

Index

AAA. See American Arbitration Association anti-suit injunctions, under private AALCO. See Asian-African Legal international law, 80 Consultative Organisation appeals. See rights of appeal AAPL v. Sri Lanka, 206-208 applicable law, in international Abs, Hermann J., 256-257 investment arbitration, 226-232. Abyei arbitration, 321, 382-383 See also International Center for the Settlement of Investment ad hoc arbitration, 70-71 ad hoc consent, in inter-state arbitration, **Disputes** 327-328 annulment and, prevention of, 241-242 ad valorem system of remuneration, for in arbitral tribunals, 228-229, 236 in bilateral investment treaties, 227, 229 tribunal costs, 441 Adams, Charles, 310 in Canada, 230 African Union Convention against choice of, 240-242 Corruption, 415-416 correct outcomes within scope of Aguilar-Alvarez, Guillermo, 195 tribunal authority, 240-241 AI. See Artificial Intelligence in Court of Justice of the European Union, Alabama Claims arbitration, 6-10, 27-28 241 Adams and, 310 in Energy Charter Treaty, 227 Cockburn and, 310, 313, 319 factual determinations under, 231-232 Hague Peace Conferences (1899/1907) for international investment agreements, influenced by, 314 226-227, 234-236 investor-state arbitration and, 197 interpretive principles in, 231-232 for peace, 310-314 party autonomy, 227-228 reassessment of, 317-319 as rules of decision, 229-230 peace as result of, 310-314 theoretical approach to, 225-226 umbrella clauses and, 228–229 Permanent Treaty of Arbitration and, 319 tribunal members, 310 UNCITRAL Arbitration Rules, 225-226 American Arbitration Association (AAA), in US, 230 41-42, 141-142 vacatur and, prevention of, 241-242 American Treaty on Pacific Settlement (Pact Vienna Convention on the Law of Treaties, of Bogota), 364 arbitral awards and remedies annulment, of awards and remedies. See also vacatur annulment of. See annulment under applicable law, in international from comparative law, in arbitration, 75 investment arbitration, 241-242 enforcement of awards, 75 of arbitral awards, 109 by foreign courts, after arbitration, private Southern Pacific Properties (Middle international law and, 87-88 East) Limited v. Arab Republic of under ICSID Convention, 282-283 limitations of, 277-278 Egypt, 183-185 autonomy of arbitration and, 128-129 lex arbitri and. See lex arbitri under ICSID Convention, 283 for peace, 314 ante hoc consent, in inter-state arbitration. Arbitral Tribunal for Foreign Investment, 329-331 247



484 Index

arbitration. See also arbitrators; commercial corruption and arbitration; international arbitration; duties of arbitrators, 435-436 specific topics proof and, 435 comparative law in, importance of. guidelines and principles for, 392-397 sources for, 392-394 See comparative law judicialisation and, 476-477 in ICSID Convention, 398-400 private international law and. See private in International Court of Justice, 337-339 international law in inter-state arbitration, 337-339 as regression, 468-470 judges compared to, xiii-xv rights of appeal in, xv-xvi neutrality of, 157-161 Arbitration Act, England (1996), 16-17, 81 under Arbitration Act (England), 160 autonomy of arbitration under, 122-123 definition of, 158-159 neutrality of arbitrators under, 160 under Federal Arbitration Act (US), Arbitration Act, Norway, 100 159-160 Arbitration Act, Sweden, 100 legislative approaches to, 159-160 arbitration agreements in selected arbitral institutions, 160-161 as instruments for peace, 309-310. under UNCITRAL Model Law, 159 See also peace obligations for, 394-404 in international commercial arbitration party representatives and, conflicts with, delocalisation and, 16-19 404-406 French School and, 18-19 public law/private law distinction for, xv under New York Convention, 17-18 under UNCITRAL Model Law, 395 under Rome I Regulation, 19 neutrality of arbitrators, 159 arbitration ethics, 146-151 arbitromania, 6, 477-482 under civil law, 147-148 Arnaud, Rene, 41 for counsel disclosure of damaging Arsanjani, Mahnoush, 235 precedents, 147 Article 42, in ICSID Convention, 225-226, in direct communication with adverse 237-240. See also choice-of-law parties, 146-163 regime in discovery rules, 147-148 party autonomy principle in, 233-236 IBA Guidelines on, 149-150 prohibitions in, 234-235 institution-specific regulations for, Artificial Intelligence (AI), 145 148 - 149Asian-African Legal Consultative transnational code of, 150-151 Organisation (AALCO), 7, 380 Asser, Tobias, 29-30, 356 in witness preparation, 146-163 arbitration procedures Austin, John, 472 autonomy, of arbitration as instruments for peace, 309-310. See also peace annulment procedures and, 128-129 lex arbitri and, 102-103 anti-arbitration injunctions and, 129-130 under Arbitration Act, in England, 122-123 composition of tribunals as influence on, 104 contemporary approach to, 472-473 rules of, 104 under contract law, 134 territoriality principle in, 102 creation of, 125-127 UNCITRAL Model Law and, 126-127 arbitrators applicable rules for, 392-394 UNIDROIT Principles and, 126-127 challenges to, 397-403 definition of, 127-128 prejudgment of merits of case, 402-403 enforcement of, 129-131 prior procedural rulings, 401-402 derogatory/prorogatory elements in, 130 relationship with claimant party, 401 history of, 120-125 repeat appointments, 398-400 after modern state, 124-125 choice of, in comparative law arbitration, before modern state, 120-122 71 during modern state, 122-124



Index 485

lex mercatoria Brierly, James, 472 procedural autonomy, 118-119 Briggs, Adrian, 477 Broches, Aron, 4-5, 27, 252-254, 259, 262, substantive autonomy, 115-117 during Middle Ages, 121-122 275-276 Brower, Charles, 39, 55 practices of, 125-131 under private law, 133-135 private/public ordering in, 131-132 procedural, 118-119 applicable law in, international lex mercatoria and, 118-119 investment arbitration and, 230 under public law, 133-135 in Comprehensive Economic and Trade respect of, 128-129 Agreement, 290 under Roman law, 120-121 North American Free Trade Agreement, 194-195 scope of, 115-120 under ICSID Convention, 285-286 sovereign, 472 United States, Canada and Mexico substantive, 115-118 as autopoietic process, 116-117 Agreement, 289-290 lex mercatoria and, 115-117 capacity of consent, 208-214 UNIDROIT Principles, 117 illegal contracts, 209 theory of, 131-137 procedural illegality and, 209-212 qualifications of investment in, 213-214 globalisation role in, 135-136 legal realism in, 133-135 substantive illegality and, 212 tensions in, 131-133 tainted contracts, 209 total, 119-120 Carabiber, Charles, 40-41 in totalitarian states, 123-124 CERDS. See Charter of Economic Rights and UNIDROIT Principles **Duties of States** CETA. See Comprehensive Economic and creation of autonomy and, 126-127 substantive autonomy and, 117 Trade Agreement awards. See arbitral awards and remedies CFTs. See complex financial transactions Charter of Economic Rights and Duties of Banifatemi, Yas, 239-240 States (CERDS), 54-55, 277, 295 Baxter, Richard, 275 China, comparative law in arbitration in, 64 Bernini, Giorgio, 183 Choate, Joseph, 359 Between Interests and Law (Hale), 43 choice-of-law regime, 232-240 definition of, 236 bilateral investment treaties (BITs) applicable law in, 227, 229 host-state law, 237 consent in, 218-219 International Court of Justice Statute, 237 international law rules, applicability of, corruption in investment arbitration, 425-426 237-240 foreign direct investment and, civil law tradition international standards for, 298 arbitration ethics under, 147-148 under ICSID Convention, 285 corruption and, consequences of, 422-424 ICSID Convention and, 27, 285 corrupt contracts, 422-424 inter-state arbitration and, 330, 332-333 CJEU. See Court of Justice of the European investment arbitration and, 27 Union investor-state arbitration and, 189, 193-197 classical comparative law, in arbitration, best practices for, 200-203 67-69 most favoured nation clause in, 218-219 Cockburn, Alexander, 310, 313, 319 UNCITRAL Model Law in, 22 Cohen, Daniel, xviii Cohen, Morris R., 133-134 Black, Eugene, 249-253, 276 bribery commercial arbitration, international, 10-22 consent and, 212 academic scholarship on, 38-40 as corruption, 410 American Arbitration Association, 41-42



486 Index

commercial arbitration, international (cont.) Hague Choice of Court Convention, arbitral mechanisms, for efficiency, 163-164 International Council for Commercial 139 - 142for expedited procedures, 140 Arbitration, 45 'Fast Track' rules, 140 International Court of Arbitration, 10 under IBA Rules, 140-141 judicialisation of, 138-139 International Chamber of Commerce, 140 jurisdictional view of, 11 under Prague Rules, 140-141 kompetenz-kompetenz doctrine and, 10, in summary dispositions, 141-142 21 - 22arbitration agreement legal elements of, 10 delocalisation and, 16-19 legitimacy issues for, 52-54 French School and, 18-19 lex arbitri and, 10, 14-16 under New York Convention, 17-18 UNCITRAL Model Law and, 16 under Rome I Regulation, 19 lex causae and, 10 confidentiality in, 169-171 lex fori and, 10, 14-15 criticisms of, 170-171 lex mercatoria and, 53-54 transparency compared to, 169-170 International Chamber of Commerce conflict approach to, 46-50 and, 44, 46 modern development of, 10, 40-46. See formula for change in, 49 also International Chamber of consensus approach to, 46-50 formula for change in, 49 Commerce global power arrangements in, 47-48 evolutionary process in, 50-58 contractualist view of, 11 gender representation in, 50-51 cosmopolitanism and, 48-49 generational conflicts in, 53-54 cost of, 138-145 lack of diversity in arbitrators, 50-52 delays in, 138-145 New York Convention and, 42 delocalisation and, 17-18, 20-22 delocalisation in, xii, 11-22 arbitration agreement and, 16-19 separability doctrine and, 10, 16-19, 21-22 under New York Convention, 17-18, under Arbitration Act, 16-17 settlement agreements, 172-175 plural enforcement and, 20-22 advantages of, 172-173 state authority and, 11-16 enforceability of, 173-174 transnational law and, 12-13 res judicata effect, 173, 175 diversity in, 164-166 under UNCITRAL Model Law, 173-175 lack of female representation, 164-166 through specialised international through emergency interim relief, 142 arbitration institutes, 142-143. See English view of, 11-12, 18 also specific institutes and tribunals ethics and. See arbitration ethics for complex financial transactions, excessive formality in, 138-145 142 - 143foreign arbitral awards, recognition and state authority and reinforcement of, 10 delocalisation and, 11-16 French School, 16, 20-22, 471 in territorial approach, 11-16 arbitration agreement and, 18-19 under Swiss Rules of International through hybrid dispute resolution Arbitration, 10 mechanisms, 143-144 technology-assisted review of, 144-145 Singapore Mediation Convention, 144 with Artificial Intelligence, 145 International Chamber of Commerce and. with Predictive Coding, 144-145 See International Chamber of territorial approach to, 11-16 Commerce state authority in, 11-16 international commercial courts, 161-164 transnational networks for, 45 establishment of, 161-162 transparency in. See transparency goals and purposes of, 162-163 UNCITRAL Model Law and, 16, 20-22



Index 487

common law tradition, arbitration and, Comprehensive Economic and Trade private international law and, after Agreement (CETA), 290 arbitration, 92-93 compromissory clauses, 329, 333-334, comparative contract law, 68 364-365 comparative law, in arbitration conciliation, in Permanent Court of ad hoc arbitration, 70-71 Arbitration, 383-388 application and interpretation of laws, compulsory provisions, 387 75-77 confidentiality for international law, 75-76 in international commercial arbitration, for UNCITRAL Model Law, 76 169-171 for unfamiliar laws, 76-77 criticisms of, 170-171 arbitration as legal choice, compared to transparency compared to, 169-170 litigation, 65 in International Court of Justice arbitration seat of choice, 65-67 proceedings, 340-341 arbitrators in, choice of, 71 in inter-state arbitrations, 340-341 awards as result of, 75 conflict approach, to international enforcement of, 75 commercial arbitration, 46-50 in China, 64 formula for change in, 49 choice of law consensus approach, to international direct method, 68 commercial arbitration, 46-50 for governing of arbitration clause, 69-70 formula for change in, 49 for governing of contract, 67-69 global power arrangements in, 47-48 indirect method, 68 consent in International Court of Justice cases, lex mercatoria rules, 67-69 UNIDROIT Principles, 67-69 328-329 in inter-state arbitration, 327-334 choice of rules in, 70-71 competition over, 77-78 ad hoc consent, 327-328 lex mercatoria rules, 67-69 ante hoc consent, 329-331 classical, 67-69 compromissory clause, 329, 333-334 contestation of jurisdiction, 75 International Court of Justice David on, 61-62 jurisdiction for, 328-329 evidence collection, 71-75 post hoc consent, 328-329 under IBA Rules, 72-74 consent, in foreign investor-state arbitration under Prague Rules, 72-75 bribery and, 212 institutional arbitration, 70-71 capacity of, scrutiny of, 208-214 lex arbitri and, 65-67 illegal contracts, 209 procedural illegality, 209-212 competition over, 77 multiplicity of rules and laws, 62-64 qualifications of investment in, 213-214 New York Convention as influence on, 63 substantive illegality, 212 practical importance of, 62-75 tainted contracts, 209 in Singapore International Commercial company migration and, 215-216 Court, 65 construction of theoretical approach to, 61 AAPL v. Sri Lanka, 206-208 theoretical importance of, 77-78 under contract law, 207 UNCITRAL Model Law as influence on. Philippines-UK Treaty, 207 63-64, 74 UK-Ceylon Treaty, 207 application and interpretation of, 76 corporate nationality and, 216 comparative private international law, 68 counterclaims and, 223 exhaustion of local remedies and, 221-222 complex financial transactions (CFTs), fork in the road provision, 221 142-143 Comprehensive and Progressive Agreement good faith requirements for, 211 for Trans-Pacific Partnership under ICSID Convention, 285, 288 (CPTPP), 286, 289-290 internalization theory and, 210



488 Index

consent, in foreign investor-state arbitration	definition of, 412-413
(cont.)	as economic phenomenon, 412-416
interpretations of, favouring of foreign	economics of, 413-414
investor in, 214-223	under Foreign Corrupt Practices Act, 415
through forum shopping, 216	in investment arbitration, 424-429
investment approval and, 210-211	admissibility of investor claims, 427-428
most favoured nation clause and, 218-220	as bar to jurisdiction, 425-427
in bilateral investment treaties, 218-219	in bilateral investment treaties, 425-426
exclusions in, 220	in demands of host state officials,
goals of, 219-220	investor claims based on, 428-429
procedural requirements in, 220	legal consequences of, 416-429
preclusionary defences and, 222-223	legal instruments against, 415-416
indigenous rights, 222-223	as legal phenomenon, 412-416
national security, 222-223	private law contracts, 417–424
through round tripping, 214-215	applicable law for, 420–422
theoretical approach to, 204-206	arbitrability of, 417–419
in Tokios Tokeles v. Ukraine, 214–215	validity of arbitration agreements,
umbrella clause and, 216–218	419–420
construction arbitration, 3	proof of, 430-436
construction of consent	arbitrators and, 435
AAPL v. Sri Lanka, 206-208	burden of proof, 430–431
under contract law, 207	evaluation of evidence as, 435
Philippines-UK Treaty, 207	standard of proof, 431–433
UK-Ceylon Treaty, 207	theoretical approach to, 410–412
contract law	UN Convention against Corruption,
autonomy of arbitration under, 134	412-413, 415-416
comparative, 68	cosmopolitan tribunals, 7
construction of consent under, 207	cosmopolitanism, international commercial
private international law and, after	arbitration and, 48–49
arbitration, 88	costs, in arbitration
contracts	allocation of, 448–458
international law of, xviii	through apportionment, 450–451
New York Convention and, xviii	approaches to, 450–454
contractualist view, of internationalist	relevance of parties' misconduct in,
commercial arbitration, 11	453-454
Convention on the Elimination of All Forms	success in, 450–452
of Discrimination against Women,	tribunal power in, 448–450
372	controls for, 441–448
Convention on the Law of the Sea.	party costs, 443–447
See United Nations	for tribunal costs, 441–443
Convention on the Pacific Settlement of	for Essar Oilfield v Norscot, 458
International Disputes (1899), 6–10	funding of, 458–466
corporate nationality, consent and, 216	through corporate financing, 460
corruption	external, 459–460
arbitrators	through external counsel, 460
duties of, 435–436	with insurance, 460
proof and, 435	through loans, 460
bribery and, 410	recoverability of, 456–457
civil law consequences of, 422–424	future solutions for, 447–448
corrupt contracts, 422–424	cost efficiency mechanisms, 447–448
condemnation of, as transnational public	technology use, 448
policy, 414–416	through use of guidelines, 447–448



Index 489

of international commercial arbitration, lawfulness of, 154-155 138-145 material scope of, 153-154 in International Court of Justice cases, obligations in, 156-157 right to be forgotten, 157 344 - 346David, René, 61-62 of inter-state arbitration, 344-346 overview of, 438 Dealing in Virtue (Dezalay and Garth), party costs, 443-447 38-39, 42-43 for expedited procedures, 444-445 Declaration on the Establishment of New International Economic Order (NIEO for summary procedures, 445-447 tribunal case management powers, Declaration), 54-55, 277 443-444 foreign direct investment and, 295 as problem, responses to, 440-441 delocalisation of arbitration, xvii, 473-475 recoverable, 454-458 in France, xii for ancillary proceedings, 457-458 by ICSID Convention, 282 applicable definitions of, 454 ICSID Convention and, 26 before/after arbitration proceedings, 455 in international commercial arbitration, for funding, 456-457 xii, 11-22 for in-house costs, 455-456 arbitration agreements and, 16-19 limitations on, 455-458 under New York Convention, 17-18, 20-22 reasonable costs, 455 in third-party funding, 465-466 plural enforcement of, 20-22 review of, 439-440, 466-467 state authority and, 11-16 sources for, 440 transnational law and, 12-13 investment arbitration and, 26 third-party funding for, 461-466 availability of, 461-462 in Permanent Court of Arbitration, xvii conflicts of interest with, 463-465 Dezalay, Yves, 38-39, 42-43 control through, by funders, 466 Dijon School. See French School current trends in, 462-463 Diplock, Kenneth, 13 disclosure issues with, 463-465 diversity, in international commercial recoverable costs in, 465-466 arbitration, 164-166 tribunal, 441-443 lack of female representation, 164-166 ad valorem system of remuneration, 441 Domke, Martin, 40-42 institutional fees, 441-443 Don Pacifico Affair, 27 Council of Europe Civil Law Convention on Drago, Luis M., 293-294, 359-360 Corruption, 415-416 Drago-Porter Convention (1907), 9, 23-24, Council of Europe Criminal Law Convention 294-295, 359-360 on Corruption, 415-416 Dupuy, René, xviii counterclaims, consent and, 223 Court of Justice of the European Union economic nationalism, 295-296 (CJEU) ECOSOC. See United Nations applicable law and, in international Egypt investment arbitration, 241 Law No. 43, 181-183 arbitral awards decisions, 106-108 legal scope of, 187–189 Covenant of the League of Nations, 315 Southern Pacific Properties (Middle East) CPTPP. See Comprehensive and Progressive Limited v. Arab Republic of Egypt, Agreement for Trans-Pacific 179-189 Partnership annulment of award requests, 183-185 Jiménez de Aréchega and, 180-181 Dahl, Robert A., 302 Law No. 43 and, 181-183, 187-189 data protection, for arbitration, 152-157 Taba arbitration, 320 under General Data Protection Rule, for Eisemann, Frédéric, 40-41 personal data, 152-157 energy arbitration, 3



490 Index

Energy Charter Treaty, 227, 285 experts enforcement in international arbitration, 407-408 of arbitral awards and remedies. See also Panel of Recognized International Market New York Convention on the Experts in Finance, 142-143 Recognition and Enforcement of extraterritoriality, in international Foreign Arbitral Awards arbitration, 7 comparative law and, 75 lex arbitri and, 108-109 fair and equitable treatment standards, under private international law, after 299-300 arbitration, 87-88 'Fast Track' rules, for international of autonomy of arbitration, 129-131 commercial arbitration, 140 derogatory/prorogatory elements in, 130 FCN treaties. See Friendship, Commerce and of settlement agreements, in international Navigation treaties commercial arbitration, 173-174 FDI. See foreign direct investment Federal Arbitration Act, US, 159-160 England Arbitration Act, 16-17, 81 foreign arbitral awards, international autonomy of arbitration under, 122-123 commercial arbitration and, international commercial arbitration and, recognition and enforcement of, 10 11-12, 18 Foreign Corrupt Practices Act, US (1977), English law, private international law and, 415 after arbitration, 91-92 foreign direct investment (FDI) Erikson, Erik, 303 under Charter of Economic Rights and Eritrea, 321-322 Duties of States, 295 Eritrea-Ethiopia Claims Commission, under customary international law, 321-322 293 Essar Oilfield v. Norscot, 458 globalization as influence on, 301-304 ethics. See arbitration ethics employment reduction, 303-304 Ethiopia, 321-322 historical development of, 293-297 EU Convention against Corruption, 415-416 Drago and, 293-294 European Convention for the Peaceful Drago-Porter Convention and, Settlement of Disputes, 364 294-295 European Union (EU). See also specific economic nationalism as influence on, countries 295-296 in Comprehensive Economic and Trade Great Compact and, 297, 299-301, Agreement, 290 304-306 General Data Protection Rule in, for data ICSID Convention and, 295-297 protection in arbitration, 152-157 Washington Convention and, lawfulness of, 154-155 295-297 material scope of, 153-154 international standards for, refinement of, obligations in, 156-157 297-298 right to be forgotten, 157 in bilateral investment treaties, 298 inter-state arbitration in, under EU law, fair and equitable treatment standards, 326-327 299-300 evidence collection, in comparative law in lex specialis and, 297-298 arbitration, 71-75 most favoured nation clause and. under IBA Rules, 72-74 300 under Prague Rules, 72-75 New International Economic Order and, Ewart, J. S., 477 295 excessive formality, in international World Bank and, 256, 296 commercial arbitration, 138-145 private investment and, 244-247 exhaustion of local remedies, consent and, promotion of FDI, 270 221-222 Foreign Investment Court, 247



Index 491

foreign investor-state arbitration, globalization 22-27 in autonomy theory, 135-136 consent in. See consent foreign direct investment influenced by, definition of, 22-23 301-304 lex arbitri in, 23, 25-26 employment reduction, 303-304 non-justiciability and, 23 Goldman, Berthold, 13, 16, 40-41 in state contracts, 23-24 good faith requirements, for consent, 211 time gaps in, 205 Great Compact, 297, 299-301 fork in the road provision, 221 future of, 304-306 formality in arbitration. See excessive Greenwood, Christopher, 56 formality Grisel, Florian, 39 forum prorogatum. See post hoc consent forum shopping, 216 Hague Choice of Court Convention (Hague Fouchard, Philippe, 16 Convention), 163-164 France, delocalised international commercial Hague Peace Conferences (1899/1907), arbitration in, xii 27-28 Free Trade Agreements (FTAs) Alabama Claims arbitration as influence under ICSID Convention, 286, 289-290 on, 314 Permanent Court of Arbitration investment arbitration and, 27 French School, of international commercial Hague Peace Conference (1907), 355-359 arbitration, 16, 20-22, 471 Hague Peace Conference (1899) and, arbitration agreement and, 18-19 351-355 soft law instruments, 114 Freud, Sigmund, 303 Hale, Thomas, 43 Friendship, Commerce and Navigation (FCN) Holleaux, Georges, 41 treaties, 278 FTAs. See Free Trade Agreements Homer, 6 funding. See costs Hong Kong International Arbitration Center (HKIAC), 22 Gaillard, Emmanuel, 39, 55-56, 239-240 host-state law, in choice-of-law regime, 237 on French School, of international commercial arbitration, 16 IBA Rules on the Taking of Evidence in on transnational law, 13-14 International Arbitration, 2010 Garth, 38-39, 42-43 (IBA Rules), 72-74 arbitral mechanisms for efficiency under, GDPR. See General Data Protection Rule gender representation, lack of, in 140-141 international commercial arbitration, arbitration ethics in, 149-150 50-51, 164-166 IBRD. See International Bank for General Act on the Pacific Settlement of Reconstruction and Development International Disputes, 362–363 ICC. See International Chamber of Commerce General Counsel, for World Bank, ICCA. See International Council for 249, 252 Commercial Arbitration Broches as, 4-5, 27, 252-254, 259, 262 ICJ. See International Court of Justice ICSID Convention. See International Center ICSID Convention and, 253-254 for the Settlement of Investment General Data Protection Rule (GDPR) data protection in arbitration, for personal **Disputes Convention** data, 152-157 IFC. See International Finance Corporation lawfulness of, 154-155 IIAs. See international investment material scope of, 153-154 agreements ILA. See International Law Association obligations in, 156-157 Iliad (Homer), 6 right to be forgotten, 157 German Code of Civil Procedure, 100 illegal contracts, 209

indigenous rights, 222-223

Gilmour, David, 182



492 Index

insolvency, private international law and, in 1960s, 255-256 after arbitration, 90 support for, 260-271 international code of conduct and, institutional arbitration, 70-71 Inter-American Anti-Corruption development of, 256-258 Convention, 415-416 Organisation for Economic internalization theory, 210 Co-operation and Development international arbitration. See also and, 258 investment arbitration; specific types UK rejection of, 257 US rejection of, 257 of arbitration applicable law in. See applicable law International Finance Corporation and, experts in, 407-408 historical development of, 3-9 investor-state arbitration preferences, in Ancient Greece, 5 259-262 UN Economic and Social Council and, arbitromania, 6 extraterritoriality as factor in, 7 259-260 peace societies, in Nineteenth member country assistance by, 251-252 Multilateral Investment Guarantee Agency Century, 4 inter-state. See inter-state arbitration and, 245 non-political mandate of, 248-249 intra-state. See intra-state arbitration national law as factor in, 8 President's role in, 248-253 non-state actors in, 3-4 Black in, 249-253, 276 private actors in, 3-4 private investment supplemented by, public awareness of, xvi 244-245 scope of, xvii foreign direct investment, 244-247 theoretical approach to, xii-xvi weighted voting system in, 267 third-party funding in, 406-407 International Center for the Settlement of though cosmopolitan tribunals, 7 Investment Disputes (ICSID) transnational legal sensibility and, xviii, Convention, 9 470-472 arbitrators in, 398-400 United Nations Compensation Article 27, 239 Commission as distinct from, 3 Article 42, 225-226, 237-240. See also WTO dispute settlement as distinct from, 3 choice-of-law regime International Bank for Reconstruction and party autonomy principle in, 233-236 Development (IBRD) (World Bank), prohibitions in, 234-235 Article 52(1)(b), 226, 241-242 4-5 administrative structure of, 248-253 awards by Articles of Agreement, 247-254, 263-264 annulment of, 283 dispute settlements and, early enforceability of, 282 involvement in, 248-254 limitations of, 277-278 establishment of, 244, 256 bilateral investment treaties under, 285 foreign direct investment and, 256, 296 budget for, 270 private investment and, 244-247 choice-of-law regime in, 232-240 promotion of, 270 definition of, 236 host-state law, 237 General Counsel of, 249 Broches as, 4-5, 27, 252-254, 259, 262 International Court of Justice Statute, 237 ICSID Convention and, 253-254 international law rules, applicability of, goals and purposes of, 244-246 237-240 ICSID Convention and, 245-246, 254-271, Comprehensive and Progressive Agreement for Trans-Pacific 276-277 alternatives to, 256-259 Partnership and, 286, 289-290 drafting of, 263-267 Comprehensive Economic and Trade General Counsel and, 253-254 Agreement and, 290



Index 493

consent mechanisms in, 285, 287-288 United States, Canada and Mexico data analysis on, 50-51 Agreement and, 289-290 delocalisation of procedures for, 282 Vienna Convention on the Law of Treaties draft Convention and, 242 and, 235 early days of, 283-285 World Bank and, 245-246, 254-271, Organisation of Economic Co-operation 276-277 and Development, 283-284 alternatives to ICSID Convention, Energy Charter Treaty and, 285 256-259 establishment of, 247, 272-273 drafting of, 263-267 foreign direct investment and, 295-297 General Counsel and, 253-254 Free Trade Agreements and, 286, 289-290 in 1960s, 255-256 Friendship, Commerce and Navigation support by, 260-271 treaties, 278 International Chamber of Commerce (ICC), goals of, 273 10, 40-42academic debate on, 40-41 growth in cases, 286-290 through global services, 289-290 arbitral mechanisms for efficiency and, historical development of, 274-279 international law remedies under, goals and purposes of, 41 limitations of, 277-278 International Code of Fair Treatment for as international organization, 279-283 Foreign Investment and, 41 governance structure, 279-280 lex mercatoria as foundation of, 44, 46 membership, 280-281, 286-290 oil industry crises and, 43-44 unique features of, 281-283 under private international law and, International Trade Organization and, during arbitration, 83-84 274-275 UN Convention on the Recognition and investment arbitration and, role in, 9, Enforcement of Foreign Arbitral 23-27 Awards, 247 bilateral investment treaties and, 27 voie directe, 113 international code of conduct, World Bank delocalisation and, 26 Free Trade Agreements and, 27 and, development of, 256-258 New York Convention and, 25-26 Organisation for Economic Co-operation Washington Convention, 24-25 and Development and, 258 UK rejection of, 257 Investor-State Dispute Settlement and, 273 US rejection of, 257 mixed arbitration in, 378, 381-382 International Code of Fair Treatment for model arbitration clauses, 268, 284 New York Convention and, 25-26, Foreign Investment, 41 278-279 international commercial arbitration. See North American Free Trade Agreement commercial arbitration under, 285-286 international commercial courts, 161-164 Permanent Court of Arbitration and, 378, establishment of, 161-162 381-382 goals and purposes of, 162-163 ratification of, 268 Hague Choice of Court Convention, Regional Comprehensive Economic 163-164 Partnership and, 286 International Convention on the Elimination Regional Economic Integration of All Forms of Racial Discrimination. Organizations, 286 rule amendment processes, 290-291 International Council for Commercial Southern Pacific Properties (Middle East) Arbitration (ICCA), 45 Limited v. Arab Republic of Egypt, International Court of Arbitration, 10 179-189 International Court of Justice (ICJ) annulment of award requests, 183-185 arbitration for peace in connection with, Jiménez de Aréchega and, 180-181 323-324 Law No. 43 and, 181-183, 187-189 choice-of-law regime and, statutes for, 237



494 Index

International Court of Justice (ICJ) (cont.) confidentiality issues, 340-341 inter-state arbitration and, 29, 334-346 costs of, 344-346 choice of arbitrators in, 337-339 lack of legal bindingness, 342-343 confidentiality of proceedings, 340-341 lack of politically binding force, 343 consent issues, 328-329 speed of proceedings, 336-337 costs of, 344-346 under EU law, 326-327 finality of judgment, 342-344 global legacy of, 346-348 jurisdiction for, 328-329 Hague Peace Conferences (1899/1907), lack of politically binding force for 27 - 28judgments, 343 historical development of, 27-29 legal bindingness of, 342-343 kompetenz-kompetenz doctrine, 28-29 political binding force of judgments, during Nineteenth Century, 29-30 UK role in, 28-29 speed of proceedings, 336-337 US role in, 28-29 US-UK Jay Treaty and, 28 International Finance Corporation (IFC), 245 international investment agreements (IIAs), International Court of Justice and. See 226-227, 234-236 International Court of Justice international investment arbitration. Jay Treaty commissions, 6-10, 27-28 See investment arbitration jurisdiction for international law. See also public compulsory, 333-334 international law International Court of Justice application of, through comparative law jurisdiction, 328-329 in arbitration, 75-76 lex arbitri and, 31-33 choice-of-law regime and, applicability of, lex causae, 31 237-240 peace through, 319-322 comparative private, 68 Permanent Court of Arbitration and, 360-366, 368-374. See also of contracts, xviii foreign direct investment under, 293 Permanent Court of Arbitration International Law Association (ILA), 274–275 case law for, 30-31 International Trade Organisation (ITO), compromissory clauses in, 364-365 274-275 Permanent Court of International Justice, International Tribunal for the Law of the Sea (ITLOS), 323, 370-371 procedural issues, 346 scope of, 6-9 inter-state arbitration (ISA), 27-34 advantages of, 334-346 theoretical approach to, 326 choice of arbitrators, 337-339 Vienna Convention on the Law of Treaties costs of, 344-346 and, 331 finality of judgment, 342-344 World Trade Organization and, 331 Alabama Claims arbitration, 6–10, 27–28 intra-state arbitration, 3-5, 27-34 availability of, 326-327 Permanent Court of Arbitration and, 5 bilateral investment treaties and, 330, UNCITRAL Model Law and, 34 332-333 investment arbitration, international consent as element of, 327-334 applicable law in. See applicable law ad hoc consent, 327-328 corruption in, 424-429 ante hoc consent, 329-331 admissibility of investor claims, 427-428 compromissory clause, 329, 333-334 as bar to jurisdiction, 425-427 International Court of Justice in bilateral investment treaties, 425-426 jurisdiction for, 328-329 in demands of host state officials, post hoc consent, 328-329 investor claims based on, 428-429 Convention on the Pacific Settlement of Don Pacifico Affair, 27 International Disputes and, 6-10 under Drago-Porter Convention, 9, 23-24 disadvantages of, 334-346 foreign investor-state arbitration, 22-27



> Index 495

definition of, 22-23 lex arbitri in, 23, 25-26 non-justiciability and, 23 366 in state contracts, 23-24 ICSID Convention role in, 9, 23-27 bilateral investment treaties and, 27 delocalisation and, 26 Free Trade Agreements and, 27 New York Convention compared to, Washington Convention, 24-25 Occidental v. Ecuador, 23 scope of, 9 investment treaties. See also bilateral investment treaties; foreign investorstate arbitration consent and. See consent exhaustion of local remedies and, 221-222 legitimacy crises for, 222-223 judges most favoured nations clause in, 218-220 qualifications of investment, 213-214 umbrella clause in, 216-217, 228-229 waiting periods in, 220 investor-state arbitration. See also International Center for the Settlement of Investment Disputes Alabama Claims arbitration and, 197 bilateral investment treaties and, 189, 193-197 best practices under, 200-203 establishment of, 179-180 international investment tribunals, 195-201 AIAC, 22 criticisms of, 198-200 mechanisms of, 180-189 North American Free Trade Agreement Lalive, Pierre, 44, 53-54 and, 194-195 Lauterpacht, Hersch, 40-41, 356 objectives of, 189-203 agreement to binding limitations as, topics 193-197 state sovereignty in, 190-193 Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt, 179-189 annulment of award requests, 183-185 Jiménez de Aréchega and, 180-181 Law No. 43 and, 181-183, 187-189 Lew, Julian, 8 World Bank and, 259–262 UN Economic and Social Council and, 259-260 Investor-State Dispute Settlement (ISDS), ICSID Convention and, 273 of, 104-106

Iran-US Claims Tribunal (IUCT), 22 Permanent Court of Arbitration and, ISA. See inter-state arbitration ISDS. See Investor-State Dispute Settlement Israel, Taba arbitration and, 320 issue estoppel, private international law and, after arbitration, 96 Italian Code of Civil Procedure, 100 ITLOS. See International Tribunal for the law ITO. See International Trade Organisation IUCT. See Iran-US Claims Tribunal Jay Treaty commissions, 6-10, 27-28

Jenkins, Roy, 313 Jessup, Philip, 471 Jiménez de Aréchega, Eduardo, 180-181 arbitrators compared to, xiii-xv public law/private law distinction for, xv rights of appeal and, xv-xvi jurisdiction, in comparative law in arbitration, 75 jurisdictional view, of international commercial arbitration, 11

Kinnear, Meg, 269-270 kompetenz-kompetenz doctrine, 10, 21-22 inter-state arbitration and, 28-29 El-Kosheri, Ahmed, 44 Kuala Lumpur Regional Centre for Arbitration, 22

law. See also private law; public law; specific transnational justice systems, xviii Law No. 43, Egypt (1974), 181-183 legal scope of, 187-189 LCIA, under private international law, during arbitration, 83-84 League of Nations, 357, 361-362 legal realism, in autonomy theory, 133-135 lex arbitri, 10, 14-16 arbitral awards and annulment of, 109 arbitrability and, assessment and scope



496 Index

lex arbitri (cont.)	lex mercatoria
composition of tribunals as influence	autonomy of arbitration
on, 104	procedural, 118–119
Court of Justice of the European Union	substantive, 115–117
decisions on, 106-108	comparative law in arbitration and, 67-69
enforcement of, 108-109	International Chamber of Commerce and,
judicial control of, 103-104	44, 46
public policy as influence on, 106-108	international commercial arbitration and,
validity of, 103–108	53–54
in arbitration procedures, 102–103	lex specialis, foreign direct investment and,
composition of tribunals as influence	297-298
on, 104	Lowe, Robert, 319
rules of, 104	
territoriality principle in, 102	Mance, Jonathan, 473–474
in comparative law in arbitration, 65–67	Mann, Frederick A., xviii, 8, 207
competition over, 77	on transnational law, 13, 15–16
in foreign investor-state arbitration, 23,	Martens, Friedrich, 356
25-26	Matteucci, Mario, 41
inter-state arbitration and, 31–33	Mbaye, Keba, 198
laws applicable to substance of dispute,	Menon, Sundaresh, 49–50
109-114	Mexico
under chosen law of parties, 109–112	North American Free Trade Agreement,
with lack of applicable law choice,	194–195
112-113	under ICSID Convention, 285–286
under private international law,	United States, Canada and Mexico
113-114	Agreement, 289–290
under territoriality principle, 109 under UNCITRAL Model Law, 112–113	Middle Ages, outpromy, of orbitration
voie directe, 113	Middle Ages, autonomy of arbitration during, 121–122
New York Convention and. See New York	MIGA. See Multilateral Investment
Convention on the Recognition and	Guarantee Agency
Enforcement of Foreign Arbitral	migration of companies, consent and,
Awards	215–216
private international law and, 79, 93-94	mixed arbitration, in Permanent Court of
laws applicable to substance of dispute,	Arbitration, 374–383
113-114	expansion of, 376-377
territoriality principle and	under ICSID Convention, 378, 381-382
in arbitration procedures, 102	under UNCITRAL Model Law, 367, 376-382
in laws applicable to substance of	mixed courts, 7
dispute, 109	model arbitration clauses, 268
UNCITRAL Model Law and, 16, 98	Monroe, James, 293
laws applicable to substance of dispute,	Moore, John Bassett, 29-30
112–113	most favoured nation clause
validity of arbitration agreements, 99-102	consent and, 218-220
lex causae, 10	in bilateral investment treaties, 218-219
inter-state arbitration and, 31	exclusions for, 220
private international law and, 93–94	goals of, 219–220
lex contractus, private international law and,	procedural requirements in, 220
93-94	foreign direct investment and, 300
lex facit arbitrum, private international law and, 79, 93–94	Multilateral Investment Guarantee Agency (MIGA), 245
lex fori, 10, 14-15	Munch, F., 40-41



Index 497

Munk, Peter, 182 Mustill, Michael, 6 NAFTA. *See* North

NAFTA. See North American Free Trade Agreement Nasser, Gamal Abdel, 251

national security, 222–223 nationalism. *See* economic nationalism

neutrality, of arbitrators, 157–161 under Arbitration Act (England), 160 definition of, 158–159

under Federal Arbitration Act (US), 159–160

legislative approaches to, 159–160 in selected arbitral institutions, 160–161 under UNCITRAL Model Law, 159

New Lex Mercatoria, 6

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), xviii, 8–9

comparative law in arbitration influenced by, 63

ICSID Convention and, 25–26, 278–279 international commercial arbitration and, 42 arbitration agreements, 17–18 delocalisation and, 17–18, 20–22

investment arbitration and, 25–26 *lex arbitri* and, in arbitration, 97–98,

109–112 formal validity of agreements, 99–101

under German Code of Civil Procedure, 100 under Italian Code of Civil Procedure,

under Italian Code of Civil Procedure,

legal capacity of parties in, 101 under Norwegian Arbitration Act, 100 scope of agreements, 101–102 seat of tribunal under, 98 under Swedish Arbitration Act, 100

under Swedish Arbitration Act, 100 under Swiss Private International Law Act, 100

under UNCITRAL Model Law, 99–101 validity of agreements, 99–102 private international law and, after arbitration, 85–86, 89–90

NIEO Declaration. See Declaration on the Establishment of a New International Economic Order

North America. *See also* Canada; Mexico; United States

transnational justice system movement in, 471–472

North American Free Trade Agreement (NAFTA), 194–195 under ICSID Convention, 285–286 Norway, Arbitration Act, 100 Nussbaum, Arthur, 40–41

Obama, Barack, 292
Occidental v. Ecuador, 23
OECD. See Organisation for Economic
Co-operation and Development
ordering. See private/public ordering
Organisation for Economic Co-operation and
Development (OECD), 258, 283–284

Pact of Bogota. *See* American Treaty on Pacific Settlement

Panel of Recognized International Market Experts in Finance (P.R.I.M.E. Finance), 142–143

party autonomy principle

under applicable law, in international investment arbitration, 227–228

in ICSID Convention, 233-236

party representatives, arbitrators in conflict with, 404–406

Paulsson, Jan, 3, 26, 53-54, 148

PCLL See Permanent Court of Arbitration

PCIJ. See Permanent Court of International Justice

peace, arbitration for

Abyei arbitration, 321

Alabama Claims arbitration and, 310–314 reassessment of, 317–319

arbitral awards and, 314

Covenant of the League of Nations, 315 declines in, 316–324

through inter-state arbitrations, 319–322 perception of, 315–316

Eritrea-Ethiopia Claims Commission and, 321–322

after World War I, 315

in International Court of Justice, 323–324 in International Tribunal for the law of the Sea, 323

Permanent Court of International Justice and, 309, 315

public international law and, xvii–xviii through removal of potential causes of

war, 323–324 restoration of, 319–322

after World War II, 315–316 *Taba* arbitration, 320



498 Index

peace, arbitration for (cont.) permanent constitution of court, 354-360 theoretical approach to, 309-310 UN Convention on the Law of the Sea and, UN Convention on the Law of the Sea, 367-374 316, 323 Permanent Court of International Justice unrealized expectations for, 315-316 (PCIJ), 309, 315, 346, 360-362 Washington Convention and, 314 Permanent Treaty of Arbitration, 319 peace societies, international arbitration Philippines-UK Treaty, 207 history and, 4 PILA. See Private International Law Act Permanent Court of Arbitration (PCA), 346 Porter, Horace, 294-295, 359-360 administration of, 373 post hoc consent (forum prorogatum), American Treaty on Pacific Settlement, 328-329 Practising Virtue, 39, 49-50 availability of, 373, 382-383 Prague Rules. See Rules on the Efficient Conduct of Proceedings in bespoke procedures in, 383-388 conciliation in, 383-388 International Arbitration compulsory provisions, 387 preclusionary defences, for consent, 222-223 delocalised arbitration in, xvii indigenous rights, 222-223 European Convention for the Peaceful national security, 222-223 Settlement of Disputes, 364 Predictive Coding, 144-145 expansion of, 381 P.R.I.M.E. Finance. See Panel of Recognized International Market Experts in General Act on the Pacific Settlement of International Disputes, 362-363 Finance Hague Peace Conference (1899) and, private international law after arbitration, 85-96 351-352, 354-355 drafting of, 353 under common law traditions, 92-93 Hague Peace Conference (1907) and, under contract law, 88 355-359 under English law, 91-92 Draft Convention for, 356-357 foreign awards, enforcement of, 87-88 historical development of, 6, 29, 350-366 foreign judicial judgments, effects of, codification of procedures for, 353-354 88-95 establishment of, 350-354 insolvency issues and, 90 goals and purposes of, 349, 352-353 issue estoppel and, 96 Russia and, 350-351 under New York Convention, 85-86, inter-state arbitration and, 360-366, 89-90 368-374 during arbitration, 81-85 case law for, 30-31 under Arbitration Act, 81 compromissory clauses in, 364-365 choice of law rules, 81-82 intra-state arbitration and, 5 conflict of laws and, 82-85 Iran-United States Claims Tribunal, 366 consent of agreement of parties, 81-82 League of Nations and, 357, 361-362 under International Chamber of mixed arbitration in, 374-383 Commerce rules, 83-84 expansion of, 376-377 under LCIA rules, 83-84 under ICSID Convention, 378, 381-382 under Singapore International under UNCITRAL Model Law, 367, Arbitration Centre rules, 83-84 376-382 tribunal directions, 82-85 revival of, 366-388 under UNCITRAL Model Law, 81, 83 South Pacific Regional Fisheries comparative, 68 Management Organization and, lex arbitri and, 79, 93-94 385-386 laws applicable to substance of dispute, standing tribunals, 383-388 113-114 structure of, 352 lex causae and, 93-94 open, 367-368 lex contractus and, 93-94



Index 499

lex facit arbitrum and, 79, 93-94 Rosenne, Shabtai, 34 prior to arbitration, 79-80 round tripping, 214-215 anti-suit injunctions, 80 Rules on the Efficient Conduct of Proceedings Private International Law Act (PILA), in International Arbitration (Prague Switzerland, 100 Rules), 72-75 private investments, World Bank and, arbitral mechanisms for efficiency under, 244-245 140-141 private law. See also private international Russia, Permanent Court of Arbitration and, law 350-351 arbitrators and, xv autonomy of arbitration under, 133-135 Sasson, Monique, 239 Schumpeter, Joseph, 303 judges and, xv private law contracts, corruption in, 417-424 separability doctrine, international applicable law for, 420-422 commercial arbitration and, 10, arbitrability of, 417-419 16-19, 21-22 validity of arbitration agreements, 419-420 under Arbitration Act, 16-17 private/public ordering, in autonomy of settlement agreements, in international arbitration, 131-132 commercial arbitration, 172-175 procedural autonomy, of arbitration, advantages of, 172-173 118-119 enforceability of, 173-174 public international law, arbitration for res judicata effect, 173, 175 peace and, xvii-xviii under UNCITRAL Model Law, public law. See also public international law 173-175 arbitrators and, xv Shakespeare, William, 6 autonomy of arbitration under, 133-135 Shalakany, Amr, 7, 21-22 judges and, xv Shawcross, Hartley, 256-257 public policy, arbitral awards influenced by, Shihata, Ibrahim, 244-246 106-108 SIAC. See Singapore International Arbitration Centre Puig, Sergio, 50-51 SICC. See Singapore International Rape of Lucrece, 6 Commercial Court SIMC. See Singapore Mediation RCEP. See Regional Comprehensive Economic Partnership Convention recoverable costs. See costs Singapore International Arbitration Centre Regional Comprehensive Economic (SIAC), 22 Partnership (RCEP), 286 under private international law, during Regional Economic Integration arbitration, 83-84 Organizations (REIOs), 286 Singapore International Commercial Court Reisman, Michael, 235, 239 (SICC), 65 Singapore International Mediation Centre remedies. See arbitral awards and remedies René, David, 40-41 (SIMC), 144 res judicata effect, in settlement agreements, Sohn, Louis, 275 173, 175 Sornarajah, M., 7 right to be forgotten, 157 South Pacific Regional Fisheries rights of appeal Management Organization arbitration and, xv-xvi (SPRFMO), 385-386 Southern Pacific Properties (Middle East) judges and, xv-xvi Roman law, autonomy of arbitration under, Limited v Arab Republic of Egypt 120 - 121(SPP v Egypt), 179–189 annulment of award requests, 183-185 Rome I Regulation, 19 Roosevelt, Theodore, 294, 305-306, 358 Jiménez de Aréchega and, 180-181 Root, Elihu, 355-356 Law No. 43 and, 181-183, 187-189



500 Index

sovereignty, as objective of investor-state arbitration, 190-193 sports arbitration, 3 SPP v. Egypt. See Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt SPRFMO. See South Pacific Regional Fisheries Management Organization state authority, international commercial arbitration and delocalisation of, 11-16 in territorial approach, 11-16 Stead, W. T., 314 substantive autonomy, of arbitration, 115-118 as autopoietic process, 116-117 lex mercatoria and, 115-117 UNIDROIT Principles, 117 Sudan, Abyei arbitration and, 321, 382-383 summary dispositions, in international commercial arbitration, 141-142 Sweden, Arbitration Act, 100 Swiss Rules of International Arbitration, 10 Switzerland, Private International Law Act,

Taba arbitration, 320 tainted contracts, 209 technology, for international commercial arbitration, 144-145 Artificial Intelligence, 145 with Predictive Coding, 144-145 territoriality principle in arbitration procedures, 102 lex arbitri and, 102 laws applicable to substance of dispute, third-party funding, for arbitration. See costs Thomas, John, 475, 479-480 Tokio Tokeles v. Ukraine, 214-215 total autonomy, of arbitration, 119-120 totalitarian states, autonomy of arbitration in. 123-124 transnational code, of arbitration ethics, 150 - 151transnational justice system (transnational law), xviii

Gaillard on, 13-14 international arbitration and, xviii, international commercial arbitration,

471-472 Mann on, 13, 15-16 transnational legal sensibility, international arbitration and, xviii transnational networks, for international commercial arbitration, 45 transparency, in international commercial arbitration, 166-171 confidentiality and, 169-171 comparisons between, 169-170 criticisms of, 170-171 demands for, 167 institutional initiatives for, 167-168 International Centre for Dispute Resolution, 170 International Chamber of Commerce and, 167-168 tribunals, arbitral. See also specific tribunals under applicable law, in international investment arbitration, 228-229, 236 cosmopolitan, 7 costs for, 441-443 ad valorem system of remuneration, 441 institutional fees, 441-443 for investor-state arbitration, 195-201 criticisms of, 198-200 lex arbitri and composition of tribunals, 104 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 98 under private international law, during arbitration, 82-85

as legal movement, in North America,

UK-Ceylon Treaty, 207 umbrella clause under applicable law, in international investment arbitration, 228-229 consent and, 216-218 in investment treaties, 216-218 UN Commission on International Trade (UNCITRAL) Model Law, 7 under applicable law, Arbitration Rules and, 225-226 arbitrators under, 395 neutrality of, 159 autonomy of arbitration and, 126-127 in bilateral investment treaties, 22 comparative law in arbitration influenced by, 63-64, 74

UK. See United Kingdom

12-13



Index 501

application and interpretation of, 76 United States (US) international commercial arbitration and, Alabama Claims arbitration. See Alabama 16, 20-22Claims arbitration intra-state arbitration and, 34 American Arbitration Association, 41-42, lex arbitri and, 16 141-142 laws applicable to substance of dispute, American Treaty on Pacific Settlement, 112 - 113New York Convention on the applicable law in, international investment arbitration and, 230 Recognition and Enforcement of Foreign Arbitral Awards, 99-101 Federal Arbitration Act, 159-160 in mixed arbitration, 367, 376-382 Foreign Corrupt Practices Act, 415 in Permanent Court of Arbitration, 367, inter-state arbitration and 376-382 role in historical development of, under private international law, during US-UK Jay Treaty and, 28 arbitration, 81, 83 settlement agreements under, 173-175 Iran-US Claims Tribunal, 22 UN Convention on the Law of the Sea, 316, Permanent Court of Arbitration and, 366 323 North American Free Trade Agreement, UNCITRAL Model Law. See UN Commission on International Trade Model Law 194-195 UNCLOS. See United Nations under ICSID Convention, 285-286 UNIDROIT Principles, 67-69 Permanent Treaty of Arbitration, 319 autonomy of arbitration and Uniform Arbitration Act, 141-142 creation of, 126-127 United States, Canada and Mexico Agreement, 289-290 substantive, 117 Uniform Arbitration Act, US, 141-142 World Bank international code of conduct United Kingdom (UK) and, rejection of, 257 Alabama Claims arbitration. See Alabama United States, Mexico and Canada Claims arbitration Agreement (USMCA), 289-290 inter-state arbitration and US. See United States role in development of, 28-29 USMCA. See United States, Mexico and US-UK Jay Treaty and, 28 Canada Agreement Permanent Treaty of Arbitration, 319 US-UK Jay Treaty, 28 Philippines-UK Treaty, 207 World Bank international code of conduct vacatur, prevention of, 241-242 and, rejection of, 257 van den Berg, Jan, 55-56 United Nations (UN). See also UN Vattel, Emmerich de, 472 Commission on International Trade Vienna Convention on the Law of Treaties Model Law applicable law and, in international Compensation Commission, international investment arbitration, 231 arbitration as distinct from, 3 ICSID Convention and, 235 Convention against Corruption, 412-413, inter-state arbitration and, 331 415-416 voie directe, 113 Convention on Recognition and von Suttner, Bertha, 314 Enforcement of Foreign Arbitral Awards, 247 Wai, Robert, 136 Convention on the Law of the Sea, 316, Washington Convention 323, 367 arbitration for peace and, 314 Permanent Court of Arbitration and, foreign direct investment and, 295-297 367-374 ICSID Convention and, 24-25

UN Economic and Social Council,

259-260

women, in international commercial

arbitration, lack of, 50-51, 164-166



502 Index

Woods, George D., 264–266
World Bank. See International Bank for
Reconstruction and Development
World Trade Organisation (WTO)
dispute settlement mechanisms,
international arbitration as distinct
from, 3
inter-state arbitration and, 331

World War I, arbitration for peace after, 315 World War II, arbitration for peace after, 315–316 Wortley, Benjamin, 41 WTO. See World Trade Organisation

Zoellick, Robert B., 269-270