The first two decades of the twenty-first century witnessed a series of large-scale sovereign defaults and debt restructurings, in which sovereigns struggled to negotiate with recalcitrant bondholders, particularly hedge funds. Also, the outbreak of the COVID-19 pandemic in 2020 heralded a bleak financial outlook for many developing and emerging market countries, requiring sovereign debt restructuring in times of great macroeconomic uncertainty. Given the absence of a multilateral mechanism for sovereign debt restructuring equivalent to domestic corporate bankruptcy system, however, defaulted sovereigns often suffer from holdout litigation wrought by bondholders. This book proposes ways in which such legal actions could be regulated without the undue expense of bondholders’ remedies by exploring the mechanism of balancing bondholder protection and respect for sovereign debt restructuring at various stages of litigation and arbitration proceedings.

KEI NAKAJIMA is Associate Professor of International Law at the University of Tokyo. Previously he worked at the International Court of Justice in The Hague as an Associate Legal Officer for several judges. Kei completed his two doctoral studies in Tokyo and Geneva.
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THE INTERNATIONAL LAW OF SOVEREIGN DEBT DISPUTE SETTLEMENT

KEI NAKAJIMA

The University of Tokyo
My debt to Sayoko
CONTENTS

Acknowledgements page xi
Table of Cases xiii
Table of Statutes, Bills and Treaties xxvi
List of Abbreviations xxix

Introduction 1

1 Setting the Scene 3
1.1 Problem Identified: Holdout Litigation 7
  1.1.1 Vultures’ Victory: The Rise of Holdout Litigation 7
  1.1.2 Normative Challenges Posed by Holdout Litigation 13
1.2 Perspective of This Study 15
1.3 Sovereign Debt Discourse within the Broader Context of Contemporary International Law 16
1.4 Terminology and Scope of This Study 18

2 The Emerging Framework for Sovereign Debt Discourse 21
2.1 Limited Relevance of Existing Mechanisms 21
  2.1.1 The Paris and London Clubs 21
  2.1.2 HIPC Initiative 23
  2.1.3 Odious Debt Doctrine 24
  2.1.4 The COVID-19 Debt Service Suspension Initiative 26
2.2 Traditional Discourse on Regime Designs 27
  2.2.1 Centralised Statutory Approach 28
  2.2.2 Decentralised Contractual Approach 33
2.3 Modern Discourse on Interpretative Framework 37
  2.3.1 Sanctity-of-Contract Paradigm 37
  2.3.2 Public Law Discourse on Sovereign Debt Restructuring 40
  2.3.3 A Regulatory Approach to Sovereign Debt Restructuring 48
  2.3.4 Structure of This Study 56
PART I  Regulation through Contract and Litigation  59

3  Sovereign Immunities and Other Statutory Mechanisms Regulating Holdout Litigation  61
  3.1 Jurisdictional Immunities  61
    3.1.1 Waiver of Jurisdictional Immunity  62
    3.1.2 Commercial Activities Exception  64
    3.1.3 Immunity from Discovery  70
  3.2 Immunity from Measures of Constraint  72
    3.2.1 Waiver of Immunity from Measures of Constraint  73
    3.2.2 Relevance of the Purpose of Assets  78
    3.2.3 Immunity of Central Bank Property from Execution  79
  3.3 Other Mechanisms Regulating Legal Actions  84
    3.3.1 Legislation Excluding Attachment of Foreign Property  85
    3.3.2 Stay of Proceedings during Sovereign Debt Restructuring  91

4  Collective Action Clauses: Contractual Regulation of Holdout Litigation  100
  4.1 Traditional CACs  101
    4.1.1 The Genesis of CACs  102
    4.1.2 Standardisation of Traditional CACs  104
    4.1.3 Balancing in Traditional CACs  106
  4.2 Enhanced CACs  107
    4.2.1 Arrangements Facilitating Sovereign Debt Restructuring  110
    4.2.2 Arrangements Introducing Accountability Mechanisms  117
    4.2.3 Filing Unintended Loopholes: Re-designation and ‘Pac-man’  122
  4.3 Retrofit CACs: The Case of the Greek Bondholder Act  126
    4.3.1 The Saga of the Greek Financial Crisis  128
    4.3.2 Retrofit CACs and the Protection of Properties  130

5  The Pari Passu Clause: Managing Holdouts through Injunctive Relief  139
  5.1 Interpretative Discourse  140
    5.1.1 Pari Passu as Equal Ranking or Ratable Payment  140
    5.1.2 Pari Passu Clauses and Sovereign Debt Restructuring  145
  5.2 The NML Saga  147
    5.2.1 Shock of NML v. Argentina  148
    5.2.2 Scope of the NML Rulings  154
CONTENTS

5.3 Ratable Payment as Injunctive Relief 156
  5.3.1 US Court Jurisprudence 156
  5.3.2 Development in Contractual Arrangements 159
  5.3.3 An Alternative Interpretation and Regulatory Implementation of Pari Passu Clauses 161

PART II Regulation through Treaty and Arbitration 167

6 Jurisdiction of Arbitral Tribunals over Sovereign Debt Disputes 169
  6.1 Investor–State Arbitration as a Means to Settle Sovereign Debt Disputes 169
  6.2 Coverage of Sovereign Bonds in Investment Treaties 172
    6.2.1 Inclusion and Exclusion of Sovereign Bonds 172
    6.2.2 Sovereign Bonds Subject to a ‘Negotiated Restructuring’ 174
  6.3 Interpretation of ‘Investment’ in the Absence of a Definition 181
    6.3.1 The So-Called ‘Outer Limit’ and the Relevance of the Salini Test 182
    6.3.2 Evolving Meaning of the Term ‘Investment’ 185
    6.3.3 Sovereign Bonds as Investment 186

7 Admissibility of Sovereign Bond Claims: Mass Claims Arbitration as a Supplemental Leverage over Holdouts 202
  7.1 Regulatory Mass Arbitration 206
    7.1.1 Aggregate or Representative: Two Models for Mass Arbitration 206
    7.1.2 Nature of Arbitration and Issues of Consent 208
    7.1.3 Justifications for Mass Arbitral Proceedings 210
  7.2 Multi-Party Investment Arbitration 212
    7.2.1 Multi-Party Investment Cases Other than Sovereign Debt Disputes 213
    7.2.2 Exceptional Features of Sovereign Debt Disputes 217
  7.3 Regulatory Mass Investment Arbitration 219
    7.3.1 Jurisdiction: Issues of Consent 220
    7.3.2 Admissibility: Arbitration as Remedy or Regulation 222
  7.4 Article 44 of the ICSID Convention: A New Interpretation 227
    7.4.1 Reinterpretation of the Silence 227
    7.4.2 A Sketch for the Regulatory Operation of Article 44 231
    7.4.3 Procedural Safeguards 234
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When I started my PhD work in Geneva in 2013, we were still in the middle of the unprecedented sovereign debt dispute between hedge funds and the Argentine Republic, which had defaulted more than a decade ago. The media covered the development of this historical ‘bond war’ on a daily basis. Cases were routinely reported from various jurisdictions across the world. The problem of holdout litigation began to be discussed at various United Nations (UN) organs in and out of Geneva. The present book is a revised version of my PhD thesis submitted to the Graduate Institute of International and Development Studies in 2019, six years after the US Court of Appeals for the Second Circuit upheld the so-called pari passu injunction ordered by the district court in *NML Capital v. Argentina*.

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Kei Nakajima

Tokyo, January 2022
## TABLE OF CASES

1 Domestic Jurisdictions

**Argentina**


**Austria**

Case No. 4 Ob 227/13f, Supreme Court of Austria, 20 May 2014, at [https://rdb.manz.at/document/ris.just.JJT_20140520_OGH0002_004OB00227_13F0000_000/formats/ris.just.JJT_20140520_OGH0002_004OB00227_13F0000_000.pdf](https://rdb.manz.at/document/ris.just.JJT_20140520_OGH0002_004OB00227_13F0000_000/formats/ris.just.JJT_20140520_OGH0002_004OB00227_13F0000_000.pdf)  69

Case No. 8 Ob 67/15h, Supreme Court of Austria, 30 July 2015, at [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JHT_20150730_OGH0002_008OB00067_15H0000_000](www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JHT_20150730_OGH0002_008OB00067_15H0000_000)  64

Case No. 8 Ob 125/15p, Supreme Court of Austria, 25 November 2015, at [www.ris.bka.gv.at/Dokumente/Justiz/JHT_20151125_OGH0002_008OB00125_15P0000_000/JHT_20151125_OGH0002_008OB00125_15P0000_000.pdf](www.ris.bka.gv.at/Dokumente/Justiz/JHT_20151125_OGH0002_008OB00125_15P0000_000/JHT_20151125_OGH0002_008OB00125_15P0000_000.pdf)  271

**Belgium**


*Le recours en annulation de la loi du 12 juillet 2015 introduit par ‘NML Capital, Ltd.’, La Cour constitutionnelle belge, numéro du rôle: 6371, arrêt n° 61/2018, le 31 mai 2018*  89


xiii

France
Commisimpex c. République du Congo, Cour de cassation, première chambre civile, No 13-17.751, arrêt du 13 mai 2015  75
Commisimpex c. République du Congo, Cour de cassation, première chambre civile, No 16-22.494, arrêt du 10 janvier 2018  76–77
Commisimpex c. République du Congo, Cour de cassation, première chambre civile, No 16-16.511, arrêt du 24 janvier 2018  76–77
La société NML Capital c. la République argentine, Cour de cassation, première chambre civile, No 10-25.938, arrêt du 28 mars 2013  75, 77

Germany
Case No. Az. 13 U 43/15, Oldenburg Court of Appeals, 18 April 2016, at https://openjur.de/u/884874.html  68–69
Case No. VI ZR 516/14, German Federal Court of Justice, 8 March 2016, at http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=74323&pos=0&anz=1  69
Case No. XI ZR 796/16, German Federal Court of Justice, 19 December 2017, at http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&az=XI%20ZR%20796/16&nr=80679  69
Jointed Case Nos. 2 BvM 1-5/03 and 2 BvM 1-2/06 (‘Argentine Necessity Case’), German Federal Constitutional Court, 8 May 2007, at www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2007/05/ms20070508_2bvm000103en.html  69

Ghana
NML Capital Ltd. v. Republic of Argentina, Commercial Division of the High Court Justice Accra, No. MISC/58/12, Order for Interlocutory Injunction and Interim Preservation of the ‘ARA Libertad’, 2 October 2012  74
NML Capital Ltd. v. Republic of Argentina, No. RPC/343/12, Commercial Division of the High Court Justice Accra, Ruling, 11 October 2012  74
**TABLE OF CASES**

**Italy**


**Netherlands**


**Singapore**

*DBS Bank Ltd. v. Tam Chee Chong and another*, [2011] SGCA 47, Civil Appeal No. 230 of 2010, 16 September 2011 144

**Switzerland**

Decision 5A_360/2010 of 12 July 2010 (case on BIS immunity), Swiss Federal Supreme Court, 30 ASA Bulletin 825–839 79–80

**United Kingdom**


*I° Congreso Del Partido*, Court of Appeal, Civil Division, 1 October 1979, 64 ILR 227 67

*I° Congreso Del Partido*, House of Lords, 16 July 1981, 64 ILR 307 67


TABLE OF CASES

United States

A.I. Credit Corp. v. The Government of Jamaica, 666 F.Supp. 629 (SDNY 20 August 1987) 40

Ajdler v. Province of Mendoza, No. 17-cv-1530 (VM), 2017 WL 3635122 (SDNY 2 August 2017) 162

Allied Bank International v. Banco Credito Agricola de Cartago, 757 F.2d 516 (2d Cir. 18 March 1985) 40

AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (27 April 2011) 209–211

Aurelius Capital Master, Ltd. v. Republic of Argentina, 644 Fed.Appx. 98 (2d Cir. 15 April 2016) 164, 232

Aurelius Capital Master, Ltd. v. Republic of Argentina, 589 Fed.Appx. 16 (2d Cir. 23 December 2014) 72

Aurelius Capital Partners, LP v. Republic of Argentina, No. 07 Civ. 2715 (TPG); 2009 WL 755231 (SDNY 12 March 2009) 65

Aurelius Capital Partners, LP v. Republic of Argentina, No. 07 Civ. 2715 (TPG); 2009 WL 910783 (SDNY 3 April 2009) 71

Aurelius Capital Partners, LP v. Republic of Argentina, Nos. 07 Civ. 2715 (TPG), 07 Civ. 11327 (TPG), 07 Civ. 2693 (TPG); 2010 WL 2925072 (SDNY 23 July 2010) 65

Biscon Bee LLC v. Republic of Argentina, 18-CV-3446 (LAP), 2018 WL 8058126 (SDNY 22 October 2018) 156

Biscon Bee LLC v. Republic of Argentina, 778 Fed.Appx. 72 (2d Cir. 4 October 2019) 156, 166

Blue Ridge Investments, LLC v. Republic of Argentina, 735 F.3d 72 (2d Cir. 19 August 2013) 73

Capital Ventures International v. Republic of Argentina, 652 F.3d 266 (2d Cir. 20 July 2011) 234

Carnegie v. Household International, Inc., 376 F.3d 656 (7th Cir. 16 July 2004) 211


Elliott Associates, L.P. v. Banco de la Nacion and the Republic of Peru, 194 F.3d 363 (2d Cir. 20 October 1999) 84


EM Ltd. v. Republic of Argentina, 695 F.3d 201 (2d Cir. 20 August 2012) 70, 71, 164
TABLE OF CASES

EM Ltd. v. Republic of Argentina, 131 Fed.Appx. 745; 2005 WL 1131662 (2d Cir. 13 May 2005) 8
EM Ltd. v. Republic of Argentina, 473 F.3d 463 (2d Cir. 5 January 2007) 65
EM Ltd. v. Republic of Argentina, 2009 WL 2568433 (SDNY 18 August 2009) 65
First National City Bank v. Banco Para El Comercio Exterior De Cuba (Bancec), 462 US 611 (17 June 1983) 82
Greylock Global Opportunity Master Fund Ltd. v. Province of Mendoza, No. 04 Civ.7643(HB), 2005 WL 289723 (SDNY 8 February 2005) 162
Hilton v. Guyot, 159 U.S. 113, 16 S. Ct. 139 (3 June 1895) 95
In re ‘Agent Orange’ Product Liability Litigation, 517 F.3d 76 (2d Cir. 22 February 2008) 72
In re Board of Directors of Multicanal S.A., Debtor in Foreign Proceeding, No. 04-10280 (ALG), 307 B.R. 384 (SDNY 12 March 2004) 5
International Multifoods Corp. v. Commercial Union Ins. Co., 309 F.3d 76 (2d Cir. 17 October 2002) 161
Keating v. Superior Court, 645 P.2d 1192 (Cal. 10 June 1982) 211
Declaration of Anne-Marie Slaughter pursuant to 28 USC 1746 (16 October 2002) 73, 93, 95–96
Moses v. McDivitt, 88 NY 62, WL 12577 (7 February 1882) 84
NML Capital, Ltd. and EM Ltd. v. Banco Central de la Republica Argentina and the Republic of Argentina, 652 F.3d 172 (2d Cir. 5 July 2011) 82, 83
NML Capital, Ltd. v. Republic of Argentina, 2011 WL 3897828 (SDNY 2 September 2011) 80
NML Capital, Ltd. v. Republic of Argentina, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG); WL 9522565 (SDNY 7 December 2011) 148–149
NML Capital, Ltd. v. Republic of Argentina, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (SDNY 23 February 2012) 150–152, 165, 232
NML Capital, Ltd. v. Republic of Argentina, 680 F.3d 254 (2d Cir. 30 March 2012) 67
NML Capital, Ltd. v. Republic of Argentina, No. 12-105(L), 699 F.3d 246 (2d Cir. 26 October 2012) 148–149, 151, 155, 161, 165, 254
TABLE OF CASES

Brief of Defendant-Appellant the Republic of Argentina, No. 12-105-cv(L) (21 March 2012) 141, 149, 151

Brief for the United States of America as Amicus Curiae in Support of Reversal, No. 12-105-cv(L) (4 April 2012) 154

NML Capital, Ltd. v. Republic of Argentina, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG); 2012 WL 5895786, Order on Payment Formula (SDNY 21 November 2012) 12, 152, 153

NML Capital, Ltd. v. Republic of Argentina, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG); 2012 WL 5895784, Amended Order (SDNY 21 November 2012) 12, 152, 153

NML Capital, Ltd. v. Republic of Argentina, 727 F.3d 230 (2d Cir. 23 August 2013) 12, 39, 105, 107, 153, 154, 155, 163, 232

Brief of Defendant-Appellant the Republic of Argentina, No. 12-105-cv(L) (28 December 2012) 7, 8, 13, 142, 153, 155

Brief for the United States of America as Amicus Curiae in Support of the Republic of Argentina’s Petition for Panel Rehearing and Rehearing en Banc, No. 12-105-cv(L) (28 December 2012) 13, 142, 153, 155


NML Capital, Ltd. v. Republic of Argentina, 144 F.Supp.3d 513 (SDNY 30 October 2015) 163


NML Capital, Ltd. v. Republic of Argentina, 2016 WL 836773 (SDNY 2 March 2016) 166


Pravin Banker Associates, Ltd. v. Banco Popular del Peru and the Republic of Peru, 109 F.3d. 850 (2d Cir. 25 March 1997) 40, 97


Republic of Argentina v. NML Capital, Ltd., 134 S. Ct. 2250 (16 June 2014) 71


Sharon Steel Corporation v. Chase Manhattan Bank, N.A., 691 F.2d 1039 (2d Cir. 28 September 1982) 141
2 International Jurisdictions

Court of Justice of the European Union

Accorinti and others v. European Central Bank, Case T-79/13, Judgment of the General Court (Fourth Chamber), 7 October 2015 134, 250, 262–263

Fahnenbrock and Others v. Hellenic Republic, Joined Cases C-226/13, C-245/13, C-247/13, and C-578/13, EUR-Lex 62013CJ0226

Judgment of the Court (First Chamber), 11 June 2015 64, 271

Opinion of Advocate General, 9 December 2014 271

Hellenische Republik v. Leo Kuhn, Case C-308/17

Judgment of the Court (First Chamber), 15 November 2018 271

Opinion of Advocate General, 4 July 2018 271

K. Chrysostomides and Co. LLC, and others v. Council and others, Case T-680/13,

Judgment of General Court (Fourth Chamber, Extended Composition), 13 July 2018 243, 249

Ledra Advertising Ltd. et al. v. European Commission and European Central Bank,

Joined Cases C-8/15 P to C-10/15 P, Judgment (Grand Chamber), 20 September 2016 243

European Court of Human Rights

Handyside v. United Kingdom, Application No. 5493/72, Judgment of 7 December 1976 137, 243

Ioanna Koufaki et ADEDY c. Grèce, requêtes n°s 57665/12 et 57657/12, décision du 7 mai 2013 133

Kyrkos et autres c. Grèce, requête n° 64058/14, arrêt du 8 février 2018 132

## Table of Cases

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>NML Capital Ltd. c. France, requête no 23242/12, décision du 5 février 2015</td>
<td>79</td>
</tr>
<tr>
<td>Thlimmenos c. Grèce, requête no 34369/97, arrêt du 6 avril 2000</td>
<td>135</td>
</tr>
</tbody>
</table>

### International Court of Justice and Permanent Court of International Justice

- Dispute concerning Judicial Decisions of the United States of America relating to the Restructuring of the Argentine Sovereign Debt, Application Instituting Proceedings filed in the Registry of the Court on 7 August 2014
- Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, ICJ Reports 2009
- Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, ICJ Reports 2012
- Payment of Various Serbian Loans Issued in France/Payment in Gold of the Brazilian Federal Loans Issued in France, PCIJ Series A, Nos. 20/21, Judgment of 12 July 1929
- Usine de Chorzów (demande en indemnité), CPJI série A, no 17, fond, arrêt du 13 septembre 1928

### Investment Arbitration

- Abaclat and Others v. Argentine Republic, ICSID Case No. ARB/07/05
- Decision on Jurisdiction and Admissibility, 4 August 2011
- Dissenting Opinion of Georges Abi-Saab, 4 August 2011
- Procedural Order No. 15, 20 November 2012
- Procedural Order No. 17, 8 February 2013
- Consent Award under ICSID Arbitration Rule 43(2), 29 December 2016
- Adamakopoulos and others v. Republic of Cyprus, ICSID Case No. ARB/15/49, Decision on Jurisdiction, 7 February 2020
- Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic, ICSID Case No. ARB/03/19, Order in Response to a Petition for Transparency and Participation as Amicus Curiae, 19 May 2005
- Alcoa Minerals of Jamaica, Inc. v. Jamaica, ICSID Case No. ARB/74/2
- Alemanni and Others v. The Argentine Republic, ICSID Case No. ARB/07/8
- Decision on Jurisdiction and Admissibility, 17 November 2014
- Concurring Opinion of J. Christopher Thomas, 17 November 2014
- Order of the Tribunal Discontinuing the Proceeding, 14 December 2015
TABLE OF CASES

Decision on Jurisdiction and Admissibility, 8 February 2013 183, 185, 187, 189, 192, 197, 199, 213, 215–219, 221, 223, 227, 235, 254
Dissenting Opinion of Santiago Torres Bernárdez, 8 February 2013 185, 223, 227
Order of Discontinuance of the Proceeding, 28 May 2015 254
Amco Asia Corporation and others v. Republic of Indonesia, ICSID Case No. ARB/81/1, Award, 20 November 1984 38, 39
Anderson and others v. Republic of Costa Rica, ICSID Case No. ARB(AF)/07/3, Award, 19 May 2010 214, 215
Antaris Solar GmbH and Dr. Michael Göde v. The Czech Republic, PCA Case No. 2014–01, Award, 2 May 2018 244, 257–258
Arif v. Republic of Moldova, ICSID Case No. ARB/11/23, Award, 8 April 2013 257
Bayview Irrigation District and others v. United Mexican States, ICSID Case No. ARB(AF)/05/1, Award, 19 June 2007 214, 215
BG Group plc. v. Argentina, UNCITRAL, Final Award, 24 December 2007 277
Bogdanov v. Republic of Moldova, SCC, Award, 22 September 2005 259
Bogdanov and Bogdanova v. Republic of Moldova, SCC Case No. V091/2012, Final Award, 16 April 2013 264
Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Paraguay, ICSID Case No. ARB/07/09, Decision on Objections to Jurisdiction, 29 May 2009 273
Canadian Cattlemen for Fair Trade v. United States of America, UNCITRAL, Award on Jurisdiction (28 January 2008) 214–216
Caratube International Oil Company LLP v. Republic of Kazakhstan, ICSID Case No. ARB/08/12, Award, 5 June 2012 188, 191
Cargill, Incorporated v. Republic of Poland, ICSID Case No. ARB(AF)/04/2, Final Award, 5 March 2008 259
CC/Devas (Mauritius) Ltd. et al. v. Republic of India, PCA Case No. 2013–09, Award on Jurisdiction and Merits, 25 July 2016 282
Československa obchodní banka, a.s. v. Slovak Republic, ICSID Case No. ARB/97/4, Decision on Objections to Jurisdiction, 24 May 1999 182
Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt, ICSID Case No. ARB/02/09, Award, 27 October 2006 263
Chemtura Corporation v. Canada, UNCITRAL, Award, 2 August 2010 242
CMS Gas Transmission Company v. Argentine Republic, ICSID Case No. ARB/01/8, Award, 12 May 2005 270, 274, 275, 280, 281
Continental Casualty Company v. Argentine Republic, ICSID Case No. ARB/03/09, Award, 5 September 2008 258–259, 280–283
<table>
<thead>
<tr>
<th>Table of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/09/2, Award, 31 October 2012</td>
</tr>
<tr>
<td>EDF (Services) Limited v. Romania, ICSID Case No. ARB/05/13, Award, 8 October 2009</td>
</tr>
<tr>
<td>EDF International S.A., SAUR International S.A. and others v. Argentine Republic, ICSID Case No. ARB/03/23, Award, 11 June 2012</td>
</tr>
<tr>
<td>Electrabel S.A. v. Republic of Hungary, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012</td>
</tr>
<tr>
<td>Enron Creditors Recovery Corporation and Ponderosa Assets, L.P. v. Argentine Republic, ICSID Case No. ARB/01/03 Award, 22 May 2007</td>
</tr>
<tr>
<td>Decision on Annulment, 30 July 2010</td>
</tr>
<tr>
<td>Eureko B.V. v. Republic of Poland, ad hoc arbitration, Partial Award, 19 August 2005</td>
</tr>
<tr>
<td>Fedex N.V. v. Republic of Venezuela, ICSID Case No. ARB/96/3, Decision on Objections to Jurisdiction, 11 July 1997</td>
</tr>
<tr>
<td>Funnekotter and others v. Republic of Zimbabwe, ICSID Case No. ARB/05/06, Award, 22 April 2009</td>
</tr>
<tr>
<td>Goetz and others v. Republic of Burundi, ICSID Case No. ARB/95/3, Award, 10 February 1999</td>
</tr>
<tr>
<td>Goetz and others v. Republic of Burundi, ICSID Case No. ARB/01/2, Award, 21 June 2012</td>
</tr>
<tr>
<td>Gold Reserve Inc. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014</td>
</tr>
<tr>
<td>Gramercy Funds Management LLC v. Republic of Peru, UNCITRAL, Claimant’s Amended Notice of Arbitration and Statement of Claim, 18 July 2016</td>
</tr>
<tr>
<td>Guaracachi America, Inc. and Rurelec plc v. Plurinational State of Bolivia, Award, 31 January 2014</td>
</tr>
<tr>
<td>Impregilo S.p.A. v. Islamic Republic of Pakistan, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005</td>
</tr>
<tr>
<td>Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006</td>
</tr>
<tr>
<td>Joy Mining Machinery Limited v. Arab Republic of Egypt, ICSID Case No. ARB/03/11, Decision on Jurisdiction, 6 August 2004</td>
</tr>
<tr>
<td>Kaiser Bauxite Company v. Jamaica, ICSID Case No. ARB/74/3</td>
</tr>
<tr>
<td>Kardassopoulos v. Georgia, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007</td>
</tr>
<tr>
<td>Klöckner Industrie-Anlagen GmbH v. Cameroon, ICSID Case No. ARB/81/2 Award, 21 October 1983</td>
</tr>
<tr>
<td>Decision Annulling the Award, 3 May 1985</td>
</tr>
<tr>
<td>LG&amp;E Energy Corp., LG&amp;E Capital Corp. and LG&amp;E International Inc. v. Argentina, ICSID Case No. ARB/02/1</td>
</tr>
<tr>
<td>TABLE OF CASES</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Decision on Objections to Jurisdiction, 30 April 2004</td>
</tr>
<tr>
<td>Decision on Liability, 3 October 2006</td>
</tr>
<tr>
<td>Malaysian Historical Salvors, SDN, BHD v. Malaysia, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009</td>
</tr>
<tr>
<td>Mathias Kruck and others v. Kingdom of Spain, ICSID Case No. ARB/15/23, Decision on Jurisdiction and Admissibility, 19 April 2021</td>
</tr>
<tr>
<td>Merrill &amp; Ring Forestry LLP v. Canada, UNCITRAL, Award, 31 March 2010</td>
</tr>
<tr>
<td>Micula and others v. Romania, ICSID Case No. ARB/05/20, Final Award, 11 December 2013</td>
</tr>
<tr>
<td>Noble Ventures, Inc. v. Romania, ICSID Case No. ARB/01/11, Award, 12 October 2005</td>
</tr>
<tr>
<td>Nordzucker AG v. Republic of Poland, UNCITRAL, Second Partial Award, 28 January 2009</td>
</tr>
<tr>
<td>Quiborax S.A. and others v. Bolivia, ICSID Case No. ARB/06/2, Award, 16 September 2015</td>
</tr>
<tr>
<td>Oxus Gold plc v. Republic of Uzbekistan, UNCITRAL, Award, 17 December 2015</td>
</tr>
<tr>
<td>Parkering-Compagniet AS v. Republic of Lithuania, ICSID Case No. ARB/05/08, Award, 11 September 2007</td>
</tr>
<tr>
<td>Philip Morris Brands Sàrl et al. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Award, 8 July 2016</td>
</tr>
<tr>
<td>Phoenix Action, Ltd. v. Czech Republic, ICSID Case No. ARB/06/05, Award, 15 April 2009</td>
</tr>
<tr>
<td>Decision on Annulment of the Award, 29 September 2016</td>
</tr>
<tr>
<td>PV Investors v. Kingdom of Spain, PCA Case No. 2012–14, Preliminary Award on Jurisdiction, 13 October 2014</td>
</tr>
<tr>
<td>Final Award, 28 February 2020</td>
</tr>
<tr>
<td>Reynolds Jamaica Mines Limited and Reynolds Metals Company v. Jamaica, ICSID Case No. ARB/74/4</td>
</tr>
<tr>
<td>Romak S.A. v. Republic of Uzbekistan, PCA Case No. AA 280, Award, 26 November 2009</td>
</tr>
<tr>
<td>RosInvestCo UK Ltd. v. The Russian Federation, SCC Case 079/2005, Final Award, 12 September 2010</td>
</tr>
<tr>
<td>RRREEF Infrastructure (G.P.) Limited et al. v. Kingdom of Spain, ICSID Case No. ARB/13/30, Decision on Responsibility and on the Principles of Quantum, 30 November 2018</td>
</tr>
<tr>
<td>TABLE OF CASES</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan, ICSID Case No. ARB/05/16, Award, 29 July 2007</td>
</tr>
<tr>
<td>Saluka Investments BV v. The Czech Republic, Partial Award, 17 March 2006</td>
</tr>
<tr>
<td>Sempra Energy International v. Argentine Republic, ICSID Case No. ARB/02/16, Award, 28 September 2007</td>
</tr>
<tr>
<td>SGS Société Générale de Surveillance S.A. v. Pakistan, ICSID Case No. ARB/01/13, Decision on Objections to Jurisdiction, 6 August 2003</td>
</tr>
<tr>
<td>SGS Société Générale de Surveillance S.A. v. Paraguay, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>Siemens A.G. v. Argentine Republic, ICSID Case No. ARB/02/8, Award, 6 February 2007</td>
</tr>
<tr>
<td>Société Civile Immobilière de Gaëta c. République de Guinée, Affaire CIRDI No. ARB/12/36, sentence arbitrale du 23 décembre 2015</td>
</tr>
<tr>
<td>Spyridon Roussalis v. Romania, ICSID Case No. ARB/06/1, Award, 7 December 2011</td>
</tr>
<tr>
<td>Técnicas Medioambientales Teemed, S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003</td>
</tr>
<tr>
<td>Texaco Overseas Petroleum Company and California Asiatic Oil Company v. the Government of the Libyan Arab Republic, Award on Merits, 19 January 1977, 53 ILR 422–511</td>
</tr>
<tr>
<td>Total S.A. v. The Argentine Republic, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010</td>
</tr>
<tr>
<td>Toto Costruzioni Generali S.p.A. v. Republic of Lebanon, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009</td>
</tr>
<tr>
<td>Unión Fenosa Gas, S.A. v. Arab Republic of Egypt, ICSID Case No. ARB/14/4, Award, 31 August 2018</td>
</tr>
<tr>
<td>Urbaser S.A. et al. v. The Argentine Republic, ICSID Case No. ARB/07/26, Award, 8 December 2016</td>
</tr>
<tr>
<td>Von Pezold v. Republic of Zimbabwe, ICSID Case No. ARB/10/15, Award, 28 July 2015</td>
</tr>
</tbody>
</table>

**Miscellaneous Cases**

Aguilar-Amory and Royal Bank of Canada claims (Great Britain/Costa Rica) (‘Tinoco’ Case), Award of 18 October 1923, 1 RIAA 371 | 25 |
<table>
<thead>
<tr>
<th>Table of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>'ARA Libertad' Case (Argentina v. Ghana), Provisional Measures, Order of 15</td>
</tr>
<tr>
<td>December 2012, ITLOS Reports 2012, 332</td>
</tr>
<tr>
<td>Brazil – Measures Affecting Imports of Retreaded Tyres, WTO Appellate Body,</td>
</tr>
<tr>
<td>WT/DS332/AB/R, adopted on 17 December 2007</td>
</tr>
<tr>
<td>EFTA Surveillance Authority v. Iceland, EFTA Court, Case E-16/11, Judgment,</td>
</tr>
<tr>
<td>28 January 2013</td>
</tr>
<tr>
<td>Island of Palmas Case (Netherlands/United States of America), Award of 4 April</td>
</tr>
<tr>
<td>1928, 2</td>
</tr>
<tr>
<td>Revaluation of German Mark ('Young Loan Arbitration'), Decision of 16 May</td>
</tr>
<tr>
<td>1980, 19</td>
</tr>
<tr>
<td>S.A. et al. v. Greece, Human Rights Committee, Communication No. 2868/2016,</td>
</tr>
<tr>
<td>10 November 2017</td>
</tr>
<tr>
<td>Sheibani v. United States, Iran-United States Claims Tribunal, Case No. 946,</td>
</tr>
<tr>
<td>11 June 2003</td>
</tr>
<tr>
<td>United States – Measures Affecting the Cross-Border Supply of Gambling and</td>
</tr>
<tr>
<td>Betting Services, WTO Appellate Body, WT/DS285/AB/R, adopted on 20 April 2005</td>
</tr>
</tbody>
</table>
# TABLE OF STATUTES, BILLS AND TREATIES

## Argentina

Law 26,017 ('Emergency Law' or 'Lock Law') (9 February 2005) (English non-official translation is provided by Argentina in *Abaclat v. Argentina*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, para. 79) 149, 150, 252–254, 263, 265

Law 26,547 of Rescheduling of Public Securities Eligible for the Exchange (9 December 2009). (The excerpts are reproduced in *NMl Capital, Ltd. v. Republic of Argentina*, WL 9522565, 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (SDNY 7 December 2011), para. 10) 149, 150

## Barbados


## Belgium

Loi insérant dans le Code judiciaire un article 1412quinques régissant la saisie de biens appartenant à une puissance étrangère ou à une organisation supranationale ou internationale de droit public (No 2015009459, le 23 août 2015), at www.etaamb.be/fr/loi-du-23-aout-2015_n2015009459.html 76

Loi relative à la lutte contre les activités des fonds vautours (Doc No. 54-1057/005, le 12 juillet 2015), at www.lachambre.be/FLWB/PDF/54/1057/54K1057005.pdf 88

Loi visant à empêcher la saisie ou la cession des fonds publics destinés à la coopération internationale, notamment par la technique des fonds vautours (No 2008015073, le 6 avril 2008), at www.etaamb.be/fr/loi-du-06-avril-2008_n2008015073.html 87

Proposition de loi relative à la lutte contre les activités des fonds vautours (Doc 54-1057/001, le 30 avril 2015), at www.dekamer.be/FLWB/PDF/54/1057/54K1057001.pdf 89, 90

Proposition de loi relative à la lutte contre les activités des fonds vautours : rapport (Doc 54-1057/003, le 19 juin 2015), at www.lachambre.be/FLWB/PDF/54/1057/54K1057003.pdf 90
# TABLE OF STATUTES, BILLS AND TREATIES

## Belize


## France

Code des procédure civiles d’exécution 76

Décret n° 2012-1517 du 29 décembre 2012 relatif aux clauses d’action collective applicables aux titres d’Etat 109

Loi n° 2012-1509 du 29 décembre 2012 de finances pour 2013 109

Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (’loi Sapin 2’) (JORF n°0287) 76, 86

Proposition de loi visant à lutter contre l’action des fonds financiers dits ‘fonds vautours’ (N° 3214, le 28 juin 2006), at www.assemblee-nationale.fr/12/propositions/pion3214.asp 86

## Greece


## United Kingdom and the Crown Dependencies

Civil Procedure Rules 1998 94

Debt Relief (Developing Countries) (Jersey) Law 2013, at www.jerseylaw.je/laws/revised/Pages/17.200.aspx 85

Debt Relief (Developing Countries) Act 2010 (8 April 2010), at www.legislation.gov.uk/ukpga/2010/22/contents 85

Debt Relief (Developing Countries) Act 2010 (Permanent Effect) Order 2011 (2011 No. 1336) 85

Heavily Indebted Poor Countries (Limitation on Debt Recovery) Act 2012 (Isle of Man) 85, 86

State Immunity Act of 1978, 17 ILM 1123 63, 64, 81

## United States

American Arbitration Association, AAA Supplementary Rules for Class Arbitrations (8 October 2003) 210
### Table of Statutes, Bills and Treaties

<table>
<thead>
<tr>
<th>Statute/Act</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill to Prevent Speculation and Profiteering in the Defaulted Debt of Certain Poor Countries, and for Other Purposes (HR 2932, 18 June 2009), at <a href="http://www.govtrack.us/congress/bills/111/hr2932/text">www.govtrack.us/congress/bills/111/hr2932/text</a> and <a href="http://www.congress.gov/111/bills/hr2932/BILLS-111hr2932ih.pdf">www.congress.gov/111/bills/hr2932/BILLS-111hr2932ih.pdf</a></td>
<td>85</td>
</tr>
<tr>
<td>Federal Rules of Civil Procedure</td>
<td>70, 72</td>
</tr>
<tr>
<td>New York Judicial Law</td>
<td>84</td>
</tr>
</tbody>
</table>

### Selected International Treaties

- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted on 10 June 1958, 330 UNTS 38 (‘New York Convention’)**: 170
- **Treaty on the Functioning of the European Union (TFEU), 2008 OJ C 115/104**: 119, 263
ABBREVIATIONS

AJIL American Journal of International Law
BIS Bank of International Settlement
BITs Bilateral Investment Treaties
BYIL British Yearbook of International Law
CACs collective action clauses
CETA EU–Canada Comprehensive Economic and Trade Agreement
CJEU Court of Justice of the European Union
CMLJ Capital Markets Law Journal
CTR Common Terms of Reference
ECB European Central Bank
ECT Energy Charter Treaty
ECtHR European Court of Human Rights
EFC European Union Economic and Financial Committee
EFTA European Free Trade Association
EJIL European Journal of International Law
ESM European Stability Mechanism
EU European Union
EWHC High Court of England and Wales
FAA Fiscal Agency Agreement
FET fair and equitable treatment
FSIA Foreign Sovereign Immunities Act of 1976 (United States)
FTA Free Trade Agreement
GATT General Agreement on Tariffs and Trade
HIPC Heavily Indebted Poor Countries
HRC United Nations Human Rights Council
ICJ International Court of Justice
ICJ Reports Reports of Judgments, Advisory Opinions and Orders
ICLQ International and Comparative Law Quarterly
ICMA International Capital Market Association
ICSID International Centre for Settlement of Investment Disputes
ICSID Review ICSID Review – Foreign Investment Law Journal
IIAs International Investment Agreements
ILA International Law Association
LIST OF ABBREVIATIONS

ILC International Law Commission
ILC Yearbook Yearbook of the International Law Commission
ILM International Legal Materials
ILR International Law Reports
IMF International Monetary Fund
ITLOS International Tribunal for the Law of the Sea
MFN most favoured nation
NAFTA North American Free Trade Agreement
NT national treatment
OECD Organisation for Economic Co-operation and Development
PCA Permanent Court of Arbitration
PSI private sector involvement
RCADI Recueil des cours de l’Academie de droit international de La Haye
RIAA United Nations Reports of International Arbitral Awards
SDNY District Court for the Southern District of New York
SDRM Sovereign Debt Restructuring Mechanism
SIA State Immunity Act of 1978 (United Kingdom)
TFEU Treaty on the Functioning of the European Union
UK United Kingdom
UN United Nations
UNCITRAL United Nations Commission on International Trade Law
UNCTAD United Nations Conference on Trade and Development
UNGA United Nations General Assembly
US United States of America
VCLT Vienna Convention on the Law of Treaties
WTO World Trade Organization