 175–177
  - international confiscation standards, 129–131
  - procedural fairness and proportionality in, 248–252
  - proportionality in ECtHR case law concerning, 230–240
  - van Hoek, Aukje*, 148, 150–152
  - van Offeren v. Netherlands*, 233–234, 248–252
  - Varnava and Others v. Turkey*, 144–145
  - Vatican, flagrant denial of justice standard and, 150–152
  - victim communities
    - collective right to wealth and resources and, 35–37, 281–288
    - double jeopardy and legal certainty in proceedings of, 210–212
    - fairness of enforcement proceeding in, 228–252
    - flagrant denial of rights criteria and, 156–162
    - jurisdiction in cooperative compensation and, 155–156
    - persons affected by confiscation, 116–120
    - property rights of, 35–37
    - public interest in confiscation and, 219–222
    - value of foreign confiscation orders and, 223–228
  - Vulakh and Others v. Russia*, 239
  - Waldemar Nowakowski v. Poland*, 193–196
  - Walsh v. UK*, 248–252
  - Watergate scandal, Foreign Corrupt Practices Act and, 3–5
  - wealth distribution
    - collective right to, under AfCHPR property rights provisions, 281–288
    - group versus individual property rights and, 10–11
    - private property rights and, 6–8
  - Welch v. UK*, 187–189
  - Willcox v. UK*, 240–245

|   |  |
|---|--|
| Wolfsberg Group of financial institutions, asset recovery responsibilities and, 23–27                                       | <i>European Communities (Kadi No. 2)</i> , 193–195, 245–248  |
| World Bank  | <i>Yassin Abdullah Kadi and Al Barakaat International Foundation v. European Commission (Kadi No. 3)</i> , 193–195, 245–248, 255–256 |
| anti-corruption efforts by, 17–20   |  |
| asset recovery defined by, 27–28  | <i>Yildirim v. Italy</i> , 234–235   |
| <i>Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the</i> | <i>Zerbes, Ingeborg</i> , 75   |
|   | <i>Zlinsat v. Bulgaria</i> , 205, 239–240  |