

## INDEX

- accountability, 5, 15, 288–290, 294, 371–375
- accountability frameworks, 289
- accountability mechanisms, 373
- administrative reforms, 289
- components, 294–295
- contract, 375
- direct procurement, 29, 85–86
  - controls by independent administrative bodies, 315–318
  - controls on the conduct of officials, 305–313
  - external controls, 89–90
  - hierarchical controls, 313–315
  - internal controls, 86–88, 304–305, 313–319
  - shortcomings, 318–319
- external accountability to suppliers and third parties, 89–90
- external controls, 295–302, 372
  - Board of Auditors, 297–301
  - effectiveness, 303–304
  - Executive Board, 296–297
  - Joint Inspection Unit, 301–302
  - member states' controls, 303
- immunity of international organizations, 323–330
- indirect procurement, 29–30
  - agreements between international organizations, 30
  - contracts between private parties, 30
  - inter-institutional controls, 319–322
  - NEX and loan agreements, 29–30
  - strict inter-institutional accountability system, 105–106
- influence of external oversight, 374
- institutional and functional components, 289
- inter-institutional controls (indirect procurement), 319–322
- internal accountability between subordinates and superiors, 86–88
- internal controls
  - conduct of officials, 305–313
  - direct procurement, 372
  - ethics offices, 305–309
  - hierarchical controls, 313–315
  - independent administrative bodies, 315–318
  - indirect procurement, 373
  - investigative bodies, 309–312
  - shortcomings, 312–313, 318–319
- meaning, 290–293
- Office of Internal Oversight Services, 89–90
- operational definitions, 290–294
  - common features, 294
- private parties in contract execution, 363–364
  - arbitration, 367–369
  - dispute settlement bodies, 364–367
  - 'special' protection, 369–371
- private subjects' rights
  - direct procurement, 331
- private subjects' rights vis-à-vis international organizations, 322, *see also* private subjects' rights vis-à-vis international organizations
- reciprocal accountability, 30
- remedies in indirect procurement, *see* remedies
- vendor selection phase, 361–363
  - administrative appeals and judicial review, 331–345

- accountability mechanisms, 18, 373
  - Board of Auditors, 301
  - direct procurement, 29
  - European institutions
    - European Ombudsman, 341
    - informal complaint, 340
    - judicial review, 342
    - protests to procuring entity, 340
  - executive boards, 296
  - indirect procurement, 29–30
  - Joint Inspection Unit, 296, 301, 302
  - limits, 344, 361–363
  - no mechanisms, 332–333
- accountability to private parties, 363–364
- arbitration and procurement in practice, 367–369
- dispute settlement bodies, 364–367
- ‘special’ protection, 369–371
- adhesion contracts, 418–419
- administrative appeals
  - direct procurement, 331–345
  - indirect procurement, 346–351
  - violations of domestic procurement rules, 356–358
- Administrative Committee on Coordination (ACC), 54–55
- composition, 54–55
- administrative duties on organizations, 4
- administrative law, 16, *see also* international administrative law
  - historic evolution, 11
  - law of public administration, 11
  - law on public administrations, 11
  - protection of private parties’ rights, 369
- administrative reforms, 70–73
  - direct procurement, 73–75
  - direct procurement, partial reforms
    - accountability, 85–90
    - competition, 75–82
    - transparency and publicity, 82–85
  - disintegration of the Soviet bloc, 71–72
  - dissatisfaction with UN management, 70–71
  - indirect procurement
    - accountability mechanisms, 94–95
    - country procurement capacities, 93–94
    - harmonization, 90–92
- adoption of international procurement rules by states
  - constructivist theories, 25–26
  - internal expediency reasons, 27
  - need to gain esteem and a good reputation, 27
  - procedural and administrative nature, 26
- Advisory Committee on Administrative and Budgetary Questions (ACABQ), 79, 289
- African Development Bank (AfDB), 21, *see also* international development banks
- Agreement Establishing the African Development Bank, 39
- applicable procurement rules, 24
- conditions of contract, 253
- foundation, 52
- indirect procurement, 24
- reason giving, 189
- regulatory misalignment, 91
- Rules and Procedures for Procurement of Goods and Works
  - domestic and regional preference, 39
  - eligibility criteria, 39
  - social purposes, 41
  - tender procedures, 42
  - transparency, 162
- Agreement Establishing the African Development Bank
  - supply of goods, works and related services, 39
- Agreement Establishing the African Development Fund
  - supply of goods, works and related services, 39
- Agreement Establishing the Nigeria Trust Fund
  - supply of goods, works and related services, 39

- Agreement on Government Procurement (GPA), 17, 100, 387, 415,
  - applicability, 101–102
  - EU commitments
    - exclusion of Canadian suppliers, 102
  - preferential treatment, 156
  - principles of equality of treatment and non-discrimination, 156
  - publication of award decisions, 175
  - special and different treatment for developing countries, 156
  - subcontracting, 244
- alternative procurement arrangements (APA)
  - Bhutan, 107–108
  - India, 108
  - World Bank, 106, 108
- Amerasinghe, C.F., 397
- American Arbitration Association, 269, 364, 365
- anti-competitive practices, 142–143
  - contract extensions, 146–147
  - direct procurement, 123–151
  - European Court of Auditors, 143
  - European Parliament, 143
  - long-term agreements, use of, 147–151
  - splitting of awards, 142–146, 157–158
- Anti-Corruption Guidelines, 201
- appeal mechanisms, *see* administrative appeals, judicial review
- appeal procedures, 361
  - codification and proceduralization, 362
- applicable law, 97–100
  - arbitration, 269
  - choice of law
    - convenience and efficiency, 271
    - impartiality, 272
  - independence and sovereignty of the organizations, 272
  - need to maintain equal distance from member states, 271
  - position of international organizations compared to nation state, 271
- contracts, 261–262, 286–287
  - choice of law, 270–275
  - decision-making power of organizations, 276–277
  - dispute resolution, 285–286
  - legal history, 262–270
  - substantive issues, 278–285
- contracts between private and international persons, 262
- direct procurement, 100–104
- dispute resolution procedures, 285–286
- indirect procurement, 104–109
  - types of organization, 104
- nature of, 276
- organizations acting as administrative public authorities, 97
- organizations acting as public international subjects, 97
- regulatory hybridization, 419–422
- substantive issues, 278–285
- types of contract, 266–267
- application of international policy considerations, 131
- arbitration, 367–369
  - American Arbitration Association, 269
  - guarantees of impartiality, 257
  - International Chamber of Commerce, 269
  - protection of private parties' rights, 370
  - substantive law, 269
- Asian Development Bank (ADB), 21, *see also* international development banks
- applicable procurement rules, 24
- conditions of contract, 253
- foundation, 52
- indirect procurement, 24
- Procurement Guidelines
  - eligibility criteria, 39
- reason giving, 189
- social purposes, 41

- Asian Development Bank (cont.)
  - tender procedures, 42
  - time frames, 157
  - transparency, 162
- assigning contracts, 243
- autonomy of states, 23, 24, 70, 105
  - publicity requirements, 174
  - requisitioning, 112
  - transparency, 174
- award decisions, 386
  - complaint mechanisms, 347
- award notices
  - degrees of publicity, 175
  - direct procurement, 175–178
  - discretionary publication
    - decisions, 177–178
  - indirect procurement, 178–179
  - no publication requirement, 178
  - strict publication requirements, 176–177
- indirect procurement, 174
- publication, 175–179
  - degrees of publicity, 175
  - vendor selection procedure, 175–179
- Award Review Board (ARB), 336
  - accountability mechanism, 337
- awards, 84–85, 120
- balance of interests, 4, 5, 67–68, 105–106, 416
  - proceduralization, 414–418
  - unilateral rescission for public
    - convenience, 228–233
- bankruptcy, 239–240
- bankruptcy/insolvency of private
  - parties, 239–240
- banks, *see* financial institutions and banks
- Baruch Plan, 49
- Baruch, B., 51
- Batifol, H., 264
  - contracts between private and
    - international persons, 264–265
- best value for money, 384–385, 388, 390, 415, *see also* competition
- Board of Auditors, 79, 297, 303, 391
  - accountability controls, 296, 297–301
  - decentralization process, 87
  - establishment, 89
  - reports on direct procurement, 62
- Bretton Woods, 50
- Busan Partnership for Effective
  - Development Co-operation, 105
- calls for tenders, *see* invitations to tender
- categories of international
  - organization, 9–11
- centralization of organizations
  - economic and technical
    - organizations, 43
- choice of law, 270–275, 286–287
  - convenience and efficiency, 271
  - impartiality, 272
  - independence and sovereignty, 272
  - influence of organizations, 276
    - economic bargaining power, 277
    - general terms and conditions, 277
  - need to maintain equal distance from
    - member states, 271, 278
- position of international
  - organizations compared to
    - nation states, 271
- pre-contractual procedure, 273
- choice of law clauses, 269
- civil law systems, 17, 28, 420
  - indirect procurement through
    - private parties, 28
- classification of international
  - organizations
    - administration structure, 42–44
    - functions performed, 40–42
    - membership, 36–40
    - relationships, 44–46
- clauses exorbitantes*, effects of, 206–207, 230, 250–251
- caps on private parties' liability, 250
- discouragement of bids from smaller
  - suppliers, 250
- flexibility/lack of in negotiations, 250
- selection of certain large
  - suppliers, 250
- closed organizations
  - membership, 37

- codification, 95
  - appeal procedures, 362
  - direct procurement, 55, 63–65
  - indirect procurement, 56, 69–70
- Cold War, 51, 95
- commercial law, general principles, 282
- common law systems, 16, 28
  - contracts, 5
  - indirect procurement through
    - private parties, 28
- common procurement system, 57, 58
- compatibility assessment, 37, 153
  - national and international
    - procurement rules, 24
- compensation for damages, 200, 223, 230, 235, 317, 347
- clauses exorbitantes, 250–251
- performance warranties and, 255–256
- powers to order, 335, 339, 362
  - Board of Auditors, 339
  - Court of Justice of the European Union, 343
- unilateral rescission of contract, 230
- competition, 122, 387, 390, 415, *see also*
  - best value for money
  - control mechanisms, 78
  - direct procurement
    - competition and nationality, 129–134
    - competition and time frames, 138–142
    - extension of existing contracts, 146–151
    - open and restricted competition, 124–129
    - splitting of awards, 142–146
    - waivers of competition, 135–138
  - indirect procurement
    - extending existing contracts, 158
    - long-term agreements, 158
    - nationality and domestic preference, 155–156
    - open competition and waivers, 151–155
    - splitting of awards, 157–158
    - time frames for bid submission, 157
  - competition and its limits, 123
    - direct procurement
      - competition and nationality, 129–134
    - extension of existing contracts, 146–147
    - long-term agreements, 147–151
    - open and restricted competition, 124–129
    - splitting of awards, 142–146
    - time frames for bid submission, 138–142
    - waivers of competition, 135–138
  - indirect procurement, 151
    - extending existing contracts, 158
    - long-term agreement, 158
    - nationality and domestic preference, 155–156
    - open competition and waivers, 151–155
    - splitting of awards, 157–158
    - time frames for bid submissions, 157
  - competition indicators, 158
  - competition procedures
    - avoiding competition
      - splitting of awards, 142–146
    - clauses exorbitantes, impact of, 250–251
  - degree and scope of competition in
    - direct procurement
      - negotiated procedures, 125
    - open procedures, 124
    - restricted procedures, 125
  - European Union, 123
  - international organizations, 123
  - nationality
    - application of international policy considerations, 131
    - application of the donor funding criterion, 131
    - equitable geographical
      - distribution of vendors, 129
    - geographical return criterion, 133
    - restriction of competition, 130
  - procedural innovations within the United Nations, 80–82
  - publicity and transparency, 82–85

- competition procedures (cont.)
  - substantive reforms within the United Nations, 77–80
  - threats to, 76
  - time frames for bid submissions, 138–142
  - United Nations, within, 75–77
  - vendor selection procedures
    - open/restricted competition, 124–129
  - waivers of competition, 135–138
- complaints, 346
  - complaints against international organizations, 352–356
  - powers of banks, 348
- compliance with the obligation of advertisement, 170
- conclusion of contractual arrangements, 204, 258–260
- contractual freedom of private parties (direct procurement), 205–209
  - capacity to enter into a contract, 209–213
  - competition, 216–217
  - freedom of contract, 220–225
  - general terms and conditions, 217
  - legal personality, 209–213
  - liability of private parties, 246–251
  - privileges and immunities, 225–227
  - strict and flexible approaches, 217–220
  - subcontracting, 240–246
  - termination of contract, 227–240
  - types of contracts, 213–216
- contractual freedom of private parties (indirect procurement), 252
  - arbitration, 256–258
  - compensation for damages, 255–256
  - conditions of contract, 253–255
  - performance warranties, 255–256
  - types of contract, 252–253
- conditional contributions, 400–402, *see also* member state contributions
- conduct of officials, 305
  - bodies with investigative powers
    - Office of Audit and Investigations, 311
    - Office of Internal Oversight Services, 309–311
  - concerns about controls, 312
  - ethics offices, 305–309
  - regulation of
    - bodies with investigative powers, 309–312
    - ethics offices, 305–309
    - shortcomings, 312–313
- conflict of interests, 195, 198
  - duties of communication, 198
  - duty to report, 199
- constructivism, 25–27
  - adoption of international procurement rules by states, 25–26
  - internalization, 26
  - international socialization, 26
  - norm emergence, 25
- consulting services
  - direct procurement, 58
  - investigations of agencies, 58
- continental legal systems, *see also* civil law systems
  - public law rules on public procurement, 383–385
- contract clauses, 280
- contract methodology, 268
  - applicable law, 268
  - substantive law, 269
- contract negotiation, 275
- contract without a governing law, 274–275
- contractors
  - selection of, 48
- contracts, 14, 15, 18, 30, 47–51, 120, 418–423
  - applicable law, 261–262, *see also* applicable law
  - content, 215
  - contracts between national administrations and private parties, 396
  - contracts between private and international persons, 262–263,

- see also* contracts between private and international persons
- contracts with external parties, 48
- direct procurement, 30, *see also* direct procurement
- employment contracts of officials, 48
- final approval, 216
- 'fixed' clauses, 223–224
- general terms and conditions, 217
  - freedom of contract, 220–225
  - strict and flexible approaches, 217–220
- indirect procurement, 31, *see also* indirect procurement
- prohibitions connected to the protection of fundamental human rights, 223
- purchase orders compared, 214–215
- contracts between private and international persons, 267
  - Batifol, 264
  - Institut de Droit International, 265
  - Jenks, 263
  - Mann, 262
  - United Nations Charter, 267
- contracts financed by the WB
  - non-OECD suppliers, 403
  - OECD suppliers, 403
- contracts for the purchase, sale and management of real estate, 205
- contracts of financial institutions, 205
- contractual freedom of private parties
  - limits, 244–246
- contractual freedom of states
  - limits, 252
- contractual relationships
  - evolution of theory and practice
    - Batifol, 264
  - contractual capacity of individual agencies, 267
  - contrats administratifs*, 265
  - immunities and privileges, 267
  - Institut de Droit International, 265
  - Jenks, 263
  - Mann, 262
  - contrats administratifs*, 5, 206, 207, 244–246, 265
  - contrats sans loi*, 278–285
  - contributions, *see* member state contributions
  - Convention on the Privileges and Immunities of the United Nations, 326, 363
    - contracts between private and international persons, 267
  - cooperation with private subjects, 3
  - corruption and collusion, 61, 318, *see also* fraud and corruption
    - misprocurement, 94
  - cost-effectiveness, *see* best value for money
  - countries supplying services, goods and works to WB projects, 404
  - Country Procurement Assessment Reviews (CPARs), 70
  - Court of Justice of the European Union (CJEU), 366
    - accountability mechanisms
      - judicial review, 29
    - applicability of EU law, 103
    - compensation for damages, 343
    - complaints procedures
      - judicial review, 342–344
    - dispute resolution, 286, 366–367
    - duty to give reasons, 181
  - damages caused to third parties, 249
  - decentralization of organizations, 43
    - economic and efficiency reason, 43
    - increasing external administrative activity, 43
  - decentralization of procurement
    - activity, 198, 274–275, 288
    - integrity, impact on, 198
  - decision-making balance, 52
    - conditioning financing, 52
  - declarations of the General Assembly, 59
    - local contractors, use of, 59–61

- decolonization, 49, 51, 52, 67, 69, 86, 95, 273, 417
- defining international procurement, 16–17
- delegation of procurement matters, 313
- derivative legal capacity, 209–213
  - European Union, 211
- developing countries, 19, 52, 54, 59, 60, 66, 80, 130, 394, 399
  - Agreement on Government Procurement, 156
  - balance of interests, 67
  - competition, 396
  - preferential treatment, 68
  - suppliers from, 80, 399, 408
  - technical cooperation, 52
- development aid
  - European Union, 2
  - United States, 2
- development banks, *see* international development banks
- development of procurement regulation, 14, 47
  - administrative reforms and procurement regulation, 70–73
  - direct procurement, 73–75
  - partial reforms in direct procurement, 75
- codification, 55
  - direct procurement, 55–56, 63–65
  - indirect procurement, 56
- contract law and, 47–51
  - direct procurement, 47–49
  - indirect procurement, 49–51
- criticisms of UN procurement, 75
  - competition, 75–82
- emergence of procedures, 51–55
  - codification proposals, 55–56
  - coordination and harmonization, 56–58
  - declarations on principles, 59–62
- transition period, 62–63
  - balance of interests (direct procurement), 67–68
  - codification (indirect procurement), 69–70
  - codification and harmonization (direct procurement), 63–65
  - publicity and transparency (direct procurement), 65–67
- development of rights of private subjects, 4
- direct contracts of international organizations
  - common law contracts compared, 418
  - contract between private parties with equal standing compared, 419
- Direct Execution (DEX) procedure, 19, 20
- direct procurement, 5, 32–33
  - actors, 34
  - balance of interests, 67–68
  - codification, 63–65
  - competition procedures, 75–77
    - competition and nationality, 129–134
  - extension of existing contracts, 146–147
  - long-term agreements, 147–151
  - open and restricted competition, 124–129
  - procedural reforms, 80–82
  - splitting of procurement contracts, 142–146
  - substantive reforms, 77–80
  - time frames for bid submission, 138–142
  - waivers of competition, 135–138
- conflict of laws in European Union, 100–104
- contractual freedom and its limits, 205–209
  - capacity to enter into a contract, 209–213
  - general terms and conditions, 217–225
  - liability of private parties, 246–251
  - privileges and immunities, 225–227
  - subcontracting, 240–246
  - termination of contract, 227–240
  - types of contracts, 213–217
- dual approach (restricted procedure and direct contracting), 125
- emergence of procurement procedure, 53–54

- harmonization, 63–65
- internal accountability, 29, 86–88
- internal controls
  - hierarchical control, 313–315
  - independent administrative bodies, 315–318
  - inefficiency, 315
- legal transplant, 379
- publicity and transparency, 65–67, 82–85
- reform, 73–75
- sources of regulation, 21–22
- transparency
  - prior information obligations, 166
  - reasons for decisions, 180–188
- dispute resolution, *see also* arbitration
  - accountability to private parties, 364–367
  - applicable law, 285–286
  - Court of Justice of the European Union, 286, 366–367
  - European Space Agency, 286
  - national tribunals, 367
- dispute settlement bodies
  - ad hoc* tribunals, 365
  - Court of Justice of the European Union, 366–367
  - International Chamber of Commerce, 364
- international judicial bodies, 365–367
- national courts, 367
- national tribunals, 367
- permanent arbitration institutions, 364–365
- dispute settlement provisions, 363
- disseminating information
  - internet, 82
- doctrine of privileges and immunities, 10
- domestic legal personality of organizations, 210, *see also* legal personality
  - attribution of personality by treaties, 211
  - original or derivative compared, 210
- domestic preference, 39, 59–61, *see also* preferential treatment
  - direct procurement, 129–134
  - indirect procurement, 155–156
- domestic public administrations, *see also* national procurement, *see also* national tribunals
  - procurement, 12
- donor funding criterion, 131–133
- duties of exchange of information, 347
- duties of prior information, *see* prior information obligations
- duty to maintain insurance, 249
- Economic and Social Council (ECOSOC), 49, 56, 58, 303
- eligibility criteria
  - eligibility of the bidder, 39
  - eligibility of the goods, works and related services, 39
- emergence and formalization of the procurement needs
  - procurement planning, 110–112
  - requisitioning, 112–113
- emergence of procurement procedures, 51–55
  - administrative reforms, 70–73
    - direct procurement, 73–90
    - indirect procurement, 90–95
  - codification proposals, 55–56, 63–65, 69–70
  - coordinating procurement activities, 56–58
  - declarations on principles, 59–62
  - harmonization (direct procurement rules), 56–58, 63–65
  - harmonization (indirect procurement rules), 69–70
  - publicity and transparency, 65–67
  - reason giving in direct procurement, 65–67
  - transition, 62–63
- English law
  - contractual relationships, 208–209
- equal treatment, 181, 392, 415
  - Treaty on the Functioning of the European Union, 156
- equitable geographical distribution, 59, 60, 67, 68, 301
- competition and, 63, 129–134

- equitable geographical (cont.)
  - inadequate publicity and transparency, 66
  - invited vendors, 129
  - suppliers, 60
- ethics of officials, 194
  - conduct and ethics of officials, 194
  - rules of conduct for international officials
    - autonomy and impartiality, 200
    - discretion, 200
- ethics offices, 305
  - appointment of head, 306
  - investigative powers, lack of, 308
  - reporting obligations, 308
  - role and duties, 307
- EU Commission
  - prior information obligations, 166
  - transparency, 162
- EU Financial Regulation, 102
- EU institutions
  - award notices, 176
  - complaints procedures
    - European Ombudsman, 339
  - informal complaints, 339, 340
  - petitions to the European Parliament, 339
  - publicity obligations, 171
  - vendor selection procedures, 392
- EU procurement law
  - applicability, 104
  - applicability to international organizations, 103
  - harmonization, 102
- Euratom
  - membership, 38
- European Bank for Reconstruction and Development (EBRD), 21, *see also* international development banks
  - applicable procurement rules, 24
  - balanced allocation of risks and responsibilities, 85–86
  - indirect procurement, 24
  - Procurement Policies and Rules, 152
  - reason giving, 189
  - social purposes, 41
  - transparency, 162
  - types of contract, 253
  - waivers of competition, 154
- European Central Bank (ECB), 100–104
- European Convention on Human Rights (ECHR), 327
- European Court of Auditors
  - anti-competitive conduct
    - splitting of procurement contracts, 143
  - publicity obligations, 171
  - splitting procurement contracts, 143
- European Court of Human Rights (ECtHR), 327
  - Waite and Kennedy, 354
- European Court of Justice, *see* Court of Justice of the European Union (CJEU)
- European Development Fund (EDF), 21, *see also* international development banks
  - judicial review, 356
  - prior information obligations, 166
  - publicity obligations, 172
- European institutions
  - integrity, 197
- European Ombudsman
  - accountability mechanisms
    - judicial review, 29
  - complaints procedures, 339, 340–342
  - duty to give reasons, 181
- European Parliament
  - anti-competitive practices
    - splitting of procurement contracts, 143
- European Procurement Directive, 415
- European public procurement, 100
  - procurement regulation, 100
- European Space Agency (ESA), 8, 284
  - complaints procedures, 338
  - dispute resolution, 286
  - extensions of contracts, 150
  - geographical return principle, 133–134
  - immunities and privileges, 284
  - Implementing Instructions, 133
  - independent and impartial review body, 338–339

- European Union (EU), 8
  - accountability mechanisms, 29
  - administrative appeals, 335
  - applicable law, 283
  - domestic legal personality, 210
  - funding of the United Nations, 2
  - judicial review, 335
  - legal framework for public procurement, 103
  - minimum number of vendors to be invited, 128
  - privileges and immunities, 225–227
  - public law rules on public procurement, 385–387
  - splitting of procurement contracts, 145
  - time frames, 140
  - timetables for bid submissions, 138
- ex post* reviews of contracts, 321
- excessive use of purchase orders, 216
- exchange of information
  - complaint mechanisms, 348
- Executive Boards, 303
  - accountability controls, 296–297
- exemption from national taxation, 223
- exigency, 78
  - genuine exigency, 135, 334
- extension of existing contracts
  - direct procurement, 146–147
  - indirect procurement, 158
- external oversight mechanisms, 295
- ‘extraordinary’ contractual provisions, 225
- fair distribution of contractual rights and obligations, 422
- finalité fonctionnelle*, 40
- finalité intégrée*, 41
- financial and management controls, 319–322
- financial institutions
  - competition, 395
  - contracts, 205
  - indirect procurement, 22–27
  - projects funded by, 22–27
  - regulation of procedures, 22–27
- financial institutions and banks
  - complaint procedures, 348
  - control of procurement activities, 70
  - debriefing unsuccessful bidders, 349
  - duties of exchange of information, 347
- financing organizations
  - award decisions, 121, 158
  - international competitive bidding, 394
  - monitoring by, 319
  - securities guaranteeing contractual execution, 255
- financing states
  - conditional contributions, 400–403
  - impartiality and competition, 406
  - interests and principles, 397–407
    - post-contract, 407
  - procurement objectives
    - economic return from procurement activity, 398–400
    - proper management of resources provided, 397–398
- Finnemore, M., 25
- fixed features of international procurement, 18–19, 412
- Food and Agriculture Organization (FAO), 52
  - award notices, 177
  - direct procurement, 125
  - discretion not to employ competitive procedures, 68
  - duties of private parties, 231
  - general principles of commercial law, 282
  - general terms and conditions, 219
  - legal personality
    - functional formulation, 211
  - right to termination contracts for convenience, 233–235
  - termination due to force majeure, 237
  - termination due to non-performance, 234
- force majeure*, 259
  - definition, 236
  - duties of notice, 236
  - duties of private parties, 236–237
  - expenses incurred, 237
  - performance of international organizations, 238

- force majeure (cont.)
  - termination of contractual relationships, causing, 235–238
  - notice, 238
- framework agreements, *see* long-term agreements (LTAs)
- framework contracts, 215, *see* long-term agreements (LTAs)
- fraud and corruption, 140, 344
  - accountability tools, 358–359
  - European Development Fund, 360–361
  - Anti-Corruption Guidelines, 201
  - combatting, 94
  - sanctions, 359
- freedom of contract, 220–222
  - administrations' openness to negotiation, 222
  - clauses on privileges, 223
  - clauses on unilateral rescission, 223
  - compensation for damages, 223
  - conditional nature of strict approaches, 222
  - exemption from national taxation, 223
  - immunity from jurisdiction and execution, 223
  - International Maritime Satellite Organization, 220–221
  - limits imposed by international organizations, 258–260
    - direct procurement, 205–251
    - indirect procurement, 252–258
  - negotiating content of contracts, 222
  - prohibitions connected to the protection of fundamental human rights, 223
  - termination of contractual relationships, 223
- freedom of establishment, 386
- freedom of goods and service, 386
- freedom of movement for workers, 386
- freedom to provide services, 386
- French law
  - clauses exorbitantes*, 209
  - contractual relationships, 206
  - contrats administratifs*, 206, 207, 265
  - contrats sans loi*, 279
  - négligence bancaire*, 354
- functions of organizations, 40–42, 45–46
  - type of procurement, 45
- General Agreement on Tariffs and Trade (GATT), 387
- general standards of conduct
  - guiding documents, 194–198
  - internal rules, 198–200
- general terms and conditions, 217, 281
  - change in legal status of private parties, 239
  - flexible approach, 217, 218–219, 258
    - acceptance with reservation, 222
  - freedom of contract, 220–225
  - private parties' breach
    - defaults, 233–234
    - not meeting essential requirements for performance, 234–235
  - strict approach, 217–218
    - conditional nature, 222
- genuine exigency, 135, 334
- geographical return principle, 133–134
- German law, 232
  - Administrative Procedure Act, 208
  - contractual relationships, 207–208
  - Verwaltungsverträge, 207–208
- global administrative law, 11
  - administrative component, 11–12
  - development of procurement, 411–414
  - global component, 12
  - law component, 12–13
- government procurement defined, 16
- governmental (IGOs) and non-governmental (INGOs) international organizations distinguished, 19, 36–37
- GPA, *see* Agreement on Government Procurement (GPA)
- gross negligence
  - contractors, 250
  - institutions, 250
- guidelines on applicable law
  - Batifol, 264–265

- Institut de Droit International, 265–267
- Jenks, 263–264
- Mann, 262–263
- Secretariat of the United Nations, 267–270
- harmonization of direct procurement
  - rules
    - early attempts, 56–58
    - procurement manuals, 63–65
- harmonization of indirect procurement
  - rules
    - guidelines, 69–70
    - reforms, 90–95
- Headquarters Agreement, 282
- hybrid regulation
  - NEX procedures, 22–27
  - procedures of financial institutions, 22–27
- hybridization of applicable law, 418–423
- identification of the institutional
  - subjects involved, 380
- ILO Administrative Tribunal (ILOAT), 312
- immunity clauses, 223
- immunity from jurisdiction and
  - execution, 223, 225–227, 258–260, 323–330
  - direct procurement specifically, 328
  - European Court of Human Rights, 327
  - evolution of concept, 324
  - financial organizations, 329
  - United Nations Charter, 325–326
- impact of international, supranational and national procurement
  - laws, 100
- impartial treatment and an effective
  - remedy, 337
- impartiality and independence, 196, 385
  - administrative impartiality, 383, 394
  - officials, 195
- indemnification, *see* compensation for damages
- indirect procurement, 5
  - actors, 34
  - codification, 69–70
  - competition procedures, 151
    - extending existing contracts, 158
    - long-term agreements, use of, 158
  - nationality and domestic
    - preference, 155–156
  - splitting of awards, 157–158
  - time frames for bid
    - submission, 157
  - waivers of competition, 151–155
- contract law and, 49–51
- contract notice, 174
- contractual freedom and its
  - limits, 252
  - arbitration, 256–258
  - conditions of contract, 253–255
  - performance warranties and
    - compensation for damages, 255–256
  - types of contract, 252–253
- control and accountability
  - mechanism reforms, 94–95
- emergence of procurement
  - procedure, 54–55
- ethical standards, 201
- financial institutions, 32–33
- harmonization reforms, 69–70, 90–93
- legal context for regulation
  - developments, 49–51
- legal transplant, 379
- letters of assist, 32–33
- NEX procedures, 32–33
- other international organizations, 32–33
- private parties, 32–33
- remedies
  - administrative appeals, 346–351, 356–358
  - complaints against international organizations, 352–356
  - judicial remedies, 351–352, 356–358
  - violation of domestic
    - procurement rules, 356–358

- indirect procurement (cont.)
  - violation of the organizations' procurement rules, 346–351
  - strengthening of country procurement capacities, 93–94
- Industrial Ombudsman, 338, 339
- insolvency of private parties, *see also* bankruptcy/insolvency of private parties
- Institut de Droit International
  - contracts between private and international persons, 265
- institutional structure, 42
  - procurement divisions, 43
- Inter-Agency Procurement Services Unit (IAPSU), 57, 62
- Inter-Agency Procurement Working Group (IAPWG), 62
- Inter-American Arbitration Association, 269
- Inter-American Development Bank (IDB), 21, *see also* international development banks
  - applicable procurement rules, 24
  - foundation, 52
  - indirect procurement, 24
  - reason giving, 189
  - social purposes, 41
  - tender procedures, 42
- interim measures, 325, 328, 329, 330, 335, 339
  - judicial review, 343
  - suspension of tender procedure, 331, 339, 342
- inter-institutional controls on procurement, 319–322
- internal controls on procurement
  - controls by independent administrative bodies, 315–318
  - deficiencies, 315–318
  - hierarchical, 313–315
  - independent controls, 315–318
- internal oversight mechanisms, 294, *see also* internal controls on procurement
- internal procurement
  - external purposes
  - needs of beneficiaries outside the organizations, 19
- international administrations and private subjects, 411
- international administrative law, 3, 411
- International Atomic Energy Agency (IAEA), 58
- International Bank for Reconstruction and Development (IBRD)
  - disbursements, 61
  - immunity, 329
- International Chamber of Commerce (ICC), 269
  - Rules of Arbitration, 286
- International Civil Service Commission (ICSC)
  - accountability, 293
- international commercial arbitration, 256
  - exceptions, 257
  - greater autonomy for the state, 257
  - exemption of borrowing states, 257
- international commercial law, general principles, 283
- international competitive bidding (ICB), 50–51, 61–62, 70
  - direct procurement, 59–61
  - indirect procurement, 61
  - principles of, 59
  - World Bank (WB), 56
- international development banks
  - accountability mechanisms, 94
  - authority, 353
  - claims for damages in domestic courts, 353
  - dissatisfactory outcomes, 90–95
  - increased workload, 72
  - liability
    - lack of supervision and monitoring, 355
    - recognition of, 354–355
  - liability in domestic courts, 353–354
  - monitoring and control rights, 353
  - open and competitive procedures by states, 152
  - vendors bringing damage claims, 353

- International Fund for Agricultural Development (IFAD), 21
  - general terms and conditions, 218
  - social purposes, 41
  - transparency, 162
- international governmental organizations (IGOs)
  - membership, 37
  - non-governmental international organizations distinguished, 36–37
- International Labor Organization (ILO)
  - accountability framework, 294
  - audits, 322
  - Statute of the Administrative Tribunal, 365
- international legal personality, 210, *see also* legal personality
- International Maritime Satellite Organization (INMARSAT), 220
- International Monetary Fund (IMF)
  - legal personality, 212
- International non-governmental organizations (INGOs)
  - international governmental organizations (IGOs) distinguished, 36–37
- International Organization of Supreme Audit Institutions (INTOSAI)
  - internal controls on direct procurement, 304
- international organizations' procurement
  - contract, 30–31
  - interests and principles, 389
    - financing states, 397–407
    - international organizations, 389–397
    - recipient states, 407–409
  - mechanisms of accountability, 29–30
  - modalities of execution, 20–21
  - purposes, 19
  - regulation generally, 21
  - regulation of direct procurement, 21–22
  - regulation of indirect procurement
    - through agreements between international organizations, 27–28
    - through letters of assist, 22
    - through NEX and loan agreements, 22–27
    - through private parties, 28–29
  - types of organizations
    - administration structure and procurement management, 42–44
    - expenditure volumes, 40–42
    - functions of organizations, 40–42
    - membership and restrictions on participation, 36–40
    - relationships, 44–46
- international organizations
  - administrative privilege over private subjects, 4
  - authority exercised by, 8
  - control and accountability mechanisms, 391
  - direct procurement, 21
  - funding, 391
  - importance of procurement, 2
  - increasing magnitude and functions, 9
  - indirect procurement
    - letters of assist, 20–21
    - National Execution (NEX) procedure, 20–21
    - projects funded by financial institutions, 20–21
  - interests and principles, 389–397
  - organizations with economic or technical purposes, 41
  - organizations with military or defence purposes, 41
  - organizations with political and social purposes, 41
  - principal-agent theory, 10
  - treaty-making powers, 10
- international organizations and private parties, relationship between, 5, 12, 187–188
  - regulation of, 3
- international organizations, interests of, 389–397, 416, 417

- international organizations, law of, 9
- international procurement, 1–2
  - actors, 34
  - current practices, 14, 15
  - fixed features, 18, *see* fixed features of international procurement
  - growth of, 2
  - internal purposes
    - functional needs, 19
  - managing resources, 3
  - member state contributions, 2
  - principles, 5
  - purposes, 19
  - reasons, 376
  - rules, development of, 3–5
  - transplanted norms, 379–383
  - variable features, *see* variable features of international procurement
- international procurement rules
  - adoption by states, 26
  - functions, 24–25
  - integration of national legislation, 24, 25
  - internalization, 26
  - national roots, 376
  - substitution for national legislation, 24, 25
- international socialization, 26
- investigative bodies
  - conduct of officials, 309–312
- invitations to tender, 82, 140, 167, *see also* requests for proposals, requests for quotations
  - acceptance of the general terms and conditions, 217
  - advertising, 82
  - contract is attached, 219
  - minimum number of vendors to be invited, 128
  - publicity obligations
    - direct procurement, 167–171
    - indirect procurement, 171–172
  - service contracts, 173
  - supply contracts, 172
  - time frames, 140
  - transparency, 82–83
    - international organizations, 167
    - national public procurement, 167
  - vendors, 127–129
  - works contracts, 173
- Jenks, W., 3, 263, 411, 412
  - contracts between private and international persons, 263–264
- Johannesburg Declaration 2003, 94
- Joint Inspection Unit (JIU), 289, 303, 391
  - accountability controls, 296, 301–302, 304
  - establishment, 89
  - excessive use of purchase orders, 216
- judicial remedies
  - indirect procurement, 351–352
    - violations of domestic procurement rules, 356–358
  - violation of procurement rules, 351–352
- judicial review, 343
- legal context for regulation
  - development, 50
- legal personality
  - analytical-descriptive formulation, 211
  - capacity to enter into a contract, 209–213
  - deduction by interpretation, 212
  - functional formulation, 211
  - reference to an external legal source, 211
  - United Kingdom, 213
  - United States, 213
- legal transplants
  - causes of transplants, 381
  - characteristics, 378
  - definition, 378
  - direction of transplants, 382
  - principles and procedural rules governing international organization procurement, 378
- legitimacy of international organizations, 423–428
  - challenges, 423–426
  - equal distribution of rights and duties, 427
  - evolution of global governance, 426

- exercise of public power, 427
- legitimacy of states compared, 424–426
- levels of transparency and accountability, 426
- legitimacy of states
  - Anglo-American liberal approach, 424
  - continental enlightenment philosophy, 424
- letters of assist, 20, 22
- letters of invitation, 65
- levels of governance, 378
- liability for losses, damage, or injury suffered by contractors, 248
- liability of private parties, 227–228
  - clauses exorbitantes*, 250–251
  - discretion, 248
  - liability for losses, damage, or injury, 248
  - liability towards employees, 246–249
  - liability towards third parties, 249–250
  - professional skills and experience of personnel, 248
- links between the membership, purposes and structure of international organizations, 44–46
- loan agreements, 22–27, 29–30
  - complaint mechanisms, 346
- local and regional procurement, 402, *see also* domestic preference
- long-term agreements (LTAs), 147, 215,
  - anti-competitive practices, 147
  - direct procurement, 147–151
  - indirect procurement, 158
  - joint procurement, 148
  - misuse of, 148–151
- long-term contracts
  - preference for, 48
- loosening of regulatory requirement strengthening and using national procurement arrangements, 105
- Malmendier, B., 353
- Mann, F.A.
  - contracts between private and international persons, 264–265
- market conditions, 50
- Marshall Plan (European Recovery Program, 1948–1952), 50
- member state contributions, 1–2
- peacekeeping operations, 53
- US reductions, 71
- membership and restrictions on participation, 36
  - closed membership, 38
  - distinction between IGOs and INGOs, 36–37
  - distinction between universal and closed organizations, 37–40
  - expanded membership of UN organizations, 51
  - nature of the applicable rules, 44–45
  - procurement, impact on, 44–45
  - types of international organization, 36–40
- misprocurement, 321
- modalities of execution, 18, 20–21
  - direct execution, 20
  - indirect execution, 20
- mutual recognition
  - Treaty on the Functioning of the European Union, 156
- national administrations
  - autonomy, 260
  - monitoring by international financing organizations, 319–322
- national administrative law, 411
- national competitive bidding (NCB), 70
  - assessment of procedures, 108
- National Execution (NEX)
  - procedure, 20
- national legislation
  - suitability to regulate the procurement procedure, 23

- national procurement, 16, 17, *see also*
  - public procurement
  - actors, 34
  - emergence of procedures, 69–70
  - states acting in accordance with international/regional rules, 395
- national procurement
  - arrangements, 24
  - Accra Agenda for Action, 105
  - compatibility with the international organizations' rules, 24
  - Paris Declaration on Aid Effectiveness, 105
- national public procurement
  - interests and principles, 383–389
- national roots of procurement
  - regulation, 377–383
- national tribunals
  - dispute resolution, 367
- nationality and domestic preference, *see* domestic preference
- NATO Procurement Manual
  - time frames, 139
- negotiated procedures, 125
  - waivers of competition, 135–138
- non-disclosure policies, 163
- non-discrimination principle, 386
  - Treaty on the Functioning of the European Union, 156
- non-governmental international organizations (INGOs)
  - membership, 37
- non-performance of private parties
  - termination of contractual relationships, 233–235
- North Atlantic Treaty Organization (NATO), 8
  - award notices, 176
  - integrity, 197
  - liability of private parties, 249
  - publicity obligations, 170
  - splitting procurement contracts, 143
  - notification of intention to award, 189
  - notifying unsuccessful bidders, 65
- Nye, 41
- obligations to report cases of
  - corruption, 199
- obligations to report conflicts of
  - interest, 199
- Office of Audit and Investigations (OAI), 311
  - corruption and collusion, 344
- Office of Internal Oversight Services (OIOS), 77
  - criticisms of procurement function, 75, 76
  - establishment, 89
  - excessive use of purchase orders, 216
  - exemption of goods, 77
  - internal controls, 315–318
  - investigations, 317
  - investigations into conduct of officials, 309
  - rights of both parties, 317
- Office of Legal Affairs (OLA), 84
  - interpretations of accounting rules, 83
- Official Development Assistance (ODA), 404
  - funding of the United Nations, 71
- open competition, 126
- Open Skies programme, 49
- Organization for Economic Co-operation and Development (OECD), 387
  - Methodology for Assessing Procurement Systems (MAPS), 107
- organizations chosen for the
  - study, 7
  - methodology, 7
  - relevance, 7–9
- organizations with economic or technical purposes, 41
  - centralized administrative structure, 43, 44
- organizations with military or defence purposes, 41
  - decentralized administrative structures, 44

- organizations with political and social purposes, 41
  - decentralized administrative structure, 44
  - field procurement offices, 43
- organizations with primary social and humanitarian purposes, 20
- oversight, *see also* accountability, Office of Internal Oversight Services (OIOS)
  - internal and external compared, 294–295
- Padelford, N.J., 41
- parties to contracts, 15
- patterns of reason giving
  - direct procurement
    - compulsory reason giving, 180–183
    - exceptional reason giving, 187
    - no duty to give reason, 187–188
    - optional reason giving, 183–187
  - indirect procurement, 188–193
    - accountability mechanisms, 189
    - EU institutions, 188–189
    - financial institutions, 189–193
- peacekeeping and peacebuilding missions, 19, 86
- Congo (ONUC), 53
- expenditure, 72
- Middle East (UNEF), 53
- splitting of procurement contracts, 144
- performance warranties, 255–256
- personnel
  - actions or omissions of, 249
  - discretion to review, 247
  - liability towards, 246–249
- political bipolarism, 51
- political equidistance of member states, 272–273
- Practical Guide to Contract Procedures (PRAG), 360
- preferential treatment, 68, *see also* domestic preference
- preliminary market consultation
  - EU procurement rules, 102
- pre-qualified firms, 65
- principal-agent theory, 10
- principle contracts
  - duties of winning bidders, 242
  - protection of private parties
    - organizations' notice duties, 243
    - rights of organizations, 242
- principle of single audit, 300
- prior information notices, 165
- prior information obligations, 165–167
- private contractors
  - liability towards employees, 246–249
  - liability towards third parties, 246, 249–250
- private law, general principles, 281
  - protection of private parties' rights, 369
- private parties, 3
  - agreements with organizations, 21, 28–29, 98–99
  - bankruptcy and insolvency, 239–240
  - changes in financial status, 239–240
  - changes in legal status, 238–239
  - development of rights of private subjects, 4
  - freedom of consent, 224
  - limits to contractual freedom, 244–246
  - subcontracting, 240, *see* subcontracting
- private subjects' rights vis-à-vis international organizations, 331–345
  - administrative appeals and judicial review, 331–345
  - direct procurement, 331–345
  - immunity of international organizations, 323–330
    - protection of organizations, 325
    - risk to organizations' unhampered functioning, 325
  - indirect procurement, 345–361
- privilege clauses, 223, 225–227
- privileges and immunities
  - European Union, 226
  - relationships between organizations and private parties, 227
  - United Nations, 226

- proceduralization, 3, 50, 414–418
  - direct procurement, 414–417
  - indirect procurement, 417–418
  - procurement activity, 95, 202–203
- procurement
  - definition, 16
  - principles of
    - competition and its limits, 123–158
    - integrity, 194–202
    - transparency, 158–194
  - procurement by international organizations, 18
  - procurement by states, 18
- procurement contracts
  - common law contracts, 5
  - public law contracts, 5
- procurement contracts of international organizations
  - interpretation, 5
- procurement manuals or procurement guidelines, 200–202
- procurement planning, 110–112
- procurement procedure, 109–110
  - awarding contracts, 120–121
  - emergence and formalization of the procurement needs
    - procurement planning, 110–112
    - requisitioning, 112–113
  - vendor selection, 113–114
    - evaluation of offers, 119–120
    - invitation to bid, 117–119
    - market analysis, 114–115
    - methods of solicitation, 115–117
    - request for quotations, 117–119
    - requests for proposal, 117–119
- Procurement Review Board, 338
- Procurement Task Force
  - limits of oversight, 318
- procurement volumes, 42, 120
- prohibitions connected to the
  - protection of fundamental human rights, 223
- projects funded by financial institutions, 20
- promotion of economic and social growth in developing countries, 394, *see also* developing countries
- proportionality, 212
  - Treaty on the Functioning of the European Union, 156
- protection of private parties' rights
  - effectiveness, 369–371
- public administration, law of, 11
- public administrations, law on
  - accountability, 11
  - transparency, 11
- public and private interests, interaction between, 415
- public procurement, 13, 16, 17
  - definition, 16
  - internationalization of, 17
  - procedural aspects, 17
  - substantive aspects, 17
- publicity and transparency in direct procurement, 65–67, 82–85
  - access to relevant documents, 85
  - balance of interests, 67–68
  - invitations to tender, 82–83
  - opening bids, 83–84
  - standard of publicity, 84
- publicity of decisions
  - award decisions, 175–179
  - calls for tenders, 167–175
  - duties of prior information, 165–167
- publicization
  - procurement activity, 95
- publicness of the rules, 162–165
- purchase orders, 213
  - competition, 216
  - contracts compared, 214–215
  - freedom of contract, 216
- purposes of international procurement, 18, 19
  - economic or technical purposes, 41
  - external purposes, 19
  - internal purposes, 19
  - military or defence purposes, 41
  - political and social purposes, 41
  - regulation, impact on, 19
- qualifications required of personnel, 247

- reason giving, 179–180, 193
  - direct procurement, 65–67, 180–188
    - limits of debriefing, 185–187
  - indirect procurement, 188–193
  - integrity
    - conduct and practice, 194–202
  - organizations, 194–202
- recipient states
  - interests and principles, 407–409
  - interests of, 407–409, 416, 418
    - advantages to national suppliers, 407
  - results of procurement, 407
- reciprocity, 383
- recognition of new rights, 415
- reform initiatives
  - direct procurement, 53–54
    - partial reforms, 75
  - indirect procurement, 54–55
- reforms, 62–63
  - administrative reforms and procurement regulation, 70–73
    - direct procurement, 73–90
  - direct procurement
    - balance of interests, 67–68
    - codification and harmonization, 63–65
    - publicity, 65–67
    - reason giving, 65–67
    - transparency, 65–67
  - indirect procurement
    - codification and standardization, 69–70
- reforms to administrative activities
  - impacting on external public or private subjects, 73
- reforms to general budgets and accounting, 73
- regional organizations
  - applicable law, 283
- registered suppliers, 79–80, 81, 127
- regulated subjects, 21, 28
- regulation
  - direct procurement, 21–22
  - indirect procurement
    - letters of assist, 22
  - NEX procedures, 22–27
  - procedures of financial institutions, 22–27
  - regulation of international procurement, 18
  - regulation of public procurement, 387
  - regulations found in international treaties and agreements, 281
  - regulators, 21, 28
  - relationship between requisitioners and procurement officers, 79
  - remedies
    - vendor selection phase, 331, 345–346
      - administrative appeals, 346–351, 356–358
    - complaints against international organizations, 352–356
      - direct procurement, 331–345
      - fraud and corruption, 358–363
      - indirect procurement, 345–361
    - judicial remedies, 351–352, 356–358
    - violation of domestic procurement rules, 356–358
    - violation of organizations' procurement rules, 346–352
  - reporting obligations, 308, 319
  - request the removal or replacement of personnel, 247
  - requests for expressions of interest (REOI), 169
    - publication of, 170
  - requests for proposals, *see also* invitations to tender
    - time frames, 140
  - requests for quotations, *see also* invitations to tender
    - time frames, 140
  - requisitioning process, 76, 112–113
  - restricted competition, 125
  - restricted selection procedure, 81
  - right to terminate contracts for convenience, 231
- Rousseau, C., 40
- Sikkink, K., 25
- small and medium-sized businesses
  - EU procurement rules, 102
  - splitting procurement contracts, 146

- splitting procurement contracts, 142–146
  - anti-competitive practice
    - European Parliament, 143
  - Best Value for Money (BVM)
    - principle, 142
  - direct procurement, 142–146
  - effects of, 143
  - EU institutions, 145–146
  - European Parliament, 143
  - indirect procurement, 157–158
  - NATO Procurement Manual, 143
  - peacekeeping missions, 144
  - United Nations Development Programme, 143
- standardization of contracts, 274–275
- Standards of Conduct for the
  - International Civil Service, 194
- standards of publicity, 170–171
  - EU institutions, 171
- structure of organizations
  - procurement management, 42–44
  - procurement, impact on, 44
- subcontracting, 259
  - Agreement on Government Procurement (GPA), 244
  - association with undertakings not respecting principles and values, 241
  - general terms and conditions
    - removal of subcontracting companies, 242
    - requirement for awarding organization's consent, 242
  - liability towards employees, 247
  - limits to the contractual freedom of private parties, 244–246
  - national administrations and international organizations compared, 244–246
  - principal contractors
    - liability for contractual performance, 242
  - principle of strict competition and impartiality, 241
  - regulating the subcontract, 241–243
  - risks, 240–241
  - selecting contractors, 240
  - stability of the contractual relationship, impact on, 240
- subcontractors
  - limits to the contractual freedom, 244–246
- subject matter of regulation, 21
- suspension of tender procedures, 331, 338–339, 342–343
- system contracts, 215, *see also* long-term agreements (LTAs)
- taxonomy of procurement types, 14, 31–35
- tender procedures, 41
  - suspension of, 331, 339, 342
- termination for qualified convenience, 230
- termination for simple convenience, 230
- termination of contractual relationships, 223, 227–228
  - changes in the status of the private party, 227, 238–240
  - date of termination, 232
  - force majeure*, due to, 227, 235–238
  - lack of reciprocity, 259
  - non-performance of the private party, 227, 231, 233–235
  - termination for cause, 227–228
  - termination for convenience, 227–228
  - unilateral rescission by organizations, 228–233
- third parties, *see* private parties
- third party liability clauses, 249
- time frames for bid submissions
  - advisory nature, 139
  - binding nature, 138
  - direct procurement, 138–142
  - discretion, 139
  - flexible approach, 139
  - indirect procurement, 157
  - non-binding nature, 140–142
  - shortening of tender period, impact of, 141
- Tokyo Round, 92, 387
- transferring individual rights and obligations, 243

- transparency, 50, 158–162, 396, 415
  - access to documents, 161
  - degrees of, 162
  - international organizations
    - direct procurement, 161
    - indirect procurement, 161–162
  - national public procurement, 158–161
  - publicity of procurement decisions, 160, 165
    - award notices, 175–179
    - calls for tenders, 167–175
    - prior information obligations, 165–167
  - publicness of the rules, 160, 162–165
    - different approaches, 162–165
    - direct procurement, 163
    - indirect procurement, 162
  - reasons for decisions, 161, 179–180
    - direct procurement, 180–188
    - indirect procurement, 188–193
  - Treaty on the Functioning of the European Union, 156
  - Treaty on the Functioning of the European Union (TFEU)
    - free movement of goods, 156
    - freedom of establishment, 156
    - freedom to provide services, 156
  - treaty-making powers of international organizations, 10
  - types of contract
    - purchase orders
      - contracts compared, 214–215
  - types of international organizations' procurement, 34
  - types of international organizations, 14, 31–35
    - governmental and non-governmental international organizations, 36
    - organizations with economic or technical purposes, 41, 43, 44
    - organizations with military or defence purposes, 41, 44
    - organizations with political and social purposes, 41, 43, 44
    - organizations with primary social and humanitarian purposes, 20
    - universal and closed organizations, 36
    - universal and closed organizations distinguished
      - domestic preference, 39–40
      - subjects submitting bids and offers, 38–39
  - ultra vires* doctrine, 209
  - UN Angola Verification Mission (UNAVEM), 76
  - UN/PD
    - procurement volumes, 42
  - UNCITRAL Arbitration Rules, 366
  - UNCITRAL Model Law on Procurement of Goods, Construction, and Services, 84, 85, 126, 282
  - UNESCO Administrative Manual
    - accountability, 142
  - uneven global development, 50
  - UNIDO Procurement Manual
    - time frames, 140
  - UNIDROIT, 275
  - unilateral rescission clauses, 223
  - unilateral rescission for public convenience
    - discretionary and autocratic element, 230
    - minimum notice periods for informing private parties, 230
  - unilateral rescission of contract, 228, 258, *see also* termination of contractual relationships:
    - unilateral rescission by organizations
      - balance of interests, 229
      - compensation for damages, 232
      - convenience
        - qualified and simple convenience distinguished, 228–229, 230
      - discretion, 229
      - exercise of the public function, 229
    - General Terms and Conditions
      - Applicable to FAO Procurement Contracts, 228
    - reasons related to public interest, 230

- unilateral rescission of contract (cont.)
  - reimbursement clauses, 232
  - UNOPS General Conditions for Goods, 228
- United Nations (UN)
  - audits, 322
  - direct procurement, 125
  - duties of private parties, 232
  - efficiency review, 53, 54
  - emergence of procurement procedure, 51–52
  - Fifth (Administrative and Budgetary) Committee, 418–419
  - growth in the costs of activities, 52
  - increasing costs, 52, 71
  - privileges and immunities, 225–227
  - Procurement Division
    - tender announcements, 83
  - Procurement Manual, 28
    - freedom of contract, 222
  - procurement of goods and services, 2–3
  - promotion of American interests, 49
  - reform of procurement methods,
    - procurement rules and regulations
      - external causes, 71–73
      - internal causes, 70–71
  - reversal in the decision-making influence, 52
  - tender procedures, 42
  - unilateral rescission of contract, 228
- United Nations Administrative Tribunal, 412
- United Nations Capital Development Fund (UNCDF), 400
- United Nations Charter, 194
  - capacity to contract, 267
  - contracts between private and international persons, 267
  - domestic legal personality, 210
  - functional formulation, 211
  - immunity from jurisdiction and execution, 325
- United Nations Commission on International Trade Law (UNCITRAL)
  - conciliation and arbitration procedures, 285
- United Nations Conference on Trade and Development (UNCTAD), 53
  - efficiency review, 53
- United Nations Development Programme (UNDP), 2, 20, 24
  - accountability, 293
  - accountability mechanisms, 334–335
  - administrative complaints, 334
  - agreements with the United Nations, 27
  - applicable procurement rules, 24
  - award notices, 176
  - donor funding criterion, 132
  - foundation, 52
  - integrity, 196
  - international policy considerations, 131
- Office of Project Execution (OPE), 57
- procurement volumes, 42, 52
- Programme and Operations Policies and Procedures, 28
  - extension of contracts, 149
  - general terms and conditions, 218
- publicity obligations, 170
- splitting of procurement contracts, 143, 144
- tender procedures, 42
- waivers of competition, 137
- United Nations Dispute Tribunal (UNDT), 312
- United Nations Educational, Scientific and Cultural Organization (UNESCO), 71
  - audits, 322
  - legal personality, 212
- United Nations Financial Regulations and Rules, 168–169
- United Nations Financing System in Science and Technology Development (UNFSSTD), 400
- United Nations High Commissioner for Refugees (UNHCR)
  - audits, 322
  - duties of private parties, 232

- termination due to
    - non-performance, 234
  - unilateral rescission of contract, 68, 228
  - weaknesses in the procurement system, 62
- United Nations Hybrid Operation in Darfur (UNAMID), 314
- United Nations Industrial Development Organization (UNIDO), 53
  - complaints procedures, 335
  - efficiency review, 53
  - general terms and conditions, 231
- United Nations International Children's Emergency Fund (UNICEF), 120–121
  - Instructions to Bidders & General Terms and Conditions for Procurement of Services, 218
  - long-term agreements, 150
  - procurement volumes, 42
  - tender procedures, 42
  - termination due to
    - non-performance, 235
  - waivers of competition, 137
  - weaknesses in the procurement system, 62
- United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), 141
  - splitting procurement contracts, 144
- United Nations Office for Project Services (UNOPS)
  - audits, 322
  - award notices, 176
  - complaints procedures, 335
  - General Conditions for Goods, 230
  - publicity obligations, 170
  - termination due to *force majeure*, 237
  - termination due to
    - non-performance, 234
  - time frames, 139
  - waivers of competition, 136
- United Nations Office of Accountability and Oversight (OIAO), 289
- United Nations Operation in Côte d'Ivoire (UNOCI), 141
- United Nations Organization
  - Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), 141
  - splitting procurement contracts, 144
- United Nations Policies and Procedures Handbook, 76
- United Nations Population Fund (UNFPA)
  - audits, 322
  - award notices, 176
  - long-term agreements, 150
  - time frames, 138
  - waivers of competition, 138
- United Nations Procurement Practitioner's Handbook, 125, 390
- United Nations Relief and Works Agency (UNRWA), 61
  - direct procurement, 125
  - donor funding criterion, 132
  - waivers of competition, 137
- United Nations reports
  - contracts between private and international persons, 267–270
- United Nations Stabilization Mission in Haiti (UNSTAMIH), 141
  - splitting procurement contracts, 144
- United Nations Sudano-Sahelian Office (UNSO), 400
- United States, 95
  - criticisms of WB, 91
  - economic return and financial contribution, 404–406
  - funding of the United Nations, 2, 49, 71, 392
- United States Government
  - Accountability Office (US GAO)
    - decentralization process, 87
- Uniting for Peace resolution, 49
- universal and closed organizations
  - distinguished, 36, 37–40

- Universal Declaration of Human Rights, 49
- universal organizations
  - membership, 38
- unsuccessful vendors
  - debriefing, 189
- Valticos, N., 371
- variable features of international procurement, 18–19, 412
  - accountability, 29–30
  - contracts, 30–31
  - direct procurement, 21–22
  - indirect procurement
    - agreements between international organizations, 21, 27–28
    - contracts between the organization and private parties, 21, 28–29
    - letters of assist, 22
    - NEX and loan agreement, 22–27
  - modalities of execution, 20–21
  - purposes, 19
  - regulation, 21
- vendor selection phase, 18, 113–114
  - developments and limits of accountability, 361–363
  - evaluation of offers, 119–120
  - invitations to tender, 118
  - market analysis, 114–115
  - methods of solicitation, 115–117
  - protection of private subjects
    - administrative appeals and judicial review, 331–345
  - developments and limits of accountability, 361–363
  - indirect procurement, 345–361
- questioning organizations' administrative actions, 331–345
- reports comparing bids, 320
- requests for proposals, 118
- requests for quotations, 118
- vendor selection procedures, 14
  - accountability, 30
  - conclusion of a contractual arrangement
    - direct procurement, 202–203, 205–251
    - indirect procurement, 204
  - direct procurement, 393
    - direct contracting/negotiating procedure, 125
    - restricted procedures, 125
  - EU institutions, 392–393
  - indirect procurement, 69–70, 393
    - direct contracting/negotiating procedures, 125
    - open procedures, 125, 126
    - restricted procedures, 125, 126, 127
  - international competition, 258
  - international competitive bidding, 61–62
    - no publicity requirements, 205
    - numbers of vendors, 127–129
    - World Bank (WB), 50–51, 61–62
  - Verwaltungsverträge*, 207
  - violation of domestic procurement rules
    - indirect procurement, 356–358
- Virally, M., 40
- waivers of competition
  - competition procedures, 135
  - controls over, 135
  - direct procurement, 135–138
  - indirect procurement, 151–155
  - negotiated procedures, 135–138
- wilful misconduct by contractors, 250
- Williams-Elegbe, S., 354
- World Bank (WB), 20
  - Anti-Corruption Guidelines, 201
  - applicable procurement rules, 24
  - Articles of Agreement, 54
  - conditions of contract, 253
  - contracts financed by, 403
  - debriefing, 190
  - establishment, 49
  - first formal procurement directive, 54
  - increased workload, 72
  - indirect procurement, 24, 49–51
    - codification, 69
    - reform, 90–95
  - Inspection Panel, 350

international competitive bidding, 56 reason giving, 189 Regulations for IPF Borrowers, 356 single loan agreements, 50 social purposes, 41 tender procedures, 42 transparency, 162 US interests, 50 vendor selection methods, 50–51, 61–62 waivers of competition, 154	World Health Organization (WHO), 2 audits, 322 direct procurement, 125 legal personality functional formulation, 211 restricted competition, 126
World Food Programme (WFP), 52 award notices, 177 direct procurement, 125 discretion not to employ competitive procedures, 68 donor funding criterion, 132 local and regional procurement, 402 procurement rules, 131–132 procurement volumes, 42 tender procedures, 41	World Intellectual Property Organization (WIPO) dispute settlement clauses, 363 investigative bodies, 309 legal personality functional formulation, 211 World Trade Organization (WTO) Agreement on Government Procurement (GPA), 17  zero tolerance in respect of receiving any favour, gift or hospitality, 197 zero tolerance to compromise solutions, 196