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978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

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## PROPORTIONALITY AND DEFERENCE IN INVESTOR-STATE ARBITRATION

In this study, Caroline Henckels examines how investment tribunals have balanced the competing interests of host states and foreign investors in determining state liability in disputes concerning the exercise of public power. Analyzing the concepts of proportionality and deference in investment tribunals' decision-making in comparative perspective, the book proposes a new methodology for investment tribunals to adopt in regulatory disputes, which combines proportionality analysis with an institutionally sensitive approach to the standard of review. The author argues that adopting a modified form of proportionality analysis would provide a means for tribunals to decide cases in a more consistent and coherent manner, leading to greater certainty for both states and investors. Affording due deference to host states in the determination of liability would address the concern that the decisions of investment tribunals unjustifiably impact on the regulatory autonomy of states.

CAROLINE HENCKELS is a Vice-Chancellor's Postdoctoral Research Fellow in Law at the University of New South Wales, and in 2016 will commence as a Senior Lecturer in Law at Monash University.

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Frontmatter

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---

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Frontmatter

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---

For Casper and Silas

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Caroline Henckels

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## CONTENTS

<i>Acknowledgements</i>	page xi
<i>Table of arbitral awards and cases</i>	xiii
<i>Table of treaties, legislation, and UN documents</i>	xxvi
<i>List of abbreviations</i>	xxxii
<b>1 Introduction</b>	<b>1</b>
1.1 Investor-state arbitration in context	1
1.2 Treaty interpretation and the role of comparative law	7
1.2.1 The relevance of the rules of treaty interpretation to the question of the method and standard of review	7
1.2.2 The role that comparative law can play	10
1.3 Book methodology and structure	20
<b>2 Proportionality and deference in theoretical perspective</b>	<b>23</b>
2.1 Introduction	23
2.2 The structure of proportionality analysis	23
2.3 The desirability of proportionality analysis as a method of review	26
2.4 The relevance of the standard of review to adjudicating regulatory disputes	29
2.4.1 Method of review, standard of review and grounds of review	29
2.4.2 Determining the appropriate standard of review	32
2.5 Rationales for deference in international and supranational adjudication	34
2.5.1 Epistemic deference: responding to normative and empirical uncertainty	35
2.5.2 Regulatory autonomy and proximity	37
2.5.3 Relative institutional competence and expertise	38
2.5.4 Privileging economically developed states?	41
2.6 Conclusion	43

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

viii

CONTENTS

- 3 Operationalizing deference in the context of proportionality analysis: comparative approaches 45**
- 3.1 Introduction 45
- 3.2 Assessing the legitimacy of a regulatory objective: a residual role for adjudicators 48
- 3.3 Suitability: the connection between a measure and its objective 53
- 3.4 Necessity: the least-restrictive means reasonably available 57
- 3.5 Proportionality *stricto sensu*: weighing and balancing the competing interests 62
- 3.6 Conclusion 67
- 4 Methods of review employed by investment tribunals in regulatory disputes 69**
- 4.1 Introduction 69
- 4.2 The areas of international investment law that are the focus of this study 70
- 4.2.1 Fair and equitable treatment 70
- 4.2.2 Indirect expropriation 75
- 4.2.3 Non-discrimination 78
- 4.2.4 Treaty exceptions 81
- 4.3 The methods of review 82
- 4.3.1 Full proportionality analysis and the dangers of substitutionary review 83
- 4.3.2 Least-restrictive means analysis as the limit of review 87
- 4.3.3 Proportionality *stricto sensu* without necessity testing 106
- 4.3.4 Other methods of review 115
- 4.4 Conclusion 122
- 5 The development of an institutionally sensitive approach to proportionality analysis in investor-state arbitration 126**
- 5.1 Introduction 126
- 5.2 Legitimate objective 126
- 5.2.1 Strict approaches 128
- 5.2.2 Explicitly deferential approach or endorsement of state policy 130
- 5.2.3 The relevance of international harmonization or consensus 133
- 5.2.4 Discriminatory objectives 135



Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## CONTENTS

ix

5.3	Suitability	138	
5.3.1	Strict approaches	138	
5.3.2	The desirability of affording a margin for error	140	
5.3.3	Reliance on the state's expertise	142	
5.3.4	The relevance of common state practice	144	
5.3.5	Using the suitability stage to identify pretextual objectives	145	
5.4	Necessity	146	
5.4.1	Strict approaches	147	
5.4.2	Reliance on the state's institutional competence or expertise	147	
5.4.3	Procedural approach to necessity	149	
5.4.4	The burden of proof	151	
5.4.5	The desirability of least-restrictive means analysis in investor-state arbitration	154	
5.5	Proportionality <i>stricto sensu</i>	160	
5.5.1	Restatement of the threshold of (dis)proportionality	161	
5.5.2	Procedural approach to proportionality <i>stricto sensu</i>	161	
5.5.3	The extent of interference with the investment	162	
5.5.4	The desirability of proportionality <i>stricto sensu</i> in investor-state arbitration	164	
5.6	Conclusion	168	
<b>6</b>	<b>Other issues affecting the method and standard of review in investor-state arbitration</b>	<b>172</b>	
6.1	Introduction	172	
6.2	The appropriateness of proportionality analysis as a method of review	172	
6.2.1	The limits of proportionality analysis in investor-state arbitration	173	
6.2.2	The proper place for proportionality analysis in determining liability	175	
6.2.3	The issue of remedies	177	
6.3	The standard of review: other influencing factors and the desirability of a deferential approach	180	
6.3.1	Conflating the grounds of review with the standard of review in fair and equitable treatment cases	181	
6.3.2	Misunderstanding deference and the margin of appreciation	183	
6.3.3	Strategic considerations affecting the standard of review	184	
6.3.4	The desirability of deference in determining state liability	186	

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing  
Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

---

x

CONTENTS

6.4 Conclusion 190

**Conclusion** 193

*Bibliography* 198

*Index* 221

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

---

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Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

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Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

**Investor-state arbitrations**

- Abaclat and others v. Argentina*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011 174
- ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary* ICSID Case No. ARB/03/16, Award, 2 October 2006 146
- ADF Group v. United States of America*, ICSID Case No. ARB(AF)/00/1, Final Award, 9 January 2003 144, 157
- AES Summit Generation Limited and AES-Tisza Erözü Kft v. The Republic of Hungary*, ICSID Case No. ARB/07/22, Award, 23 September 2010 113, 131, 133, 161
- AIG Capital Partners, Inc and CJSC Tema Real Estate Co Ltd v. The Republic of Kazakhstan*, ICSID Case No ARB/01/6, Award, 7 October 2003 113
- Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Award, 26 March 2008 113
- Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014 79, 113, 131, 144
- Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB (AF)/04/5, Award, 21 November 2007 14, 113, 132, 135, 137
- Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013 114
- ATA Construction and Trading Company v. The Hashemite Kingdom of Jordan*, ICSID Case No ARB/08/2, Award, 18 May 2010 178
- Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009 79, 157
- BG Group Plc. v. Argentine Republic*, UNCITRAL, Final Award, 24 December 2007 72
- Biloune v. Ghana*, UNCITRAL, Award on Jurisdiction and Liability, 27 October 1989 76
- Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 129, 157, 184
- Yuri Bogdanov and Yulia Bogdanova v. Republic of Moldova*, SCC Case No. V091/2012, Final Award, 16 April 2013 130
- Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009 79, 121, 130, 157

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

xiv

## TABLE OF ARBITRAL AWARDS AND CASES

- Champion Trading Co, Ameritrade International, Inc, James T Wahba, John B Wahba, Timothy T Wahba v. Egypt*, ICSID Case No. ARB/02/9, Award, 27 October 2006  
157
- Chemtura Corporation v. Government of Canada*, UNCITRAL (NAFTA), Award, 2 August 2010 77, 99–100, 132, 134, 143, 144, 149, 182
- William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL (NAFTA), PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015 121, 130, 133, 141, 146, 149, 157, 180
- CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 116, 120
- CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/08, Award, 12 May 2005 9, 51, 71–2, 74, 87–8, 128–9, 147, 184
- CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/08, Decision of the Ad Hoc Committee on the Application for Annulment of the Argentine Republic, 25 September 2007 87, 88–90
- Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 21 August 2007 76
- Consortium RFCC v. Morocco*, ICSID Case No. ARB/00/6, Award, 22 December 2003 79, 116, 157
- Continental Casualty v. Argentine Republic*, ICSID Case No. ARB/03/09, Award, 5 September 2008 11, 87, 91–7, 111, 114, 117, 131, 137–8, 147–8, 175
- Continental Casualty v. Argentine Republic*, ICSID Case No. ARB/03/09, Decision on the Application for Partial Annulment of Continental Casualty Company and the Application for Partial Annulment of the Argentine Republic, 16 September 2011 153
- Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB (AF)/04/1, Decision on Responsibility, 15 January 2008 14, 81, 113, 135, 157, 170
- Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012 113
- Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 73
- Eastern Sugar B.V. v. Czech Republic*, SCC Case No. 088/2004, Partial Award, 27 March 2007 140, 157
- EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23, Award, 11 June 2012 140, 183
- EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 51, 110, 131, 137, 161, 163, 168
- Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 116, 131, 133, 143

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

XV

- El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 26 April 2006; Award, 31 October 2011 71, 91, 114, 116, 157
- Enron Corporation Ponderosa Assets L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007 51, 72, 74, 87–89, 128–9, 138, 147–8, 153, 157, 184
- Enron Corporation Ponderosa Assets L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on the Application for Annulment of the Argentine Republic, 30 July 2010 89–90, 139
- Feldman Karpa (Marvin Roy) v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Decision on the Merits, 16 December 2002 50, 51, 79, 117, 134, 145, 157
- Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, 17 July 2006 113, 132, 170
- Frontier Petroleum Services v. Czech Republic*, UNCITRAL, Final Award, 12 November 2010 72, 121
- GAMI Investments, Inc. v. Mexico*, UNCITRAL (NAFTA), Final Award, 15 November 2004 14, 116, 121, 130, 132, 136, 141, 146
- Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. The United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010 117, 129, 180, 184
- Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. Estonia*, ICISD Case No. ARB/99/2, Award, 25 June 2001 51
- Glamis Gold Ltd. v. United States of America*, UNCITRAL (NAFTA), Award, 8 June 2009 50, 72, 100–3, 122, 130, 134, 138, 143, 149, 157, 161, 162, 168, 180, 182, 185
- Antoine Goetz v. République du Burundi*, ICSID Case No RB/95/3, (Award Embodying the Parties' Settlement Agreement), 10 February 1999 178
- Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/01, Award, 22 September 2014 113
- Impregilo S.p.A. v. Argentine Republic*, ICSID Case No. ARB/07/17, Award, 21 June 2011 117
- Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine*, ICSID Case No. ARB/08/8, Award, 1 March 2012 113
- International Thunderbird Gaming Corporation v. Mexico*, UNCITRAL, Award, 26 January 2006 11, 13, 53, 102, 114, 131, 157, 161, 180, 181
- Les Laboratoires Servier, S.A.A., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland*, UNCITRAL, Final Award (Redacted), 14 February 2012 113
- Ronald S. Lauder v. Czech Republic*, UNCITRAL, Award, 3 September 2001 113, 116, 157
- Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 9, 113, 121, 131, 132, 144, 157
- L.E.S.I. S.p.A. and ASTALDI S.p.A. v. Algeria*, ICSID Case No. ARB/05/3, Award, 12 November 2008 117
- Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014 77

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

xvi

## TABLE OF ARBITRAL AWARDS AND CASES

- LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006 9, 72, 87, 90–1, 114, 140, 148, 157, 161, 162, 168, 175
- Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011 33
- Link-Trading Joint Stock Company v. Moldova*, UNITRAL, Final Award, 18 April 2002 144
- The Loewen Group and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award, 26 June 2003 157, 185
- Mamidoil Jetoil Greek Petroleum Products Société S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, 30 March 2015 114, 119, 145
- MCI Power Group LC and New Turbine, Inc v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007 113
- Merrill & Ring v. Canada*, UNCITRAL (NAFTA), Award, 31 March 2010 117, 180, 181
- Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000 50, 76, 115, 128, 129, 180, 181
- Metalpar S.A. and Buen Aire S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/5, Award, 6 June 2008 121, 139
- Methanex v. United States*, UNCITRAL (NAFTA), Partial Award, 7 August 2002 158
- Methanex v. United States*, UNCITRAL (NAFTA), Final Award, 3 August 2005 11, 77, 99–100, 125, 132, 136, 142–3, 149, 157, 174
- Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012 121
- MTD Equity Sdn. Bhd. & MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 9
- National Grid Plc v. The Argentine Republic*, UNCITRAL, Award, 3 November 2008 140, 184
- Noble Ventures v. Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005 144, 157
- Occidental Exploration and Production Co. v. Ecuador*, LCIA Case No. UN3467, Award, 1 July 2004 73
- Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012 83
- Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL, Final Award, 23 April 2012 113
- Pantehniki SA Contractors and Engineers (Greece) v. The Republic of Albania*, ICSID Case No ARB/07/21, Award, 30 July 2009 113
- Parkerings-Compagniet AS v. Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007 50, 79, 113, 117, 130, 132, 133, 134



Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

xvii

- Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011 113, 130, 141, 145, 161
- Plama Consortium v. Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008 144, 157
- Pope & Talbot, Inc v. Canada*, UNCITRAL (NAFTA), Award on Merits, 10 April 2001 79, 97–9, 132, 134, 148, 157
- PSEG Global Inc., The North American Coal Corporation, and Konya Ingin Elektrik Uretim ve Ticaret Limited Sirketi v. Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007 118, 121
- Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012 78
- Renta 4 S.V.S.A., Ahorro Corporación Emergentes F.I., Ahorro Corporación Eurofondo F.I., Rovime Inversiones SICAV S.A., Quasar de Valores SICAV S.A., Orgor de Valores SICAV S.A., GBI 9000 SICAV S.A. v. The Russian Federation*, SCC No. 24/2007, Award, 20 July 2012 183
- Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011 77
- Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 121, 174
- Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 9, 51, 71, 75, 77, 111, 112, 114, 116, 130, 138, 148, 157, 161, 168, 174
- SAUR International SA v. Republic of Argentina*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012 79, 113, 121, 140, 184
- S.D. Myers Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000 11, 79, 97–9, 125, 130, 132, 134, 135, 137, 140, 157, 158, 180
- Sempra Energy International v. Argentina*, ICSID Case No. ARB/02/16, Award, 18 September 2007 9, 51, 72, 74, 87–9, 128–9, 134, 147, 153, 157, 170, 184
- Sempra Energy International v. Argentina*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Application for Annulment of the Award, 29 June 2010 89–90
- SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 9
- Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, 3 August 2004, Award, 6 February 2007 9, 76, 121, 157, 183
- Suez, Sociedad General de Aguas de Barcelona S.A., and InterAgua Servicios Integrales del Agua S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/17, Decision on Liability, 30 July 2010 105
- Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. and AWG v. The Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 105

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

xviii

## TABLE OF ARBITRAL AWARDS AND CASES

- Técnicas Medioambientales Tecmed S.A. v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 31, 50, 72, 107, 115, 124, 128, 129, 160, 163, 170, 184
- Teco Guatemala Holdings LLC v. The Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013 121, 130
- Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010 11, 111, 124, 130, 131, 137, 139, 144, 153, 157, 163, 175
- Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Award, 7 June 2012 11, 113, 118, 137
- Señor Tza Yap Shum v. The Republic of Peru*, ICSID Case No. ARB/07/6, Award, 7 July 2011 137
- Ulysseas v. Ecuador*, UNCITRAL, Final Award, 12 June 2102 157
- Marion Unglaube and Reinhard Unglaube v. Costa Rica*, ICSID Case Nos. ARB/08/1 and ARB09/20, Award, 16 May 2012 76
- United Parcel Service of America Inc. v. Government of Canada*, UNCITRAL, Award on the Merits, 24 May 2007 104–5, 132, 134, 149, 154, 157, 158
- Vigotop v. Hungary*, ICSID Case No. ARB/11/22, Award, 1 October 2014 113
- Waste Management v. Mexico*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 157, 174, 181
- White Industries Australia Limited v. The Republic of India*, UNCITRAL, Final Award, 30 November 2011 72
- Yukos Universal Limited (Isle of Man) v. Russian Federation*, PCA Case No. AA 227, Final Award, 18 July 2014 14

**Other investor-state dispute documents**

- Philip Morris Asia Limited v. The Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012–12, Notification of Claim, 27 June 2011 2, 14, 178
- Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Request for Arbitration, 19 February 2010 178

**Other international arbitrations**

- LFH Neer and Pauline E Neer (US v. Mexico)*, Opinion, 15 October 1926, 4 UNRIAA 60 181

**International Court of Justice and Permanent Court of International Justice**

- Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* Judgment of 19 December 2005, ICJ Reports 168 24
- Avena and Other Mexican Nationals (Mexico v. United States of America)* Judgment of 31 March 2004, ICJ Reports 12 7

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

xix

- Continental Shelf (Libyan Arab Jamahiriya v. Malta)* Judgment of 3 June 1985, ICJ Reports 13 24
- Elektronika Sicula S.p.A. (ELSI) (United States of America v. Italy)* Judgment of 20 July 1989, ICJ Reports 15 121
- Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* Judgment of 25 September 1997, ICJ Reports 7 24, 89, 91
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 136 89
- Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 226 24
- Maritime Delimitation in the Black Sea (Romania v. Ukraine)* Judgment of 3 February 2009, ICJ Reports 61 24
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* Jurisdiction of the Court and Admissibility of the Application, Judgment of 26 November 1984, ICJ Reports 392 151
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* Merits, Judgment of 27 June 1986, ICJ Reports 14 24, 42, 151
- Mutual Assistance in Criminal Matters (Djibouti v. France)* Judgment of 4 June 2008, ICJ Reports 177 33
- Navigational and Related Rights (Costa Rica v. Nicaragua)* Judgment of 13 July 2009, ICJ Reports 213 24, 37, 120, 152, 161
- North Sea Continental Shelf (Germany v. Denmark, Germany v. Netherlands)* Judgment of 20 February 1969, ICJ Reports 3 24
- Pulp Mills on the River Uruguay (Argentina v. Uruguay)* Judgment of 20 April 2010, ICJ Reports 14 39, 151, 152
- Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)* Judgment of 17 December 2002, ICJ Reports 625 89
- Territorial Dispute (Libyan Arab Jamahiriya v. Chad)* Judgment of 3 February 1994, ICJ Reports 6 7
- Territorial and Maritime Dispute (Nicaragua v. Colombia)* Judgment of 19 November 2012, ICJ Reports 624 24
- Whaling in the Antarctic (Australia v. Japan)* Judgment of 31 March 2014 31, 39, 120, 136

## Court of Justice of the European Union

- Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] ECR 649 49
- Case 40/82, *Commission v. United Kingdom (Poultry)* [1982] ECR 2793 63
- Case 174/82, *Officier van Justitie v. Sandoz BV* [1983] ECR 2445 59
- Case 72/83, *Campus Oil Limited v. Minister for Industry and Energy* [1984] ECR 2727 50

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

XX

## TABLE OF ARBITRAL AWARDS AND CASES

- Case 240/83, *Procureur de la République v. Association de défense des brûleurs d'huiles usages (ADBHU)* [1985] ECR 531 50
- Joined Cases 60 and 61/84, *Cinéthèque SA and others v. Fédération nationale des cinémas français* [1985] ECR 2605 50
- Case 302/86, *Commission v. Denmark (Bottles)* [1988] ECR 4607 63
- Case C-169/89, *Criminal proceedings against Gourmetteria Van den Burg* [1990] ECR I-2143 63
- Joined Cases C-1/90 and C-176/90, *Aragonesa de Publicidad v. Departamento de Sanidad* [1991] ECR I-4151 63
- Case C-62/90, *Commission v. Germany (Medicines)* [1992] ECR I-2575 151
- Case C-169/91, *Council of the City of Stoke-on-Trent and Norwich City Council v. B & Q Plc* [1992] ECR I-6635 63
- Case C-275/92, *Her Majesty's Customs and Excise v. Gerhart Schindler and Jörg Schindler* [1994] ECR I-1039 50
- Case C-17/93, *Criminal Proceedings against JJJ Van der Veldt* [1994] ECR I-3537 49
- Case C-384/93, *Alpine Investments BV v. Minister van Financiën* [1995] ECR I-1141 59
- Case C-83/94, *Criminal proceedings against Peter Leifer, Reinhold Otto Krauskopf and Otto Holzer* [1995] ECR I-3231 50
- Case C-108/96, *Criminal Proceedings against Dennis Mac Quen, Derek Pouton, Carla Godts, Youssef Antoun and Grandvision Belgium SA* [2001] ECR I-837 59
- Case C-124/97, *Markku Juhani Läära, Cotswold Microsystems Ltd and Oy Transatlantic Software Ltd v. Kihlakunnansyyttäjä (Jyväskylä) and Suomen valtio (Finnish State)* [1999] ECR I-6067 59
- Case C-394/97, *Criminal proceedings against Sami Heinonen* [1999] ECR I-3599 50
- Case C-67/98, *Questore di Verona v. Diego Zenatti* [1999] ECR I-7289 54
- Case C-483/99, *Commission v. France (Golden Shares)* [2002] ECR I-4781 50
- Case C-503/99, *Commission v. Belgium (Golden Shares)* [2002] ECR I-4809 50
- Case C-112/00, *Eugen Schmidberger, Internationale Transporte und Planzüge v. Republik Österreich* [2003] ECR I-5694 63
- Case C-41/02, *Commission v. Netherlands (Vitamins)* [2004] ECR I-11375 49
- Joined Cases C-96/03 & C-97/03, *Tempelman and van Schaijk v. Directeur van de Rijksdienst voor de keuring van Vee en Vlees* [2005] ECR I-1895 19
- Case C-320/03, *Commission v. Austria (Air Quality)* [2005] ECR I-9871 59
- Case C-434/04, *Ahokainen and Leppik v. Virallinen Syyttäjä* [2006] ECR I-9171 54
- Case C-110/05, *Commission v. Italy (Trailers)* [2009] ECR I-519 59
- Case C-491/06, *Danske Svineproducenter v. Justitsministeriet* [2008] ECR I-3339 50
- Joined Cases C-171/07 and C-172/07, *Apothekerkammer des Saarlandes and others and Helga Neumann-Seiwert v. Saarland and Ministerium für Justiz, Gesundheit und Soziales* [2009] ECR I-4171 59
- Case C-89/09, *Commission v. France (Medical Laboratories)* [2010] ECR I-12941 59

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

xxi

## European Court of Human Rights

- Air Canada v. the United Kingdom*, 5 May 1995, Series A No. 316-A 51
- Aksoy v. Turkey*, 18 December 1996, ECHR 1996-V 51
- Allan Jacobsson v. Sweden (No. 1)*, 25 October 1989, Series A No. 163 51, 65
- Animal Defenders International v. the United Kingdom* [GC], No. 48876/08, 22 April 2013 150
- B and L v. the United Kingdom*, No. 36536/02, 13 September 2005 55
- Beyeler v. Italy*, No. 33202/96, ECHR 2000-I 51
- Brannigan and McBride v. the United Kingdom*, 26 May 1993, Series A No. 258-B 51
- Broniowski v. Poland* [GC], No. 31443/96, ECHR 2004-V 50
- Capital Bank AD v. Bulgaria*, No. 49429/99, ECHR 2005-XII 60
- Chassagnou and Others v. France* [GC], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III 65
- Connors v. the United Kingdom*, No. 66746/01, 27 May 2004 60
- Darby v. Sweden*, 23 October 1990, Series A No. 187 51
- Dickson v. the United Kingdom* [GC], No. 44362/04, ECHR 2007-V 66, 162
- Djindrović v. "the former Yugoslav Republic of Macedonia"*, No. 46447/99, 24 February 2005 113
- Družstevnízáložna Pria and Others v. the Czech Republic*, No. 72034/01, 31 July 2008 162
- Evans v. the United Kingdom* [GC], No. 6339/05, ECHR 2007-I 60, 162
- Fadeyeva v. Russia* 9 June 2005, ECHR 2005-IV 55
- Fleri Soler and Camilleri v. Malta*, No. 35349/05, ECHR 2006-X 65
- Former King of Greece and Others v. Greece* [GC], No. 25701/94, ECHR 2000-XII 50, 113
- Fredin v. Sweden (No. 1)*, 18 February 1991, Series A No. 192 65
- Gasus Dosier-und Fordertechnik GmbH v. Netherlands*, 23 February 1995, Series A No. 306-B 51
- Gladysheva v. Russia*, No. 7097/10, 6 December 2011 64
- Grainger and Others v. United Kingdom*, No. 34940/10, 10 July 2012 51
- Hamer v. Belgium*, No. 21861/03, ECHR 2007-V 51
- Handyside v. the United Kingdom*, 7 December 1976, Series A No. 24 54
- Hatton and Others v. the United Kingdom* [GC], 8 July 2003, ECHR 2003-VIII 54
- Hentrich v. France*, 22 September 1994, Series A No. 296-A 51, 60
- The Holy Monasteries v. Greece*, 9 December 1994, Series A No. 301-A 51
- Hutten-Czapska v. Poland* [GC], No. 35014/97, ECHR 2006-VIII 65
- Immobiliare Saffi v. Italy* [GC], No. 22774/93, ECHR 1999-V 65
- Jahn v. Germany*, [GC], Nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI 50, 65, 93
- James and Others v. the United Kingdom*, 21 February 1986, Series A No. 98 31, 50, 60, 65, 108

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

xxii

## TABLE OF ARBITRAL AWARDS AND CASES

- J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], No. 44302/02, ECHR 2007-III 65
- Leander v. Sweden*, 26 March 1987, Series A No. 116 51
- Lindheim and Others v. Norway*, Nos. 13221/08 and 2139/10, 12 June 2012 65
- Lithgow and Others v. the United Kingdom*, 8 July 1986, Series A No. 102 50, 65
- Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, Reports of Judgments and Decisions 1996-IV 108
- Maurice v. France* [GC], No. 1513/03, 6 October 2005 60
- Mellacher and Others v. Austria*, 19 December 1989, Series A No. 169 51, 60, 108
- National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, Reports of Judgments and Decisions 1997-VII 51
- OAo Neftnaya Kompaniya Yukos v. Russia*, Application No. 14902/04, 20 September 2011 14
- Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, Series A, No. 222 51, 65, 113
- Richet and Le Ber v. France*, Nos. 18990/07 and 23905/07, 18 November 2010 64
- Sabou and Pircalab v. Romania*, No. 46572/99, 28 September 2004 55
- Saliba and Others v. Malta*, No. 20287/10, 22 November 2011 65
- Sarica and Dilaver v. Turkey*, No. 11765/05, 27 May 2010 65
- Spadea and Scalabrino v. Italy*, 28 September 1995, Series A No. 315-B 51
- Sporrong and Lönnroth v. Sweden*, 23 September 1982, Series A No. 52 51, 64, 65, 162
- Stefanetti and Others v. Italy*, Applications Nos. 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10, 15 April 2014 64
- Tre Traktörer AB v. Sweden*, 7 July 1989, Series A No. 159 60
- Veselinski v. "The former Yugoslav Republic of Macedonia"*, No. 45658/99, 24 February 2005 113
- Znamenskaya v. Russia*, No. 77785/01, 2 June 2005 55

**World Trade Organization and General Agreement on Tariffs and Trade***GATT Panel Reports*

- United States-Section 337 of the Tariff Act of 1930*, BISD 36S/345, 7 November 1989 61

*WTO Panel Reports*

- Argentina-Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*, WT/DS155/R, 19 December 2000 57
- Australia-Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS434, pending 14

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF ARBITRAL AWARDS AND CASES

xxiii

- Australia-Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS435, WT/DS441, WT/DS458, WT/DS467, pending 14
- Brazil-Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, 17 June 2007 52, 55, 57, 61, 66, 90, 93, 159
- China-Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R, 12 August 2009 53
- European Communities-Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/R, 18 September 2000 29, 48, 52, 56, 159
- European Communities-Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R and WT/DS401/R, 25 November 2013 57
- Mexico-Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States*, WT/DS132/R, 22 June 2001 14
- United States-Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R, WT/DS386/R, 18 November 2011 61, 134
- United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, 10 November 2004 52, 55, 57, 61, 66, 151, 159
- United States-Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/R, 2 September 2011 176

*Appellate Body Reports*

- Australia-Measures Affecting the Importation of Apples from New Zealand*, WT/DS367/AB/R, 29 November 2010 52, 143
- Australia-Measures Affecting Importation of Salmon*, WT/DS18/AB/R, 6 November 1998 62
- Brazil-Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, 3 December 2007 52, 55, 57, 61, 66, 90, 93, 159
- Chile-Tax Measures on Alcoholic Beverages*, WT/DS87/AB/R, 13 December 1999 176
- Dominican Republic-Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R, 25 April 2005 53
- European Communities-Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, 12 March 2001 29, 48, 52, 56, 159
- European Communities-Measures Affecting Livestock and Meat (Hormones)*, WT/DS26 & 48/AB/R, 16 January 1998 33
- European Communities-Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R and WT/DS401/AB/R, 22 May 2014 57
- Japan-Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, 4 October 1996 52
- Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, 11 December 2000 29, 47, 52, 53, 55, 61, 66, 134, 151, 159, 162

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

xxiv

## TABLE OF ARBITRAL AWARDS AND CASES

- Mexico-Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, 6 March 2006 14, 55
- United States-Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R, 29 June 2012 61, 134
- United States-Continued Suspension of Obligations in the EC-Hormones Dispute*, WT/DS320/AB/R, WT/DS321/AB/R, 16 October 2008 47, 52, 56, 142, 143, 152
- United States-Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, WT/DS296/AB/R, 27 June 2005 47
- United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, 12 October 1998 53, 56, 57
- United States-Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS399/AB/R, 5 October 2011 47
- United States-Measures Affecting the Cross Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, 7 April 2005 52, 55, 57, 61, 66, 151, 159
- United States-Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, 4 April 2012 176
- United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, 16 May 2012 56, 61, 96, 151, 176
- United States-Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand*, WT/DS177/AB/R, WT/DS178/AB/R, 1 May 2001 47
- United States-Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, 29 April 1996 56

## Domestic cases

## Canada

- Dunsmuir v. New Brunswick* [2008] 1 SCR 190 118
- United Mexican States v. Metalclad Corporation* (2001) 14 BLR (3d) 285, 89 BCLR (3d) 359, 2001 BCSC 664 50, 76, 115, 128, 129, 180, 181

## United Kingdom

- Associated Provincial Pictures Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223 118
- Belfast City Council v. Miss Behavin' Ltd* [2007] 1 WLR 1420; [2007] 3 All ER 1007 150
- R (Begum) v. Governors of Denbigh High School* [2007] 1 AC 100; [2006] 2 WLR 719; [2006] 2 All ER 487 150
- R (SB) v. Governors of Denbigh High School* [2005] 1 WLR 3372; [2005] 2 All ER 396 150



Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing  
Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

---

TABLE OF ARBITRAL AWARDS AND CASES

XXV

*United States*

*Ethyl Corp. v. Environmental Protection Agency* 426 U.S. 941 (1976) 118

*Jacobellis v. Ohio*, 378 U.S. 184 (1964) 124

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF TREATIES, LEGISLATION, AND UN DOCUMENTS

### *Treaties*

- Agreement between the Argentine Republic and the Republic of France for the Promotion and Reciprocal Protection of Investments, Paris, 3 July 1991, in force 3 March 1993, 1728 UNTS 298 175
- Agreement between the Belgium-Luxembourg Economic Union, on the one hand, and the Republic of Tajikistan, on the other hand, on the reciprocal promotion and protection of investments, Brussels, 10 February 2009, not in force 181
- Agreement between the Government of Canada and the Government of the Eastern Republic of Uruguay for the Promotion and Protection of Investments, Ottawa, 29 October 1997, in force 2 June 1999 82
- Agreement between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, Ottawa, 28 October 1986, in force 8 November 1986 98
- Agreement between the Government of Hong Kong and the Government of Australia for the Promotion and Protection of Investments, Hong Kong, 15 September 1993, in force 15 October 1993, 1748 UNTS 385 71, 181
- Agreement between the Government of the Republic of Croatia and the Government of the Republic of India on the Promotion and Reciprocal Protection of Investments, New Delhi, 4 May 2001, in force 19 January 2002 82
- Agreement between the Government of the Republic of Croatia and the Government of the Sultanate of Oman on the Promotion and Reciprocal Protection of Investments, 4 May 2004, not in force 71, 181
- Agreement between the Government of the United Arab Emirates and the Swiss Federal Council on the Promotion and Reciprocal Protection of Investments, Dubai, 3 November 1998, in force 16 August 1999 181
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Jamaica for the Promotion and Protection of Investments, Kingston, 20 January 1987, in force 14 May 1987 8
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Promotion and Protection of Investments, London, 14 March 1994, in force 6 January 1995 82

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF TREATIES, LEGISLATION, AND UN DOCUMENTS xxvii

- Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation, Wellington, 10 July 2013, in force 1 December 2013 176
- Agreement between the Swiss Confederation and the Republic of Mauritius Concerning the Promotion and Reciprocal Protection of Investments, Port Louis, 26 November 1998, in force 21 April 2000 71, 82
- Agreement on Subsidies and Countervailing Measures, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, Marrakesh, 15 April 1994, in force 1 January 1995, 1869 UNTS 14 15
- Agreement on Technical Barriers to Trade, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, Marrakesh, 15 April 1994, in force 1 January 1995, 1868 UNTS 120 16, 62
- Agreement on the Application of Sanitary and Phytosanitary Measures, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, Marrakesh, 15 April 1994, in force 1 January 1995, 1867 UNTS 493 16
- Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, Marrakesh Agreement Establishing the World Trade Organization Annex 1C, Marrakesh, 15 April 1994, in force 1 January 1995, 1868 UNTS 201 16, 55, 56, 62, 92, 176
- Agreement on the Mutual Protection of Investments between the Government of the Kingdom of Sweden and the Government of the People's Republic of China, Beijing, 29 March 1982, in force 29 March 1982, 1350 UNTS 255 134
- American Convention on Human Rights, San José, 22 November 1969, in force 18 July 1978, 1144 UNTS 123; (1970) 9 ILM 673 134
- ASEAN Comprehensive Investment Agreement, Cha-am, 26 February 2009, in force 29 March 2012 196
- Australia-Chile Free Trade Agreement, Canberra, 30 July 2008, in force 6 March 2009 8
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 22 March 1989, in force 5 May 1992, 1673 UNTS 57; (1989) 28 ILM 657 98, 132, 134
- Bilateral Agreement for the Promotion and Protection of Investments between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia, Bogotá, 17 March 2010, not in force 196
- Canada Model Foreign Investment Protection Agreement (2004) 78, 82
- Canada-Colombia Free Trade Agreement, Lima, 21 November 2008, in force 15 August 2011 196
- Canada-United States of America Softwood Lumber Agreement, Washington, DC, 29 May 1996, in force 29 May 1996 97, 134
- Chile-Australia Free Trade Agreement, Canberra, 30 July 2008, in force 6 March 2009 8
- Colombia Model Bilateral Investment Treaty (2007) 82

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## xxviii TABLE OF TREATIES, LEGISLATION, AND UN DOCUMENTS

- Common Market for Eastern and Southern Africa Common Investment Area Agreement, Nairobi, 23 May 2007, not in force 82, 196
- Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force 17 December 1975, 1037 UNTS 151; (1972) 11 ILM 1358 134
- Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 22 September 1992, in force 25 March 1998, 2354 UNTS 67; (1993) 32 ILM 1069 134
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, DC, 3 March 1973, in force 1 July 1975, 993 UNTS 243; (1973) 12 ILM 1088 134
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, in force 7 June 1959, 330 UNTS 3; (1965) 4 ILM 532 178
- Convention on the Settlement of Investment Disputes between States and Nationals of other States, Washington, DC, 18 March 1965, in force 14 October 1966, 575 UNTS 159; (1965) 4 ILM 532 2
- Energy Charter Treaty, Lisbon, 17 December 1994, in force 16 April 1998, 2080 UNTS 95; (1995) 34 ILM 360 8, 71, 79, 132, 181
- European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953, 213 UNTS 222 13, 15, 32, 41, 50, 64–5, 81, 165, 177
- Free Trade Agreement between the Government of Canada and the Government of the United States of America, Palm Springs, 2 January 1988, in force 1 January 1989 104
- Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China, Beijing, 7 April 2008, in force 1 October 2008 82, 196
- General Agreement on Tariffs and Trade 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Marrakesh, 15 April 1994, in force 1 January 1995, 1867 UNTS 187; (1994) 33 ILM 1153 15–16, 52, 55–6, 66, 92, 96, 99, 176
- General Agreement on Trade in Services, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, Marrakesh, 15 April 1994, in force 1 January 1995, 1869 UNTS 183; (1994) 33 ILM 1167 15–16, 52, 55–6, 62, 96, 176
- India-Singapore Comprehensive Economic Cooperation Agreement, New Delhi, 29 June 2005, in force 1 August 2005 78
- International Convention for the Regulation of Whaling, Washington, DC, 2 December 1946, in force 10 November 1948, 161 UNTS 72 120
- International Convention on the Simplification and Harmonization of Customs Procedures, Kyoto, 18 May 1973, in force 25 September 1974, 950 UNTS 269 134
- International Covenant on Civil and Political Rights, 16 December 1966, in force 23 March 1976, 999 UNTS 171; 6 ILM 368 18

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Caroline Henckels

Frontmatter

[More information](#)

## TABLE OF TREATIES, LEGISLATION, AND UN DOCUMENTS      xxix

- Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, in force 1 January 1989, 1522 UNTS 3; (1987) 26 ILM 1550 134
- North American Agreement on Environmental Cooperation, Mexico City, Washington, DC, and Ottawa, 9, 12, 14 September 1993, in force 1 January 1994, (1993) 32 ILM 1480 134
- North American Agreement on Labor Cooperation, Mexico City, Washington, DC and Ottawa, 9, 12, 14 September 1993, in force 1 January 1994, (1993) 32 ILM 1499 134
- North American Free Trade Agreement, San Antonio, 17 December 1992, in force 1 January 1994, (1993) 32 ILM 289 32, 64, 79, 98, 99, 104, 134, 181–2, 185, 191
- Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement, Wellington, 16 February 2011, in force 1 March 2013 78
- Protocol on Persistent Organic Pollutants, Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, Aarhus, 24 June 1998, in force 23 October 2003, 2230 UNTS 82; (1998) 37 ILM 505 134
- Statute of the International Court of Justice, Chapter XIV Charter of the United Nations, San Francisco, 26 June 1945, in force 24 October 1945, 33 UNTS 993 19, 24
- Treaty between the United States of America and the Argentine Republic concerning the Reciprocal Encouragement and Protection of Investment, Washington, DC, 14 November 1991, in force 20 October 1994, (1992) 31 ILM 124 4, 8, 71, 82, 87–97, 111, 169, 175
- Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan concerning the Encouragement and Reciprocal Protection of Investment, Washington, DC, 2 July 1997, in force 13 June 2003 71
- Treaty between the Government of the United States of America and the Government of the Republic of Albania concerning the Encouragement and Reciprocal Protection of Investment, Washington, DC, 11 January 1995, in force 4 January 1998 71, 196
- Treaty between the Government of the United States of America and the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment, Bucharest, 28 May 1992, in force 15 January 1994 71, 79
- Treaty between the United States of America and the Arab Republic of Egypt Concerning the Reciprocal Encouragement and Protection of Investment, Washington, DC, 11 March 1986, in force 27 June 1992, (1986) 21 ILM 927 82
- Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, Washington, DC, 27 August 1993, in force 11 May 1997 71, 181, 196
- Treaty establishing the European Economic Community, Rome, 25 March 1957, in force 1 January 1958, 298 UNTS 3 13

Cambridge University Press

978-1-107-08790-3 - Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy

Caroline Henckels

Frontmatter

[More information](#)

## XXX TABLE OF TREATIES, LEGISLATION, AND UN DOCUMENTS

- Treaty of Friendship, Commerce and Navigation between the United States of America and Nicaragua, Managua, 21 January 1956, in force 24 May 1958, 273 UNTS 4 37, 120, 152
- Treaty of Friendship, Commerce and Navigation Between the United States of America and the Italian Republic, Rome, 2 February 1948, in force 26 July 1949, 79 UNTS 171 121
- Treaty on the Functioning of the European Union, Lisbon, 13 December 2007, in force 1 December 2009 15, 32, 41, 49, 81
- Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Marrakesh, 15 April 1994, in force 1 January 1995, 1869 UNTS 401; (1994) 33 ILM 1226 48, 177
- United States Model Bilateral Investment Treaty (1998) 10
- United States Model Bilateral Investment Treaty (2012) 78
- United States-Australia Free Trade Agreement, Washington, DC, 18 May 2004, in force 1 January 2005, (2004) 43 ILM 1248 33, 93, 174, 196
- United States-South Korea Free Trade Agreement, Washington, DC, 30 June 2007, in force 15 March 2012 196
- Universal Postal Convention, Lausanne, 5 July 1974, in force 1 January 1976, 1008 UNTS 417 134
- Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 UNTS 331; (1969) 8 ILM 679 7, 8

**United Nations documents**

- International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, UN GAOR, 56th sess., Supp No 10, UN Doc A/56/10 (3 August 2001) 88
- UNESCO Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works (19 November 1968) 134

**Arbitration rules**

- ICSID Rules of Procedure for Arbitration Proceedings (2006) 151
- UNCITRAL Arbitration Rules (2010) 151

**Domestic laws***Ecuador*

- Constitution of the Republic of Ecuador (1998) (repealed) 83