

INTERNATIONAL INVESTMENT LAW AND LEGAL THEORY

Expropriation is a hotly debated issue in international investment law. This is the first study to provide a detailed analysis of its norm-theoretical dimension, setting out the theoretical foundations underlying its understanding in contemporary legal scholarship and practice. Jörg Kammerhofer combines a doctrinal discussion with a theoretical analysis of the structure of the law in this area, undertaking a novel approach that critically re-evaluates existing case-law and writings. His approach critiques the arguments for a single expropriation norm based on custom, interpretation and arbitral precedents within international investment law, drawing also on generalist international legal thought, to show that both cosmopolitan and sovereigntist arguments are largely political, not legal. This innovative work will help scholars to understand the application of theory to investment law and help specialists in the field to improve their arguments.

JÖRG KAMMERHOFER is Senior Research Fellow at the University of Freiburg, Germany, and *Privatdozent* for international law and legal theory at the Vienna University of Economics and Business. His publications include *Uncertainty in International Law* (2010), and *International Legal Positivism in a Post-Modern World*, co-edited with Jean d'Aspremont (Cambridge, 2014).

CAMBRIDGE STUDIES IN INTERNATIONAL
AND COMPARATIVE LAW: 158

Established in 1946, this series produces high quality, reflective and innovative scholarship in the field of public international law. It publishes works on international law that are of a theoretical, historical, cross-disciplinary or doctrinal nature. The series also welcomes books providing insights from private international law, comparative law and transnational studies which inform international legal thought and practice more generally.

The series seeks to publish views from diverse legal traditions and perspectives, and of any geographical origin. In this respect it invites studies offering regional perspectives on core *problématiques* of international law, and in the same vein, it appreciates contrasts and debates between diverging approaches. Accordingly, books offering new or less orthodox perspectives are very much welcome. Works of a generalist character are greatly valued and the series is also open to studies on specific areas, institutions or problems. Translations of the most outstanding works published in other languages are also considered.

After seventy years, Cambridge Studies in International and Comparative Law sets the standard for international legal scholarship and will continue to define the discipline as it evolves in the years to come.

Series Editors

Larissa van den Herik

*Professor of Public International Law, Grotius Centre for
International Legal Studies, Leiden University*

Jean d'Aspremont

*Professor of International Law, University of Manchester
and Sciences Po Law School*

A list of books in the series can be found at the end of this volume.

INTERNATIONAL
INVESTMENT LAW AND
LEGAL THEORY

Expropriation and the Fragmentation of Sources

JÖRG KAMMERHOFER
University of Freiburg



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
978-1-108-98453-9 — International Investment Law and Legal Theory
Jörg Kammerhofer
Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108984539

DOI: 10.1017/9781108989428

© Jörg Kammerhofer 2021

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

First published 2021

First paperback edition 2023

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Names: Kammerhofer, Jörg, author.

Title: International investment law and legal theory : expropriation and the fragmentation of
sources / Jörg Kammerhofer, University of Freiburg.

Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press,
2021. | Series: Cambridge studies in international and comparative law ; 158 | Includes
bibliographical references and index.

Identifiers: LCCN 2021004906 (print) | LCCN 2021004907 (ebook) | ISBN 9781108839174
(hardback) | ISBN 9781108989428 (ebook)

Subjects: LCSH: Investments, Foreign (International law) | Investments, Foreign – Law and
legislation.

Classification: LCC K3830 .K36 2021 (print) | LCC K3830 (ebook) | DDC 346/.092–dc23
LC record available at <https://lcn.loc.gov/2021004906>

LC ebook record available at <https://lcn.loc.gov/2021004907>

ISBN 978-1-108-83917-4 Hardback

ISBN 978-1-108-98453-9 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

DEM ANDENKEN MEINES VATERS

CONTENTS

<i>List of Figures</i>	<i>page</i>	x
<i>Preface</i>		xi
<i>Table of Cases</i>		xv
1	Introduction	1
2	Customary International Law	11
2.1	Introduction: The Specialist Debate	11
2.2	The Evidence–Element Relationship	17
2.3	Treaties and State Practice: The ‘Verbal Act’ Problem	20
2.4	Treaties and <i>Opinio Iuris</i> : The ‘Baxter Paradox’	28
2.5	Changing General Customary Law or Sectoral <i>lex specialis</i> ?	32
2.5.1	The <i>Ius Dispositivum</i> Model	33
2.5.2	The <i>Nicaragua</i> Model	38
2.6	Conclusion: A General Customary Rule on Expropriation?	39
3	Investment Precedents	43
3.1	Introduction: Persistent Questions	43
3.2	Awards Are Not ‘Formally Binding’, but They Are Immensely Important	45
3.3	The Orthodox De Facto Precedential System	49

3.4	Arbitral Jurisprudence and Customary Law	57
3.5	Conclusion: A General Norm of Expropriation from Jurisprudence?	63
4	Treaty Interpretation	68
4.1	Introduction	68
4.2	Treaty Interpretation in International Law	70
4.2.1	Rules of Interpretation as Norms of International Law?	70
4.2.2	Two Concepts of Interpretation	79
4.2.3	The Vienna Convention Rules Reconstructed	96
4.3	Unity through Interpretation in Investment Law?	105
4.3.1	The Theoretical Foundations of Systemic Integration	109
4.3.2	Systemic Integration and Customary International Law	121
4.3.3	<i>Renvoi</i> to Meanings, Rather than to Norms	132
4.3.4	Differences vis-à-vis Other Tools of Interpretation	136
4.4	Conclusion	141
5	Doctrinal Scholarship	144
5.1	Introduction: What Is Doctrinal Scholarship?	144
5.2	Theoretical Foundations for Doctrine	146
5.3	A New Doctrine of Investment Law	152
5.4	Trends in Case-Law	156
5.5	Conclusion	159
6	The Regulatory Expropriation Conundrum	162
6.1	Introduction: The Set-Up	162
6.2	The Single Solution	168
6.3	Four Approaches	172
6.3.1	Reinisch: The New Orthodoxy	173

CONTENTS

ix

6.3.2	Henckels: Comparatist Proportionality Analysis	175
6.3.3	Mostafa: Classic Liberalism	178
6.3.4	UNCTAD: Sovereignist Activism	180
6.4	Conclusion: Abandon the Conundrum	183
7	Expropriation: A New Beginning	186
7.1	Introduction: Three Structural Limits	186
7.2	The Argument from General Law	191
7.2.1	Transmission Mechanisms	192
7.2.2	Content of General Law	210
7.3	Equivalence of Direct and Indirect Expropriation	221
7.4	All Legality Conditions Are Necessary	228
7.4.1	Doubling the Process Conditions	229
7.4.2	Selecting from among the Legality Conditions	242
7.5	The Influence of Treaty Clause Design	249
7.6	Conclusion	260
8	Expropriation Reconstructed	263
8.1	Introduction: Method and Topic Selection	263
8.2	Substantial Deprivation	268
8.2.1	The General Rule	272
8.2.2	Sub-standards	280
8.2.3	Subsumption of Standards in Case-Law	291
8.3	Partial Expropriation	294
8.3.1	The Academic Problem	295
8.3.2	Case-Law	303
8.4	Compensation and Reparation	306
8.4.1	The Problem	307
8.4.2	Case-Law	310
8.4.3	Judicial Standard or Structural Limit?	318
8.5	Conclusion	324
	<i>Bibliography</i>	326
	<i>Index</i>	353

FIGURES

4.1	Interpretation, application, change and interpretative change	page 90
4.2	Reconstructing the rules of interpretation – Variants 1 and 2	98
4.3	Reconstructing the rules of interpretation – Variants 3 and 4	101
4.4	The interpreter’s perspective	109
4.5	Incorporation and interpretative reference	129
4.6	Systemic integration, <i>pari materia</i> interpretation and generic terms	139
4.7	Subsequent practice and the interpreter’s perspective	140
5.1	<i>Stratum</i> analysis	155
7.1	Primary and secondary relationships	194
7.2	The doubling and selection tactics	229
8.1	Substantial deprivation in the dimensions of expropriation	270
8.2	Partial expropriation	298
8.3	Matrix for legal consequences flowing from an unlawful expropriation	320

PREFACE

It is common to lament that academic writing is a lonely business and it is slightly odd when those who are masters at networking tell us in their prefaces that their existence has been a solitary one during the writing process, usually just before they name a large number of people who have helped them with their enterprise. When I came to draft the preface to my first monograph, *Uncertainty in International Law*, I found that this was not true in my case – I had the benefit of many debates, of written and oral feedback and, generally, of many friends who supported me and my work. With regard to *this* book, I am grateful for the support and feedback that I have received, as well as for the friendships which have made this new book possible. However, for a variety of reasons, the years working on the manuscript to this book have indeed seen me treading a more solitary path. There were personal reasons and reasons related to the *genus loci*, which are not relevant here. There were, however, also substantive reasons, for I seem to excel at finding the space between stools.

My recent scholarship aims to combine two realms of knowledge: legal theory and international legal scholarship. This is not unprecedented – there is a vibrant community of international legal theorists – but the specific form and approach I have chosen seem to be. And as well suited as the Pure Theory of Law, on the theoretical side, and international investment law, on the doctrinal side, are to demonstrate what I have set out to do, they seem to be like oil and water. Rather, those with whom I talk about one tend to have limited patience for the other, which has contributed to the solitary nature of my endeavour. Another factor is that I have searched less for conventional sources of reaffirmation. While academic self-sufficiency may partly be what a second book is about, I must confess to a certain amount of smugness, which is a particularly serious offence for scholars. *Mea culpa*, particularly in failing to engage more deeply with the community of international investment lawyers. The feeble excuse is that this hermit-like existence has perhaps allowed a

more coherent and bold argument to emerge than if I had, through constant feedback, micro-managed my text in order not to offend conventional sensibilities. A lonely book allows breathing-space for big new ideas.

As I have gained more experience as a scholar, I have found that my writings serve as a space in which to tighten the weave in the net of my larger theoretical argument. Ralf Dreier's encouragement to Alexander Somek that 'it is possible for a systematic theoretical programme to be conducted by way of a series of discrete [smaller] projects'¹ as well as Kelsen's late rethink of the problem of legal logic have helped to open my mind to the fact that no single project will be the last word, but every project is a chance to take at least one step further. Monographs are better suited to accomplishing this than any other genre of scholarly writings – the very Germanic process of the *Habilitation* supremely so. I have found the freedom to develop big ideas, which, in this format, is extraordinarily daunting but also extraordinarily liberating; being forced into and counselled towards this course of action has thus had the upside of allowing me to grow as a scholar.

Scholarship is not merely an exercise in making innovative arguments; in many aspects it is surprisingly close to a trade (*Handwerk*). Just as one learns to turn a piece of shafting on a lathe or to build a brick wall by watching those more senior and then trying oneself, so it is with some aspects of scholarship. There is an element of talent and creativity which one either has or has not, but there are many aspects where experience counts. This is where colleagues and teachers – both formal and informal – play a vital role. And this is how I would like the list of names which follows to be read: as thanking those from whom I have learnt one aspect or many, rather than as proof that I have associated with important people.

Erich Vranes has been my indispensable guide to the vagaries of this big project throughout as friend, colleague and *Habilitationsvater* – ever ready with in-depth comments, advice and practical suggestions, ever ready to fight in my corner when progress was threatened and ever ready to gently propel me forward when I was my own worst enemy. Once more, Matthias Jestaedt has held the dual role of *Meister* in the trade aspect and senior colleague in the academic aspect of our profession. In the former role, he exhibited a mastery in tradecraft which allowed me to learn despite my nonconformist inclinations; in the latter, we traded

¹ 'Ralf Dreier, der mir klar machte, daß sich ein systematisch angelegtes Theorieprogramm durchaus in der Form von Einzelprojekten durchführen läßt'; Alexander Somek, *Der Gegenstand der Rechtskenntnis: Epitaph eines juristischen Problems* (Baden-Baden: Nomos 1996) 5. Unless otherwise noted, all translations in this book are mine.

many ideas and arguments which helped me, despite our partially divergent areas of interest, to sharpen and rally my arguments. In recent years Georg Lienbacher has remained a friend but has also become a pillar or brace for me, in many conversations which sometimes took on aspects of a confessional, and his guidance behind the scenes shall remain there.

As I have become ever more involved in the Hans Kelsen Institute in Vienna, my collaboration with its staff has increased and so have collegiality and friendship; Clemens Jabloner, Thomas Olechowski and Klaus Zeleny can be relied on to defend Kelsen – and Merkl – and to propagate their ideas and I am comforted that in advancing the cause of the Pure Theory, we stand shoulder-to-shoulder to face the onslaught. A number of people have been sounding-boards throughout, particularly Camilla Schiefler, David Freudenberg, Jean d’Aspremont, Stanley Paulson, Gleider Hernandez and Ewald Wiederin.

Two particularly memorable two-month periods helped to shape the basic argument of this book. Thanks to Armin von Bogdandy and Jochen von Bernstorff for conversations in November–December 2008 during my time at the Max Planck Institute for International Law in Heidelberg. I would like to thank Marc Weller, Marie-Claire Cordonnier Segger and Markus W Gehring as well as the permanent and visiting fellows at the Lauterpacht Centre for International Law in Cambridge and the fellows of Queens’ College for hosting me during my Brandon Fellowship at the Centre and Distinguished Academic Visitorship at my college during Easter Term 2011.

I have had the opportunity to present chapters and sections of this book in varying stages of completion at a number of venues and would like to thank participants for their feedback and the following people for inviting me and/or for more in-depth conversations on these occasions, often over a leisurely meal: Curt Bradley, Michael Wood and Omri Sender for a Duke and Geneva Universities conference on customary international law in Geneva in July 2013, in particular for a memorable and challenging group dinner; Patrick Capps and Richard Collins for a conference on methodology in Bristol in January 2014; Julian Davis Mortenson for a short but very productive visit in Ann Arbor in June 2014; Marco Pertile, Lorenzo Gradoni, Emmanuel Voyiakis and Peter Hilpold for a conference on custom in Trento and Andrea Gattini for a guest lecture in Padua in November 2014; Stephan Schill, Rainer Hoffmann and Christian Tams for a workshop on investment law at the University of Frankfurt in March 2015; Oliver Diggelmann and Tilmann Altwicker for a guest lecture at the University of Zurich in

September 2015; Andreas Kulick for a guest lecture in January 2016 at the University of Tübingen and for a wonderful and truly ‘civilian’ dinner with him and Johannes W Flume; Panos Merkouris for hosting and co-organising with me a conference on customary law in Groningen in May 2019 and for many discussions before, during and after; and Pauline Westermann, Kostiantyn Gorobets and Andreas Hadjigeorgiou for a workshop at the IVR World Congress in July 2019.

TABLE OF CASES

Investment Tribunals

- Accession Mezzanine (2013):** Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt v. Hungary, ICSID, ARB/12/3, Decision on Respondent's Objection under Arbitration Rule 41(5) of 16 January 2013
- Achmea I (2012):** Achmea B.V. (formerly Eureko B.V.) v. The Slovak Republic, UNCITRAL, PCA 2008–13, Final Award of 7 December 2012
- ADC (2006):** ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary, ICSID, ARB/03/16, Award of 2 October 2006
- ADM (2007):** Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States, NAFTA-ICSID, ARB(AF)/04/05, Award of 21 November 2007
- AES (2005):** AES Corporation v. Argentine Republic, ICSID, ARB/02/17, Decision on Jurisdiction of 26 April 2005
- AES (2010):** AES Summit Generation Limited and AES-Tisza Erőmű Kft. v. Republic of Hungary (II), ICSID, ARB/07/22, Award of 23 September 2010
- AIG (2003):** AIG Capital Partners Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, ICSID, ARB/01/6, Award of 7 October 2003
- Allard (2016):** Peter A Allard v. Government of Barbados, PCA 2012–06, Award of 27 June 2016
- Alpha (2010):** Alpha Projektholding GmbH v. Ukraine, ICSID, ARB/07/16, Award of 8 November 2010
- Al Tamini (2015):** Adel A Hamadi Al Tamimi v. Sultanate of Oman, ICSID, ARB/11/33, Award of 3 November 2015
- Al-Warraq (2014):** Hesham Talaat M. Al-Warraq v. Republic of Indonesia, UNCITRAL, Final Award of 15 December 2014
- Ambiente Ufficio (2013):** Ambiente Ufficio SPA and Others v. Argentine Republic, ICSID, ARB/08/9, Decision on Jurisdiction and Admissibility of 8 February 2013
- Ampal (2017):** Ampal-American Israel Corporation, EGI-Fund (08–10) Investors, LLC, EGI-Series Investments, LLC, and BSS-EMG Investors, LLC v. Arab Republic of Egypt, ICSID, ARB/21/11, Decision on Liability and Heads of Loss of 21 February 2017
- Anglia Auto (2017):** Anglia Auto Accessories Limited v. Czech Republic, SCC, V 2014/181, Final Award of 10 March 2017

- Arif (2013):** Franck Charles Arif *v.* Republic of Moldova, ICSID, ARB/11/23, Award of 8 April 2013
- Aven (2018):** David Aven et al. *v.* Costa Rica, UNCITRAL, UNCT/15/3, Final Award of 18 September 2018
- Azurix (2006):** Azurix *v.* Argentina, ICSID, ARB/01/12, Award of 14 July 2006
- Azurix (2009):** Azurix Corp. *v.* Argentine Republic, ICSID, ARB/01/12, Decision on the Application for Annulment of the Argentine Republic of 1 September 2009
- A11Y (2018):** A11Y Ltd. *v.* Czech Republic, ICSID–UNCITRAL, UNCT/15/1, Award of 29 June 2018
- Bayindir (2005):** Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. *v.* Islamic Republic of Pakistan, ICSID, ARB/03/29, Decision on Jurisdiction, 14 November 2005
- Bayindir (2009):** Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. *v.* Islamic Republic of Pakistan, ICSID, ARB/03/29, Award of 27 August 2009
- BCB (2014):** British Caribbean Bank Ltd. *v.* Government of Belize, UNCITRAL, PCA 2010–18, Award of 19 December 2014
- Bear Creek (2017):** Bear Creek Mining Corporation *v.* Republic of Peru, ICSID, ARB/14/21, Award of 30 November 2017
- Belokon (2014):** Valeri Belokon *v.* Kyrgyz Republic, UNCITRAL, Award of 24 October 2014
- BG (2007):** BG Group Plc. *v.* Republic of Argentina, UNCITRAL, Final Award of 24 December 2007
- Binder (2011):** Rupert Joseph Binder *v.* Czech Republic, UNCITRAL, Final Award of 15 July 2011
- Biwater Gauff (2008):** Biwater Gauff (Tanzania) Ltd. *v.* United Republic of Tanzania, ICSID, ARB/05/22, Award of 24 July 2008
- Blusun (2016):** Blusun S.A., Jean-Pierre Lecorcier and Michael Stein *v.* Italian Republic, ICSID, ARB/14/3, Award of 27 December 2016
- Bogdanov I (2005):** Iurii Bogdanov, Agurdino-Invest Ltd and Agurdino-Chimia JSC *v.* Republic of Moldova, SCC, Award of 22 September 2005
- Bosh (2012):** Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise *v.* Ukraine, ICSID, ARB/08/11, 25 October 2012
- Burlington (2012):** Burlington Resources Inc. *v.* Republic of Ecuador, ICSID, ARB/08/5, Decision on Liability of 14 December 2012
- Busta (2017):** I.P. Busta & J.P. Busta *v.* Czech Republic, SCC, V 2015/014, Final Award of 10 March 2017
- Cargill I (2008):** Cargill, Incorporated *v.* Republic of Poland, ICSID–UNCITRAL, ARB (AF)/04/2, Award of 29 February 2008
- Cargill II (2009):** Cargill, Incorporated *v.* United Mexican States, NAFTA–ICSID, ARB (AF)/05/2, Award of 18 September 2009
- Charanne (2016):** Charanne B.V., Construction Investments S.A.R.L. *v.* Kingdom of Spain, SCC, 062/2012, Award of 21 January 2016
- Chemtura (2010):** Chemtura Corporation *v.* Government of Canada, NAFTA–UNCITRAL, Award of 2 August 2010

TABLE OF CASES

xvii

- Chevron (2010):** Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. Republic of Ecuador, UNCITRAL, PCA 34877, Partial Award on the Merits of 30 March 2010
- CME (2001):** CME Czech Republic B.V. v. Czech Republic, UNCITRAL, Partial Award of 13 September 2001
- CMS (2003):** CMS Gas Transmission Company v. Argentine Republic, ICSID, ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction of 17 July 2003
- CMS (2005):** CMS Gas Transmission Company v. Argentine Republic, ICSID, ARB/01/8, Award of 12 May 2005
- ConocoPhillips (2013):** ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V., ConocoPhillips Gulf of Paria B.V. and ConocoPhillips Company v. Bolivarian Republic of Venezuela, ICSID, ARB/07/30, Decision on Jurisdiction and the Merits of 3 September 2013
- Continental Casualty (2008):** Continental Casualty Company v. Argentine Republic, ICSID, ARB/03/9, Award of 5 September 2008
- Copper Mesa (2016):** Copper Mesa Mining Corporation v. Republic of Ecuador, UNCITRAL, PCA 2012–2, Award of 15 March 2016
- Corn Products (2008):** Corn Products International, Inc. v. United Mexican States, NAFTA-ICSID, ARB(AF)/04/01, Decision on Responsibility of 15 January 2008
- Crystallex (2016):** Crystallex International Corporation v. Bolivarian Republic of Venezuela, ICSID, ARB(AF)/11/2, Award of 4 April 2016
- Czescik (2017):** Tomasz Cześćcik and Robert Aleksandrowicz v. Republic of Cyprus, SCC, V 2014/169, Award of 11 February 2017
- Deutsche Bank (2012):** Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka, ICSID, ARB/09/2, Award of 31 October 2012
- Devas (2016):** CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India, UNCITRAL, PCA 2013–09, Award on Jurisdiction and Merits of 25 July 2016
- ECE (2013):** ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtundsechzigste Grundstücksgesellschaft mbH & Co v. Czech Republic, UNCITRAL, PCA 2010–5, Award of 19 September 2013
- EDF I (2012):** EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic, ICSID, ARB/03/23, Award of 11 June 2012
- E energija (2017):** UAB E energija (Lithuania) v. Republic of Latvia, ICSID, ARB/12/33, Award of 22 December 2017
- Electrabel (2012):** Electrabel S.A. v. Republic of Hungary, ICSID, ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability of 30 November 2012
- El Paso (2006):** El Paso Energy International Company v. Argentine Republic, ICSID, ARB/03/15, Decision on Jurisdiction of 27 April 2006
- El Paso (2011):** El Paso Energy International Company v. Argentine Republic, ICSID, ARB/03/15, Award of 31 October 2011

- Emmis (2013):** *Emmis International Holding, B.V., Emmis Radio Operating, B.V., Mem Magyar Electronic, Media Kereskedelmi és Szolgáltató Kft v. Hungary*, ICSID, ARB/12/2, Decision on Respondent's Objection under ICSID Arbitration Rule 41(5) of 11 March 2013
- Emmis (2014):** *Emmis International Holding, B.V., Emmis Radio Operating, B.V., Mem Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Hungary*, ICSID, ARB/12/2, Award of 16 April 2014
- EMV (2009):** *European Media Ventures v. Czech Republic*, UNCITRAL, Partial Award on Liability of 8 July 2009
- EnCana (2006):** *EnCana Corporation v. Republic of Ecuador*, UNCITRAL, LCIA UN3481, Award of 3 February 2006
- Enkev (2014):** *Enkev Beheer B.V. v. Republic of Poland*, UNCITRAL, PCA 2013–01, First Partial Award of 29 April 2014
- Enron (2007):** *Enron Corporation Ponderosa Assets LP v. Argentine Republic*, ICSID, ARB/01/3, Award of 22 May 2007
- Feldman (2002):** *Marvin Roy Feldman Karpa v. Mexico*, NAFTA-ICSID, ARB(AF)/99/1, Award of 16 December 2002
- Fireman's Fund (2006):** *Fireman's Fund Insurance Company v. United Mexican States*, NAFTA-ICSID, ARB(AF)/02/1, Award of 17 July 2006
- Flemingo (2016):** *Flemingo DutyFree Shop Private Limited v. Republic of Poland*, UNCITRAL, PCA, Award of 12 August 2016
- Foresight (2018):** *Foresight Luxembourg Solar 1 S.à.r.l., Foresight Luxembourg Solar 2 S.à.r.l., Greentech Energy System A/S, GWM Renewable Energy I S.p.A. and GWM Renewable Energy II S.p.A v. Kingdom of Spain*, SCC, 2015/150, Award of 14 November 2018
- Funnekotter (2009):** *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID, ARB/05/6, Award of 22 April 2009
- GAMI (2004):** *GAMI Investments, Inc. v. Government of the United Mexican States*, NAFTA-UNCITRAL, Final Award of 15 November 2004
- Gavrilović (2018):** *Georg Gavrilović and Gavrilović D.O.O. v. Republic of Croatia*, ICSID, ARB/12/39, Award of 26 July 2018
- Gemplus (2010):** *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. United Mexican States; Talsud S.A. v. United Mexican States*, ICSID, ARB(AF)/04/3, ARB (AF)/04/4, Award of 16 June 2010
- Generation Ukraine (2003):** *Generation Ukraine, Inc. v. Ukraine*, ICSID, Award of 16 September 2003
- Glamis Gold (2009):** *Glamis Gold, Ltd. v. United States of America*, NAFTA-UNCITRAL, Final Award of 8 June 2009
- Gold Reserve (2014):** *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID, ARB(AF)/09/1, Award of 22 September 2014
- Grand River (2011):** *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, NAFTA-UNCITRAL, Award of 12 January 2011

TABLE OF CASES

xix

- Guaracachi (2014):** Guaracachi America, Inc. and Rurelec Plc *v.* Plurinational State of Bolivia, UNCITRAL, PCA 2011–17, Award of 31 January 2014
- Houben (2016):** Joseph Houben *v.* Republic of Burundi, ICSID, ARB/13/7, Award of 12 January 2016
- Impregilo (2005):** Impregilo SpA *v.* Islamic Republic of Pakistan, ICSID, ARB/03/3, Decision on Jurisdiction of 22 April 2005
- Inmaris (2012):** Inmaris Perestroika Sailing Maritime Services GmbH and others *v.* Ukraine, ICSID, ARB/08/8, Award of 1 March 2012
- Invesmart (2009):** Invesmart, B.V. *v.* Czech Republic, UNCITRAL, Award of 26 June 2009
- Jan de Nul (2006):** Jan de Nul N.V. and Dredging International N.V. *v.* Arab Republic of Egypt, ICSID, ARB/04/13, Decision on Jurisdiction of 16 June 2006
- Kardassopoulos (2010):** Ioannis Kardassopoulos and Ron Fuchs *v.* Republic of Georgia, ICSID, ARB/05/18 and ARB/07/15, Award of 3 March 2010
- Karkey (2017):** Karkey Karadeniz Elektrik Uretim A.S. *v.* Islamic Republic of Pakistan, ICSID, ARB/13/1, Award of 22 August 2017
- Koch (2017):** Koch Minerals Sàrl and Koch Nitrogen International Sàrl *v.* Bolivarian Republic of Venezuela, ICSID, ARB/11/19, Award of 30 October 2017
- Lauder (2001):** Ronald S. Lauder *v.* Czech Republic, UNCITRAL, Final Award of 3 September 2001
- LG&E (2006):** LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. *v.* Argentine Republic, ICSID, ARB/02/1, Decision on Liability of 3 October 2006
- Liman (2010):** Liman Caspian Oil BV and NCL Dutch Investment BV *v.* Republic of Kazakhstan, ICSID, ARB/07/14, Award of 22 June 2010
- Mamidoil (2015):** Mamidoil Jetoil Greek Petroleum Products Société S.A. *v.* Republic of Albania, ICSID, ARB/11/24, Award of 30 March 2015
- Marfin (2018):** Marfin Investment Group Holdings S.A., Alexandros Bakatselos and others *v.* Republic of Cyprus, ICSID, ARB/13/27, Award of 26 July 2018
- MCI (2007):** M.C.I. Power Group L.C. and New Turbine Inc. *v.* Republic of Ecuador, ICSID, ARB/03/6, Award of 31 July 2007
- Merrill & Ring (2010):** Merrill & Ring Forestry L.P. *v.* Government of Canada, NAFTA-UNCITRAL, Award of 31 March 2010
- Metalclad (2000):** Metalclad Corporation *v.* United Mexican States, NAFTA-ICSID, ARB(AF)/97/1, Award of 30 August 2000
- Metalpar (2008):** Metalpar S.A. and Buen Aire S.A. *v.* Argentine Republic, ICSID, ARB/03/5, Award on the Merits of 6 June 2008
- Methanex (2001):** Methanex Corporation *v.* United States of America, NAFTA-UNCITRAL, Decision of the Tribunal on Petitions from Third Persons to Intervene as ‘Amici Curiae’ of 15 January 2001
- Methanex (2005):** Methanex Corporation *v.* United States of America, NAFTA-UNCITRAL, Award of 3 August 2005
- Middle East Cement (2002):** Middle East Cement Shipping and Handling Co. S.A. *v.* Arab Republic of Egypt, ICSID, ARB/99/6, Award of 12 April 2002

- Mitchell (2004):** Patrick Mitchell v. Democratic Republic of the Congo, ICSID, ARB/99/7, 9 February 2004
- Mondev (2002):** Mondev International Ltd. v. United States of America, NAFTA-ICSID, ARB(AF)/99/2, Award of 11 October 2002
- National Grid (2008):** National Grid plc v. The Argentine Republic, UNCITRAL, Award of 3 November 2008
- Novenergia II (2018):** Novenergia II – Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. Kingdom of Spain, SCC 2015/063, Award of 15 February 2018
- Nykomb (2003):** Nykomb Synergetics Technology Holding AB v. Republic of Latvia, SCC, Award of 16 December 2003
- Occidental I (2004):** Occidental Exploration and Production Co. v. Ecuador, UNCITRAL, LCIA, UN3467, Award of 1 July 2004
- Olguín (2001):** Eudoro Armando Olguín v. Republic of Paraguay, ICSID, ARB/98/5, Award of 26 July 2001
- Olin (2018):** Olin Holdings Limited v. Libya, ICC, 20355/MCP, Final Award of 25 May 2018
- Oxus Gold (2015):** Oxus Gold Plc v. Republic of Uzbekistan, UNCITRAL, Award of 17 December 2015
- Parkerings (2007):** Parkerings-Compagniet AS v. Republic of Lithuania, ICSID, ARB/05/8, Award of 11 September 2007
- Perenco (2014):** Perenco Ecuador Limited v. Republic of Ecuador, ICSID, ARB/08/6, Decision on Remaining Issues of Jurisdiction and on Liability of 12 September 2014
- Petrobart (2005):** Petrobart Ltd. v. Kyrgyz Republic, SCC, 126/2003, Arbitral Award of 29 March 2005
- Pezold (2015):** Bernhard Friedrich Arnd Rüdiger von Pezold et al. v. Republic of Zimbabwe, ICSID, ARB/10/15, Award of 28 July 2015
- Philip Morris (2016):** Philip Morris Brands SÀRL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID, ARB/10/7, Award of 8 July 2016
- Plama (2008):** Plama Consortium Limited v. Republic of Bulgaria, ICSID, ARB/03/24, Award of 27 August 2008
- Pope & Talbot (2000):** Pope & Talbot Inc v. Government of Canada, NAFTA-UNCITRAL, Interim Award of 26 June 2000
- PSEG (2007):** PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey, ICSID, ARB/02/5, Award of 19 January 2007
- Quiborax (2015):** Quiborax S.A. and Non Metallic Minerals S.A. Claimants v. Plurinational State of Bolivia, ICSID, ARB/06/2, Award of 16 September 2015
- RDC (2012):** Railroad Development Corporation (RDC) v. Republic of Guatemala, ICSID, ARB/07/23, Award of 29 June 2012
- RFCC (2003):** Consortium RFCC v. Morocco, ICSID, ARB/00/6, Award of 22 December 2003

TABLE OF CASES

xxi

- RosInvestCo (2010):** RosInvestCo UK Ltd. *v.* The Russian Federation, SCC, V 079/2005, Final Award of 12 September 2010
- Roussalis (2011):** Spyridon Roussalis *v.* Romania, ICSID, ARB/06/1, Award of 7 December 2011
- Rumeli (2008):** Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. *v.* Republic of Kazakhstan, ICSID, ARB/05/16, Award of 29 July 2008
- Rusoro (2016):** Rusoro Mining Limited *v.* Bolivarian Republic of Venezuela, ICSID, ARB(AF)/12/5, Award of 22 August 2016
- Ryan (2015):** Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC *v.* Republic of Poland, ICSID, ARB(AF)/11/3, Award of 24 November 2015
- Saar Papier (1995):** Saar Papier Vertriebs GmbH *v.* Republic of Poland, UNCITRAL, Final Award of 16 October 1995
- Saint-Gobain (2016):** Saint-Gobain Performance Plastics Europe *v.* Bolivarian Republic of Venezuela, ICSID, ARB/12/13, Award of 30 December 2016
- Saipem (2007):** Saipem S.p.A. *v.* People's Republic of Bangladesh, ICSID, ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures of 21 March 2007
- Saipem (2009):** Saipem S.p.A. *v.* People's Republic of Bangladesh, ICSID, ARB/05/7, Award of 30 June 2009
- Saluka (2006):** Saluka Investments *v.* Czech Republic, UNCITRAL, Partial Award of 17 March 2006
- Santa Elena (2000):** Compañía del Desarrollo de Santa Elena, S.A. *v.* Republic of Costa Rica, ICSID, ARB/96/1, Final Award of 17 February 2000
- SAUR (2014):** SAUR International *v.* Argentine Republic, ICSID, ARB/04/4, Award of 22 March 2014
- SD Myers (2000):** S.D. Myers, Inc. *v.* Government of Canada, NAFTA-UNCITRAL, Partial Award of 13 November 2000
- Sedelmayer (1998):** Franz Sedelmayer *v.* Russian Federation, SCC, Award of 7 July 1998
- Sempra Energy (2005):** Sempra Energy International *v.* Argentina, ICSID, ARB/02/16, Decision on Objections to Jurisdiction of 11 May 2005
- Sempra Energy (2007):** Sempra Energy International *v.* Argentine Republic, ICSID, ARB/02/16, Award of 28 September 2007
- Servier (2012):** Les Laboratoires Servier, S.A.S., Biofarma, S.A.S., Arts et Techniques du Progrès S.A.S. *v.* Republic of Poland, UNCITRAL, Final Award of 14 February 2012
- SGS Philippines (2004):** SGS Société Générale de Surveillance S.A. *v.* Republic of the Philippines, ICSID, ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction of 29 January 2004
- Siag (2009):** Waguih Elie George Siag and Clorinda Vecchi *v.* Arab Republic of Egypt, ICSID, ARB/05/15, Award of 1 June 2009
- Siemens (2007):** Siemens A.G. *v.* Argentine Republic, ICSID, ARB/02/8, Award of 6 February 2007

- SPP (1992):** Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt, ICSID, Award of 20 May 1992
- Suez I (2010):** Suez, Sociedad General de Aguas de Barcelona S.A. and InterAgua Servicios Integrales del Agua S.A. v. Argentine Republic, ICSID, ARB/03/17, Decision on Liability of 30 July 2010
- Suez II (2010):** Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal S.A. v. Argentine Republic, ICSID, ARB/03/19 and AWG Group v. Argentine Republic, UNCITRAL, Decision on Liability of 30 July 2010
- SwemBalt (2000):** SwemBalt AB, Sweden v. The Republic of Latvia, UNCITRAL, SCC, Decision by the Court of Arbitration of 23 October 2000
- Tecmed (2003):** Técnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID, ARB(AF)/00/2, Award of 29 May 2003
- Teinver (2017):** Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic, ICSID, ARB/09/1, Award of 21 July 2017
- Telenor (2006):** Telenor Mobile Communications A.S. v. Republic of Hungary, ICSID, ARB/04/15, Award of 13 September 2006 (Jurisdiction)
- Thunderbird (2006):** International Thunderbird Gaming Corporation v. United Mexican States, NAFTA-UNCITRAL, Award of 26 January 2006
- Tidewater (2015):** Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela, ICSID, ARB/10/5, Award of 13 March 2015
- Tokios Tokelès (2007):** Tokios Tokelès v. Ukraine, ICSID, ARB/02/18, Award of 26 July 2007
- Total (2010):** Total S.A. v. Argentine Republic, ICSID, ARB/04/1, Award of 27 December 2010
- Toto (2009):** Toto Costruzioni Generali S.p.A. v. Republic of Lebanon, ICSID, ARB/07/12, Decision on Jurisdiction of 11 September 2009
- Tza Yap Shum (2011):** Tza Yap Shum v. Republic of Peru, ICSID, ARB/07/6, Award of 7 July 2011
- Unglaube (2012):** Marion Unglaube and Reinhard Unglaube v. Republic of Costa Rica, ICSID, ARB/08/01 and ARB/09/20, Award of 16 May 2012
- UPS (2002):** United Parcel Service of America, Inc v. Canada, NAFTA-UNCITRAL, Award on Jurisdiction of 22 November 2002
- UP and CD (2018):** UP and C.D. Holding Internationale v. Hungary, ICSID, ARB/13/35, Award of 9 October 2018
- Urbaser (2016):** Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic, ICSID, ARB/07/26, Award of 8 December 2016
- Venezuela Holdings (2014):** Venezuela Holdings, B.V., Mobil Cerro Negro Holding, Ltd., Mobil Venezolana de Petróleos Holdings, Inc., Mobil Cerro Negro, Ltd., Mobil Venezolana de Petróleos, Inc. v. Bolivarian Republic of Venezuela, ICSID, ARB/07/27, Award of 9 October 2014
- Vestey (2016):** Vestey Group Limited v. Bolivarian Republic of Venezuela, ICSID, ARB/06/4, Award of 15 April 2016

TABLE OF CASES

xxiii

- Veteran Petroleum (2014):** Veteran Petroleum Limited v. Russian Federation, PCA AA 228, Final Award of 18 July 2014
- Vivendi (2007):** Compañía de Aguas Del Aconquija SA and Vivendi Universal SA v. Argentine Republic, ICSID, ARB/97/3, Award of 20 August 2007
- Walter Bau (2009):** Walter Bau AG v. Kingdom of Thailand, UNCITRAL, Award of 1 July 2009
- Waste Management (2004):** Waste Management Inc. v. United Mexican States, NAFTA-ICSID, ARB(AF)/00/3, Award of 30 April 2004
- Wena (2000):** Wena Hotels Limited v. Arab Republic of Egypt, ICSID, ARB/98/4, Award on the Merits of 8 December 2000
- Wena (2005):** Wena Hotels Limited v. Arab Republic of Egypt, ICSID, ARB/98/4, Decision on Interpretation, 31 October 2005
- Windstream (2016):** Windstream Energy LLC v. Canada, UNCITRAL, PCA, Award of 27 September 2016
- WNC (2017):** WNC Factoring Ltd (United Kingdom) v. Czech Republic, UNCITRAL, PCA 2014–34, Award of 22 February 2017
- Yukos (2014):** Yukos Universal Limited (Isle Of Man) v. Russian Federation, UNCITRAL, PCA AA 227, Final Award of 18 July 2014
- Other Courts and Tribunals**
- AMINOIL (1982):** Kuwait v. American Independent Oil Company (AMINOIL), Award of 24 March 1982, 21 ILM (1982) 976
- Armed Activities (2005):** Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Merits, Judgment of 19 December 2005, ICJ Reports (2005) 168
- Barcelona Traction (1970):** Barcelona Traction, Light and Power, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment of 5 February 1970, ICJ Reports (1970) 3
- Chorzów (1926):** Certain German Interests in Polish Upper Silesia (Germany v. Poland), Judgment on the Merits of 25 May 1926, PCIJ Series A No 7 (1926)
- Chorzów (1927):** Factory at Chorzów (Claim for Indemnity) (Germany v. Poland), Judgment on Jurisdiction of 26 July 1927, PCIJ Series A No 9 (1927)
- Chorzów (1928):** Factory at Chorzów (Claim for Indemnity) (Germany v. Poland), Judgment on the Merits of 13 September 1928, PCIJ Series A No 17 (1928)
- Diallo (2007):** Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment of 24 May 2007, ICJ Reports (2007) 582
- Diallo (2010):** Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment of 30 November 2010, ICJ Reports (2010) 639
- ELSI (1989):** Elettronica Sicula SpA (ELSI) (United States of America v. Italy), Judgment of 20 July 1989, ICJ Reports (1989) 15
- Kosovo (2010):** Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010, ICJ Reports (2010) 403

- Lotus (1927):** S.S. 'Lotus' (France v. Turkey), Judgment of 7 September 1927, PCIJ Series A No 10 (1927)
- Oil Platforms (2003):** Oil Platforms (Islamic Republic of Iran v. United States of America), Merits, Judgment of 6 November 2003, ICJ Reports (2003) 161
- Nicaragua (1984):** Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment of 26 November 1984, ICJ Reports (1984) 392
- Nicaragua (1986):** Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, ICJ Reports (1986) 14
- Norwegian Shipowners (1922):** Norwegian Shipowners' Claims (Norway v. United States of America), Permanent Court of Arbitration, Award of 13 October 1922, 1 RIAA (1948) 307
- Nottebohm (1955):** Nottebohm (Second Phase) (Liechtenstein v. Guatemala), Judgment of 6 April 1955, ICJ Reports (1955) 4
- NSCS (1969):** North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment of 20 February 1969, ICJ Reports (1969) 3
- Phillips Petroleum (1989):** Phillips Petroleum Company, Iran v. Islamic Republic of Iran, National Iranian Oil Company, Iran-USCT, Award 425-39-2 of 29 June 1989, 21 Iran-USCT Reports (1990) 79
- Revere Copper (1978):** Revere Copper and Brass, Inc. v. Overseas Private Investment Corporation, Award of 24 August 1978, 56 International Law Reports (1980) 258
- Sedco (1987):** Sedco Inc., Sedco International SA and Sediran Drilling Company v. National Iranian Oil Company and Islamic Republic of Iran, Iran-USCT, Award ITL 55-129-3 of 24 October 1985, 9 Iran-USCT Reports (1987) 248
- Texaco (1978):** Texaco Overseas Petroleum Co. v. Libyan Arab Republic, 1977, 17 ILM (1978) 1
- Wall (2004):** Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 June 2004, ICJ Reports (2004) 136