

INTERNATIONAL INVESTMENT,
POLITICAL RISK AND
DISPUTE RESOLUTION

A Practitioner's Guide

NOAH RUBINS
N. STEPHAN KINSELLA



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DISPUTE RESOLUTION**

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Freshfields Bruckhaus Deringer

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Applied Optoelectronics, Inc.

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Manufactured in the United States of America on acid-free paper.

*To Alfred Rubin
and Hans-Hermann Hoppe*

ABOUT THE AUTHORS

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GUIDANCE ON CITATIONS

To facilitate use of *International Investment, Political Risk and Dispute Resolution*, extensive cross-references are employed to alert the reader of a related discussion in another chapter or section of the same chapter.

Citations generally follow Blue Book style, with some exceptions (such as italicized case names in footnotes).

Online sources are often provided for many of the cited materials, but are omitted for very common sources or to avoid excessive repetition. For example, the text of ICJ and PCIJ decisions, many investment arbitration awards, and a great many bilateral investment treaties (BITs) and other treaties can be found online at websites listed in Appendix XVII. The reader is therefore referred to **Appendix XVII** for the online location of these and other cited materials.

CHAPTER 5

HISTORY AND DEVELOPMENT OF THE CUSTOMARY INTERNATIONAL LAW OF EXPROPRIATION AND INVESTMENT PROTECTION

The international law of expropriation was for many decades the subject of fierce divisions between the developed and developing world. As the United States Supreme Court has noted: “There are few issues in international law today on which opinion seems to be so divided as the limitations on a state’s power to expropriate the property of aliens.”¹

Historically, viewpoints on expropriation have at times appeared to be politically motivated. Capital-exporting States tended to insist that host States respect the property and contractual rights of their nationals investing abroad. Capital-importing States, on the other hand, have often demanded the right to self-determination and control over its natural resources, arguing that the collective interests of society outweigh the interests of individuals such as private investors. Today, the picture is not nearly so clear. The development of investment treaties—and in particular of the North American Free Trade Agreement (“NAFTA”)—have placed traditional capital exporters like the United States and Canada on the receiving end of investment-related international law.² Meanwhile, investors from

1 *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 424 (1964).

2 As one of the authors has elsewhere observed,

Constantly envisioning itself as the condemned party in each new arbitral award issued far away, Washington appears to have lost sight of the unquestionable benefits that modern investment treaties have bestowed upon American business and the American economy in general. International law cannot be a one-way street, and as capital-exporting States more frequently become respondents in investment arbitration, they will be forced to adopt a long-term view of development and their own self-interest to preserve the hard-won gains they have achieved.

Noah Rubins, *Loewen v. United States: The Burial of an Investor-State Claim*, 21 ARB. INT’L 1, 36 (2005).

the “developing world” are venturing further afield, leading their home States to rethink the benefits that stable investment rules can bring.

This chapter discusses the customary international law of expropriation and investor protection. The first part covers the history of the international law of expropriation, including the traditional standard, the challenges to that standard by capital-importing countries in the 1960s, and the interpretation of the law by judicial and arbitral bodies. The role that treaties and State practice have had in shaping the law of expropriation is also addressed.

The current state of relevant principles of international law is also discussed, including a discussion of the “full compensation” standard. (The modern conventional international law of investment protection as embodied in investment treaties is covered in Chapter 6, along with a detailed discussion of methods of valuation of expropriated property.)

This chapter also briefly touches upon the related topic of the breach of contract by States. As will become clear, the breach of an investment contract by a host State may give rise to a cause of action under international law, separate from but related to the cause of action arising from the taking of property.

The conclusions reached in this chapter may be summarized as follows: a State may expropriate the property of aliens within its borders,³ but must compensate the foreigner for the full value of the property taken. If the international law of expropriation has changed since the nineteenth century, the change is primarily that one State may no longer use force against another State to rectify or prevent a taking of property by the host State.

3 Regarding expropriation by a State of property outside of its borders, F.A. Mann stated that “there is no doubt that a State lacks international jurisdiction to take property situated outside its territory and such takings are, therefore, necessarily ineffective.” F.A. Mann, *The Consequences of an International Wrong in International and National Law*, 48 BRIT. YB. INT’L L. 1, 46 (1977). In the aftermath of the attacks of September 11, 2001, however, this debate may be re-opened. The Proliferation Security Initiative, announced in 2003 by the United States, is an international effort or alliance between the U.S. and many European and other States. See the entry “Proliferation Security Initiative” in Wikipedia, at http://en.wikipedia.org/wiki/Proliferation_Security_Initiative. The Initiative’s professed goal is to combat the proliferation of weapons of mass destruction. One professed goal is to police the high seas and to assert enforcement jurisdiction as well as prescriptive jurisdiction with regard to ships carrying or being believed to carry weapons of mass destruction. Thus, an expropriation by a member State of the Initiative beyond its borders may well occur. To what extent such an act would be legal under international norms remains to be seen.

A. History and Sources of the Law of Expropriation

1. Expropriation and Standards of Compensation Prior to World War II

Because expropriation was relatively rare prior to the twentieth century,⁴ legal standards of compensation evoked relatively little discussion or debate.⁵ International arbitral decisions that did address expropriation routinely held, however, that states have the right to “appropriate private property for public use,”⁶ but upon such expropriation, the State had an obligation to pay full compensation.⁷ In fact, this principle was so well settled that in treaties among European countries, compensation for expropriated property was rarely mentioned—it was taken for granted.⁸

The seminal pre-World War II case regarding the international law of expropriation, the *Chorzów Factory* case,⁹ arose from Poland’s expropriation of a nitrate factory in Upper Silesia that had been owned by German nationals. After Germany brought a claim before the Permanent Court of International Justice, the court ruled that the expropriation was in violation of the German-Polish Conven-

4 J.E.S. Fawcett, *Some Foreign Effects of Nationalisation of Property*, 27 BRIT. YB. INT’L L. 355, 356 (1950). Fawcett cites a series of nineteenth century instances of expropriation, and states that they were “for the most part settled by the application of standards based on freedom of contract, the sanctity of private property, and the duty of the state to compensate the owners of property taken for the public use.” *Id.* at 357. For a discussion of the development of the law of expropriation, see also ANDREAS LOWENFELD, *INTERNATIONAL ECONOMIC LAW* 397-403 (2002). (suggesting that the formula of full, prompt and adequate compensation, known today as the Hull formula, and the rival perspective that a foreigner is no safer from expropriation than the local citizen—known today as the Calvo doctrine—emerged from the discourse and practice of the nineteenth century. Lowenfeld points out that while during the nineteenth century the legal doctrine of compensation seems to have been well settled in theory, constant challenges threatened its practical relevance as a legal doctrine).

5 Halliburton Fales, *A Comparison of Compensation for Nationalization of Alien Property with Standards of Compensation under United States Domestic Law*, 5 NORTHWESTERN J. INT’L L. & BUS. 871, 876 (1983).

6 *Uptan Case* (U.S. v. Venez.), 9 R.I.A.A. 234, 236 (1905).

7 See Chapter 4 (discussing state responsibility for expropriation or other actions that have international consequences). For a discussion of the early law of expropriation, see ISI FOIGHEL, *NATIONALIZATION: A STUDY IN THE PROTECTION OF ALIEN PROPERTY IN INTERNATIONAL LAW* 115-16 (1957) (“compensation must be adequate or just, i.e., corresponding to the loss that results from the dispossession”); Alexander P. Fachiri, *Expropriation in International Law*, 6 BRIT. YB. INT’L L. 159, 169-70 (1925) (“expropriation is only permissible for public purposes and then only on payment of full compensation by the state”); FREDERICK S. DUNN, *THE PROTECTION OF NATIONALS* (1932). For a contrary view, see John Fischer Williams, *International Law and the Property of Aliens*, 9 BRIT. YB. INT’L L. 1 (1928).

8 See Fales, *supra* note 5, at 872.

9 *Factory at Chorzów* (Ger. v. Pol.) (Indemnity), 1928 P.C.I.J. (ser. A) No. 17.

tion Concerning Upper Silesia.¹⁰ Regarding the compensation owing for an illegal expropriation, the Court stated:

The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if that is not possible, payment of a sum corresponding to the value which a restitution in kind would bear [must be made].¹¹

The Court went on to state in *dicta* that a lawful expropriation does not require actual restitution (i.e., return of the property taken), but only payment of “the just price of what was appropriated” measured as “the value of the undertaking at the moment of dispossession, plus interest to the day of payment.”¹² This was, essentially, an affirmation of the principle that even in the case of a “lawful” expropriation, the proper level of compensation is the value of the property taken—that is, full compensation is owing for both legal and illegal expropriations. For illegal takings, the host State was also obligated to make restitution in kind, if possible.

International arbitrations both prior to and following the *Chorzów Factory* case support the proposition that the proper level of compensation following an expropriation is the full value of the property taken. Early twentieth-century cases in which full compensation was ordered include the *Delagoa Bay* arbitration,¹³ *Spanish Zone of Morocco* arbitration,¹⁴ the *Goldenberg Case*,¹⁵ the *De Salba Claim*,¹⁶

10 *Certain German Interests in Polish Upper Silesia and the Factory at Chorzów* (Ger. v. Pol.) (Judgment No. 7) (Merits), 1926 P.C.I.J. (ser. A) No. 7.

11 *Chorzów Factory*, *supra* note 10, P.C.I.J. No. 17 at 47.

12 *Id.* Judge Higgins has criticized this statement of the P.C.I.J.:

I do not believe that a central element in the law of compensation should be resolved by making deductions from an *obiter dictum* over the Permanent Court 40-5 years previously, when it was addressing only (and was only *thinking* about) a different situation—an unlawful taking.

ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 144 (1994).

13 *Delagoa Bay and East African Railway Co.* (U.S. and Great Britain v. Portugal), reprinted in MARJORIE M. WHITEMAN, 3 DAMAGES IN INTERNATIONAL LAW, 1694-1703 (1943).

14 *British Properties in Spanish Zone of Morocco* (Spain v. U.K.), 2 R.I.A.A. 615 (1925).

15 *Goldenberg Case* (Ger. v. Rom.), 2 R.I.A.A. 901 (1928).

16 *De Salba v. Panama* (U.S. v. Pan.), 6 R.I.A.A. 358 (1933).

the *Selwyn Case*,¹⁷ the *Norwegian Shipowners' Claim*,¹⁸ and the *Lena Goldfields* arbitration.¹⁹

In *Delagoa Bay*, for example, Portugal cancelled a 35-year railway concession that had been granted to a British company. In a subsequent arbitral proceeding, the tribunal stated:

Even if the present case should be regarded as one of legal expropriation, the fact remains that the effect was to dispossess private persons from their rights and privileges of a private nature conferred upon them by the concession, and that . . . the State, which is the author of such dispossession, is bound to make full reparation for the injuries done by it.²⁰

In the *Norwegian Shipowners' Claim* case, a number of Norwegian nationals entered into contracts with U.S. shipyards to build vessels for use by Norway during World War I. Following its declaration of war on Germany, the United States seized these ships for its own use. Norway brought suit before the Permanent Court of International Justice, which, in its ruling, noted that it was not bound by U.S. law “in so far as these provisions restricted the right of the claimants to receive immediate and full compensation, with interest from the day on which the compensation should have been fully paid”²¹ in accordance with principles of equity. The tribunal then awarded to the claimants the fair market value of the ships that had been seized.

The principle of full compensation for expropriation has long been established as a fundamental rule of customary international law. In one study of sixty international claims tribunals set up between 1840 and 1940 to deal with disputes arising from injury to aliens,²² none of the arbitral panels “held that the appropriate measure of compensation was less than the full value of the property taken, and many specifically affirmed the need for full compensation.”²³

17 *Selwyn Case* (G.B. v. Venezuela), 9 R.I.A.A. 380 (1903).

18 *Norwegian Shipowners' Claims* (Norway v. U.S.), 1 R.I.A.A. 307 (1922).

19 *Lena Goldfields Arbitration* (1930), reprinted in 56 CORNELL L.Q. 42, 51-52 (1950). For a fascinating historical analysis of one of the lesser-known investment disputes arising out of the Soviet Union's cancellation of concessions, see V. V. Veeder, *Lloyd George, Lenin and Cannibals: The Harriman Arbitration*, 16 ARB. INT'L 115 (2000).

20 *Delagoa Bay*, *supra* note 13, at 1698.

21 *Norwegian Shipowners' Claims*, *supra* note 18, at 340.

22 On injury to aliens by expropriation of their property and compensation therefore, see IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 508-09 *et pass.* (6th ed. 2003).

23 Patrick M. Norton, *A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation*, 85 A.J.I.L. 474, 477 (1991). But see C.F. Amerasinghe, *Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice*, 41 I.C.L.Q. 22, 23 (1992) (“it may be noted that at the time the rule of full compensation is alleged to have come into existence and later in the nineteenth century the expropri-

The United States first precisely articulated the principle of full compensation in 1938, when Secretary of State Cordell Hull, in a letter to the Mexican government regarding the nationalization of certain agricultural and oil-related properties, insisted that expropriation of foreign owned property must be accompanied by “prompt, adequate, and effective” compensation.²⁴ This phrasing has now come to be known as the “Hull formula,” and it has been interpreted to require compensation in the amount of the full fair market value of an investment as a going concern.²⁵

During this early period in the development of international law on expropriation, capital exporting States occasionally applied military force when full compensation was not forthcoming to their investors.²⁶ Professor Wortley points out that in the mid-19th century,

British and many European and American investors[, following expropriation of their property,] could expect their Governments to make use, if need be, of such measures as embargo, or pacific blockade, or naval demonstrations, and generally to use the same means as from time to time were used to obtain specific restitution.²⁷

An example of the use of force to protect the property of nationals abroad can be seen in Britain’s threat of naval intervention with respect to claims of its citizens against the government of Sicily in 1836.²⁸ Thus, not only did traditional international law require that an alien be fully compensated for the taking of its property, but it also permitted the use of force by the alien’s home State to protect such rights.²⁹

2. Challenges to the Traditional Standard

a. Latin American States

As early as the 19th century, a number of Latin American States challenged the international law standards discussed above, arguing that (1) aliens whose property was expropriated were entitled only to treatment equivalent to that granted by the expropriating State to its own nationals, and no more (and that the national

ations that took place were almost entirely of an individual nature. There were no complications emanating from, e.g., the nature of state economies, which were at that time all based on *laissez-faire* principles”).

24 Norton, *supra* note 23, at 476; 3 GREEN H. HACKWORTH, DIGEST OF INTERNATIONAL LAW 658 (1942).

25 Pat K. Chew, *Political Risk and U.S. Investments in China: Chimera of Protection and Predictability?*, 34 VA. J. INT’L L. 615, 641 (1994).

26 IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 289 (1963).

27 B.A. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 58 (1959).

28 Fawcett, *supra* note 4, at n2 (“British naval guns were brought to bear in the *Sicilian Sulphur Monopoly* case”).

29 For further discussion of the use of force under international law, see Chapter 10, Section F.

treatment might well be that no compensation is required at all),³⁰ and (2) that States were not obligated to recognize any international claims in relation to expropriation.³¹ This view of expropriation was consistent with these States' general economic policy, which was in many ways hostile to foreign investment.³²

As an expression of their view of international law, many of these countries insisted upon the inclusion a so-called "Calvo clause" in investment contracts, by which the investor agreed to renounce the right to diplomatic protection, and to submit all disputes to the jurisdiction of the host State's courts.³³ The Calvo Doctrine and accompanying Calvo clauses have declined in prominence in recent decades,³⁴ as Latin American states increasingly accept the standard of full compensation following expropriation and the settlement of investment disputes through international arbitration.³⁵

30 See Chapter 4, Section F (international law does not generally regulate a State's seizure of its own nationals' property); and Section B.4, *infra* (regarding national treatment and the international minimum standard under current international law).

31 See Francisco Orrego Vicuna, *The International Regulation of Valuation Standards and Processes: A Reexamination of Third World Perspectives*, in 3 THE VALUATION OF NATIONALIZED PROPERTY IN INTERNATIONAL LAW 131-48 (Richard B. Lillich ed., 1975).

32 Some of the constitutions of Latin American states, for instance, have prohibited ownership of real property by foreign entities. Robert B. Shanks, *Insuring Investment and Loans Against Currency Inconvertibility, Expropriation, and Political Violence*, 9 HASTINGS INT'L & COMP. L. REV. 417, 432 (1986).

33 Brice M. Clagett, *Present State of the International Law of Compensation for Expropriated Property and Repudiated State Contracts*, in PRIVATE INVESTORS ABROAD §12.02 (Southwestern Legal Foundation ed., 1989). The validity of such clauses is questionable, since according to the dominant view a private person cannot deprive a State of its right to exercise diplomatic protection. BROWNLIE, *supra* note 22, at 521. While the United States has refused to recognize Calvo clauses, Clagett opines that such clauses may be effective in stopping a proceeding to which the alien, rather than its home State, is a party. For a discussion of the Calvo doctrine, see 5 HACKWORTH, *supra* note 24, at 530, 635 (1943), and Stanley D. Metzger, *Property in International Law*, 50 VA. L. REV. 594, 598-600 (1964).

34 At the same time, a new kind of "Calvo doctrine" has been revived by the United States and Canada, which now insist that foreigners should receive no better treatment than their own citizens. This idea is now codified in many new U.S. and Canadian investment treaties. See, e.g., D. Manning-Cabrol, *The Imminent Death of the Calvo Clause and the Rebirth of the Calvo Principle: Equality of Foreign and National Investors*, 26 L. POL'Y INT'L BUS. 1169 (1995).

35 See, e.g., Chapter 6, Section B.2, discussing the standards of compensation for expropriation provided in the North American Free Trade Agreement ("NAFTA") and other investment treaties. For more on NAFTA, see www.nafta-sec-alena.org and www.naftaclaims.com. The development of bilateral investment treaties (BITs) and the explicit protections they provide to investors have contributed to the decline of the Calvo doctrine, and strengthened general acceptance of strict international standards for the treatment of aliens. See Andreas F. Lowenfeld, *Investment Agreements and International Law*, 42 COLUM. J. TRANSNAT'L L. 123 (2003) (arguing that the law of expropriation found in BITs and the Washington Convention entered customary international law binding non signatories). See also *CMS Gas Transmission Co. v. Argentina*, ICSID Case No. ARB/01/8, 2003, 42 I.L.M. 788 (2003) (holding that in the area of investment law, BIT provisions giving rise to claims for minority shareholders

b. Nationalization in the Twentieth Century

Many states nationalized the property of both their own citizens and foreign investors without compensation in the early twentieth century, often following revolutions that wrought radical changes in political and economic structures.³⁶ The new governments that arose out of these transformations often had little respect for private property, particularly in foreign hands.³⁷ Some argued that international standards requiring full compensation following expropriation were a “tool used by ‘imperialist’ powers,”³⁸ and that such standards are created by, and for the interests of, industrialized States to exploit less developed countries.³⁹

Such sudden transitions occurred in the Soviet Union in 1917,⁴⁰ Mexico in 1938,⁴¹ Bulgaria, Czechoslovakia, Hungary, and Poland between 1945 and 1948, China in the 1950s,⁴² Bolivia in 1952, and Egypt in 1956,⁴³ among others. Both the Soviet Union and Cuba, for example, after their respective revolutions of

have become a general international custom, a rule to be followed unless disproved). *But compare* Bernard Kishoiyian, *The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law*, 14 J. INT'L L. & BUS. 327 (1994) (outlining the resistance of many developing countries to the pressure to internationalize investment contracts).

36 F.N. Burton & Hisashi Inoue, *Expropriations of Foreign-Owned Firms in Developing Countries: A Cross-National Analysis*, 18 J. WORLD TRADE L. 396, 396-397 (1984) (between 1960 and 1977, seven countries accounted for 72.5% of the total number of expropriations. These countries were Algeria, Chile, Cuba, Ethiopia, Sri Lanka, Uganda, and Venezuela.) *Id.* at 413. For further discussion, see Edith Penrose, George Joffe & Paul Stevens, *Nationalization of Foreign-owned Property for a Public Purpose: An Economic Perspective on Appropriate Compensation*, 55 MOD. L. REV. 351 (1992).

37 This fact in part explains the high percentage of expropriation directed against the perceived leaders of both democracy and capitalism, the United States and United Kingdom. In their 1984 study, Burton and Inoue examined 1,857 cases of expropriation, intervention, forced sales, and forced contract renegotiation between the years 1960 and 1977. The study showed that United States and British firms accounted for 90% of all expropriated properties. Burton & Inoue, *supra* note 36, at 402.

38 JAMES C. HSIUNG, LAW AND POLICY IN CHINA'S FOREIGN RELATIONS 141 (1972).

39 Chew, *supra* note 25, at 642.

40 See Fawcett, *supra* note 4, at 357-63.

41 For further discussions of expropriations by the government of Mexico following the revolution of 1910-20, see Tali Levy, *NAFTA's Provision for Compensation in the Event of Expropriation: A Reassessment of the "Prompt, Adequate and Affective" Standard*, 31 STAN. J. INT'L L. 423 (1995); Amy L. Chua, *The Privatization-Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries*, 95 COL. L. REV. 223 (1995); ERIC N. BAKLANOFF, EXPROPRIATION OF U.S. INVESTMENT IN CUBA, MEXICO, AND CHILE (1975).

42 For further discussion, see Chew, *supra*, note 25, at 625. Nationalization in China was a slow process, but by 1957, there was virtually no foreign direct investment left there.

43 Most prominently, the Suez Maritime Canal Company was nationalized on July 26, 1956. See FOIGHEL, *supra* note 7, at 25.

1917 and 1959,⁴⁴ attempted to abolish the institution of private property, and refused to pay any compensation to foreign businesses that had suffered the confiscation of their assets.⁴⁵ Ultimately, Cuba alone seized the property of approximately 450 U.S. companies, with assets estimated at over US\$2 billion.⁴⁶

Expropriations triggered by political change continued into the 1970s. Uganda, for instance, nationalized the property of foreign investors beginning in 1970, when the Obote government moved to acquire 60% ownership in all companies in the banking, manufacturing, mining, agriculture, and transport sectors. Although this percentage was reduced to 49% following General Amin's military coup in 1971, 500 U.K. firms were subject to expropriation in 1973. In 1974, Ethiopia began to expropriate on a massive scale, when the provisional military government took power. Although compensation was promised, none was voluntarily paid. In Algeria, asset seizures focused on the petroleum and mining industries. In Venezuela, a range of takings took place in the petroleum industry, but adequate compensation was generally paid for the expropriated property.⁴⁷

During the 1950s, 60s, and 70s, nationalization programs were also implemented by the newly independent and newly prosperous states of the Middle East, Asia and Africa,⁴⁸ usually involving the expropriation of petroleum rights from multinational corporations operating under the auspices of concession agreements. These takings often resulted not so much from socialist ideological inspiration as from the desire of these States to enjoy a greater share in the profits derived from their petroleum reserves.

44 Cuba began expropriating foreign-owned property in 1959, but most of the expropriations occurred in the second half of 1960. Matias F. Travieso-Diaz, *Some Legal and Practical Issues in the Resolution of Cuban Nationals' Expropriation Claims Against Cuba*, 16 U. PA. J. INT'L BUS. L. 217, 219-224 (1995); for further discussion, see MICHAEL W. GORDON, *THE CUBAN NATIONALIZATIONS: THE DEMISE OF FOREIGN PRIVATE PROPERTY* 69-108 (1976) and BAKLANOFF, *supra* note 41. See also Chapter 10, Section D.3 and Chapter 4, Section G, discussing the Cuban Liberty and Democratic Solidarity Act.

45 Clagett, *supra* note 33, §12.02. Following a series of expropriations by the Soviet Union of foreign-owned private property, a number of countries, including the United States, withheld diplomatic recognition of the Soviet government. After the expropriation of American property in Cuba, the United States terminated diplomatic and consular relations with Cuba. Adeoye Akinsanya, *International Protection of Direct Foreign Investments in the Third World*, 36 I.C.L.Q. 58, 61 (1987).

46 Burton & Inoue, *supra* note 36, at 413.

47 See *id.* at 413-14.

48 Many of these States were transformed practically overnight from beggars to barons, due to the sudden discovery and speedy exploitation of oil resources. For example, when Libya gained independence in 1951, it was an exceedingly poor country with a sparse and under-educated population. After its entry into the "club" of oil producers, Libya's annual income from oil exports was estimated to exceed US\$16 billion by 1979. Libya's per capita income rose from US\$40 in 1951 to US\$6,500 in 1977. Robert B. von Mehren & P. Nicholas Kourides, *International Arbitrations Between States and Foreign Private Parties: The Libyan Nationalization Cases*, 75 A.J.I.L. 476, 477 (1981). See also Clagett, *supra* note 33, §12.02.

While some expropriations were driven by ideological revolution, as discussed above, some were motivated, at least in part, by specific political events. For example, the expropriations by Libya that gave rise to the *British Petroleum*,⁴⁹ *TOPCO*,⁵⁰ and *LIAMCO*⁵¹ arbitrations were triggered in part by the U.K.'s refusal to react to Iran's occupation of three islands in the Persian Gulf, which were then nominally under British protection.⁵² Another politically-motivated expropriation occurred in 1973, when the Libyan government nationalized the interests of the Nelson Bunker Hunt Oil Company in Benghazi in response to U.S. support of Israel during the Yom Kippur War.⁵³

c. Justifications for Expropriation and the U.N. Resolutions on Permanent Sovereignty

Following many of these expropriations, the States concerned publicly defended the right to expropriate without being subject to the customary international law requirement to pay full compensation.⁵⁴ Some, especially in the Middle East and Africa, argued that they were tied to long-term contracts that had been concluded between foreign investors and former colonial authorities, and that the continuation of these arrangements despite de-colonialization deprived them of essential control over their ostensibly independent economies.⁵⁵ These States argued that such contracts, which they had not negotiated, were even more repugnant as they gave foreign interests the power to dispose of their natural resources.⁵⁶ This position eventually developed into the claim that the right of sovereign States to "economic self-determination" was *inalienable*, and that therefore the requirement of full compensation following expropriation should be inapplicable, as it would render any major economic restructuring impossible.⁵⁷

49 *British Petroleum Exploration Company (Libya) Limited (BP) v. Government of the Libyan Arab Republic (1973/1974)*, 53 I.L.R. 297 (1973).

50 *Texaco Overseas Petroleum Company and California Asiatic Oil Company (TOPCO) v. Government of the Libyan Arab Republic (1977)*, 53 I.L.R. 389 (1977), 17 I.L.M. 1 (1978).

51 *Libyan American Oil Company (LIAMCO) v. Government of the Libyan Arab Republic (1977)*, 62 I.L.R. 141, 20 I.L.M. 1 (1981).

52 Von Mehren & Kourides, *supra* note 48, at 483.

53 *New York Times*, July 8, 1973, Section 4 at 2, column 4.

54 For further discussions of de-colonialization and self determination, see HIGGINS, *supra* note 12, at ch. 7.

55 Norton, *supra* note 23, at 496.

56 Penrose *et al.*, *supra* note 36, at 353.

57 BROWNLIE, *supra* note 22, at 515 *et pass.*; see also Frank Dawson & Burns Weston, "Prompt Adequate and Effective": A Universal Standard of Compensation?, 30 *FORDHAM L. REV.* 727, 738 (1962), who state:

To assert, as do some, that states lacking sufficient gold reserves, foreign exchange or other financial resources should not undertake social and economic reforms, which may necessitate enacting extensive deprivation laws is both unrealistic and patronizing . . . extensive deprivations may be of such absolute and relative magnitude as to render "full" compensation truly impossible.

These views are reflected in a series of United Nations General Assembly Resolutions endorsed, for the most part, by developing states.⁵⁸ The first of these resolutions,⁵⁹ and the only one that received broad support from States in both the developed and developing world, was General Assembly Resolution 1803 (XVII) of 1962, the Declaration on Permanent Sovereignty Over Natural Resources.⁶⁰ This resolution stated:

Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules enforced in the State taking such measure in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the state taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

Eighty-seven States supported General Assembly Resolution 1803, two opposed it, and twelve abstained. Ten of the abstaining States were from the Socialist bloc.⁶¹ While this resolution affirmed the requirements that states act “in accordance with international law” and that compensation be paid following expropriation, it sparked widespread debate over the meaning of the phrase “appropriate compensation.” The United States voted in favor of Resolution 1803 because, in its view, the term “appropriate” compensation was equivalent to

58 Although U.N. General Assembly resolutions do not have the force of law, they are often cited as evidence of international custom. Chew, *supra* note 25, at 642; Arangio-Ruiz, *The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations*, 137 RECUEIL DES COURS [R.C.A.D.I.] 419, 434-518 (1972 III). See also Erik Suy, *Innovations in International Law-Making Processes*, THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE 187, 190 (1978); F. Blaine Sloan, *The Binding Force of a “Recommendation” of the General Assembly of the United Nations*, 25 BRIT. YB. INT’L L. 1 (1948); D.H.N. Johnson, *The Effect of Resolutions of the General Assembly of the U.N.*, 32 BRIT. YB. INT’L L. 97 (1955); ROSALYN HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* (1963).

59 Foreshadowing these Resolutions was a draft article adopted by the Third Committee of the General Assembly of the United Nations, which states:

The people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may the people be deprived of its own means of subsistence.

G.A. RES. 626 (VII), U.N. GAOR, 7th Sess. (1952).

60 G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Agenda Item 39 para. 4, U.N. Doc. A/RES/1803 (XVII) (1962), *reprinted in* 2 I.L.M. 223 (1963).

61 Chew, *supra* note 25, at 643; See also Stephen M. Schwebel, *The Story of the U.N.’s Declaration on Permanent Sovereignty Over Natural Resources*, 49 A.B.A.J. 463 (1963).

“prompt, adequate, and effective” compensation.⁶² Many developing States disagreed, arguing that the “appropriate compensation” standard allowed them to pay less than full compensation following an expropriation. Subsequent arbitral decisions, discussed below, almost unanimously affirm the interpretation of the United States.⁶³

In 1973, the General Assembly, without the support of capital-exporting States, adopted Resolution 3171, which purported to further erode international law standards of full compensation following expropriation. This resolution provided that, in the event of an expropriation,

each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which may arise should be settled in accordance with the national legislation of each State carrying out such measures.⁶⁴

According to this resolution, the foreign investor is not guaranteed compensation, but only “possible compensation”; no reference is made to the appropriate level of compensation (except that the matter should be settled in accordance with the legislation of the host State); and no reference is made to international law. Thus, according to Resolution 3171, the host State has wide discretion in determining the amount of compensation due, if any, and is not bound by any external, objective principles such as those provided by customary international law.

The following year, the U.N. General Assembly passed Resolution 3201, “The Declaration on the Establishment of a New International Economic Order,” again without the support of most industrialized countries. This resolution declared the right of each State to exercise control over and exploit its natural resources, “including the right to nationalization or transfer of ownership to its nationals.”⁶⁵

In 1974, the General Assembly passed the Charter of Economic Rights and Duties of States (Resolution 3281), which asserted that States have “permanent sovereignty over their natural wealth and resources,” and that the definition of compen-

62 *Schwebel, supra* note 61.

63 *But see CME Czech Republic B.V. v. Czech Republic*, Dissenting Opinion of Ian Brownlie of 14 March 2003, at <http://ita.law.uvic.ca/documents/CME-2001Dissent.pdf>. (asserting that “just compensation” provides less compensation for expropriation than the “Hull” formula of “prompt, adequate and effective” compensation).

64 G.A.Res. 3171 (XXVIII), U.N. GAOR, 28th Sess. para. 3, UN doc. A/9030 (XVIII) (1973) G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Agenda Item 39 para. 4, U.N. Doc. A/RES/1803 (XVII) (1962), *reprinted in* 2 I.L.M. 223 (1963).

65 G.A.Res. 3201 (S-VI), U.N. GAOR, Sixth Special Sess., agenda item 7 para. 6, UN doc. A/RES/3201 (S-VI) (1974), *reprinted in* 13 I.L.M. 715 (1974).

sation was the prerogative of each State alone.⁶⁶ The resolution provided that a State has the right to

nationalize, expropriate or transfer ownership of private property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of this operand equality of States and in accordance with the principle of free choice of meanings.

Again, there was no reference in the document to international law, although it did require States to pay “appropriate compensation.” 120 States voted in favor of Resolution 3281, six States opposed it, and ten abstained.⁶⁷ Negative votes came from Belgium, Denmark, West Germany, Luxembourg, the United Kingdom, and the United States.

Based in part on these resolutions, some developing countries have since argued that the expropriating State has the authority to determine its own rules governing compensation, rather than applying some objective international standard.⁶⁸ However, even at the time, it is doubtful that the founding documents of the “New International Economic Order” reflected the condition of customary international law with regard to compensation following expropriation.⁶⁹ The Charter of Economic Rights and Duties of States has, according to Brownlie, “a strong political and programmatic flavour and does not purport to be a declaration of pre-existing principles.”⁷⁰

By contrast, General Assembly Resolution 1803 does reflect to some degree the state of current international law regarding expropriation. As sole Arbitrator Dupuy concluded in the *TOPCO* arbitration,

Resolution 1803 (XVII) seems to this Tribunal to reflect the state of customary law existing in this field. Indeed, on the occasion of the vote on a resolution

66 *Charter of Economic Rights and Duties of States*, G.A. Res. 3281 (XXIX), U.N. GAOR, 29th Sess., Agenda Item 48, U.N. DOC. A/RES/3281 (XXIX) (1974), reprinted in 14 I.L.M. 251 (1975). See also Andres Rozental, *The Charter of Economic Rights and Duties of States and the New International Economic Order*, 16 VA. J. INT'L L. 309 (1976); F.V. García Amador, *The Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation*, 12 LAW. AMERICAS-U. MIAMI J. INT'L L. 1 (1980).

67 Chew, *supra* note 25, at 644.

68 *Id.* at 645.

69 Gillian White, *A New International Economic Order?*, 16 VA. J. INT'L L. 323, 330 (1976); Edward McWhinney, *The International Law-Making Process and the New International Economic Order*, 14 CAN. Y.B. INT'L L. 57, 67 (1976).

70 BROWNLIE, *supra* note 22, at 518.

finding the existence of a customary rule, the States concerned clearly expressed their views.⁷¹

The traditional rule of international law that following an expropriation an alien must be paid the full value of the property taken has also been attacked by some international law scholars. Some of these commentators have suggested that in the modern era, private property rights must be balanced against the rights of the public, especially in the case of large-scale nationalizations with the stated purpose of “reform.”⁷² According to this view, “balancing” should allow the State to take private property or repudiate contracts with aliens without the obligation to pay full compensation.⁷³

Early drafts of the Restatement of Foreign Relations Law of the United States, in sections regarding expropriation, also appeared to support a more relaxed standard of compensation for expropriation.⁷⁴ These preliminary versions provided that “just compensation” would *ordinarily* be equal to the value of the investment, implying some circumstances would support compensation less than the asset value. In addition, comments to these drafts suggested that one of criterion characterizing “creeping expropriation” was the State’s *intent* to expropriate the property in question, rather than simply to regulate its economy for the “common good.”⁷⁵ The final version, as discussed below in Section B, firmly adopts the traditional statement of the law.⁷⁶

3. Arbitral Awards After World War II

Despite the contrary assertions of some developing States and commentators, judicial and arbitral decisions following World War II tend to support the proposition that international law requires an expropriating State to compensate fully the alien for the value of property taken. Examples of early arbitrations in which full compensation was awarded are the *ARAMCO*,⁷⁷ *Sapphire*,⁷⁸ *Abu Dhabi*,⁷⁹

71 *TOPCO*, *supra* note 50, 17 I.L.M. at para. 87.

72 BROWNLIE, *supra* note 22, at 515 *et pass*.

73 Norton, *supra* note 23, at 493. *But cf.* Clagett, *supra* note 33, §12.04[2] (“If a man steals \$10 from me and gives me back \$4, he has still stolen \$6. I am not able to understand why similar conduct by governments should be viewed any differently”).

74 Clagett, *supra* note 33, §12.02.

75 Such a “subjective” criterion would raise serious evidentiary concerns. Shanks, *supra* note 32, at 424.

76 Clagett, *supra* note 33, §12.03[5].

77 *Saudi Arabia v. Arabian American Oil Co. (ARAMCO)* 1958, 27 I.L.R. 117 (1963).

78 *Sapphire International Petroleum Limited v. National Iranian Oil Co.*, 35 I.L.R. 136 (1953).

79 *Petroleum Development Limited v. Sheik of Abu Dabi*, 18 I.L.R. 144 (1951).

Qatar,⁸⁰ and *Lighthouses*⁸¹ cases. In each of these proceedings, “the tribunal held the concessionaire state to the terms of its concession, or to damages for its breach, largely on the basis of this body of international precedent.”⁸² All of these awards support the proposition that international law requires that an expropriating State pay to an alien the full value of the property taken.⁸³

A series of arbitrations arising out of the Libyan oil nationalizations of the 1970s also support an uncompromising standard of full compensation for expropriation. In *BP*, Arbitrator Lagergren referred to reparation as a vehicle for establishing the amount of compensation, implying that full compensation is the appropriate standard following an expropriation.⁸⁴ In *TOPCO*, Arbitrator Dupuy ordered restitution from Libya.⁸⁵ It can be inferred that had he ordered damages, Dupuy would have quantified the compensation according to the full market value of the concession. The *LIAMCO* case, by contrast, relied upon a lesser “equitable compensation” standard.⁸⁶ Even in the *LIAMCO* case, however, Sole Arbitrator Mahmassani awarded the claimants the “reasonable value” of the property taken.⁸⁷

A subsequent case, *AMINOIL*,⁸⁸ concerned Kuwait’s 1977 expropriation of a petroleum concession held by the American Independent Oil Company. Kuwait admitted that it owed compensation to the claimant company, but sought to value the property using a “book value” method. The claimant, meanwhile, insisted upon a method of valuation based upon the present value of the company’s future cash flow. The parties agreed to submit the issue to arbitration.⁸⁹ The tribunal applied international law, according to the parties’ submission, to resolve the dispute.⁹⁰ The tribunal found that the appropriate level of compensation was “appropriate compensation” for a “lawful expropriation,” which was to be determined by an inquiry into all the circumstances surrounding the case.⁹¹ This value was determined by the tribunal to be the depreciated replacement value of the

80 *Ruhr of Qatar v. International Marine Oil Co.*, 20 I.L.R. 534 (1953).

81 *Lighthouses Arbitration* (France v. Greece), 23 I.L.R. 299 (1956).

82 Norton, *supra* note 23, at 477.

83 *Id.* at 478.

84 *BP*, *supra* note 49, 53 I.L.R. at 347.

85 *TOPCO*, *supra* note 50, 17 I.L.M. at 32.

86 *LIAMCO*, *supra* note 51, 62 I.L.R. at 210.

87 *Id.* at 211-15.

88 *Government of Kuwait v. American Independent Oil Company (AMINOIL)*, 21 I.L.M. 976 (1982).

89 *Id.* at 1031-36.

90 *Id.* at 1032.

91 *Id.*

fixed assets and the going concern value of the enterprise, adjusted to take account of interest and inflation.⁹²

Some of the decisions of the Iran-U.S. Claims Tribunal are also evidence of the state of the international law of expropriation.⁹³ Many of the opinions concerning expropriation were based on the application of the following passage from Article 4 of the U.S.-Iran Treaty of Amity:

[Property of investors] shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively revisable form and shall represent the full equivalent of the property taken.⁹⁴

While many of the Claims Tribunal's decisions turn on the wording of this paragraph of the Treaty, many opinions also consider the dictates of customary international law. In practically all of the decisions that considered international law, the Tribunal required the payment of full compensation.⁹⁵

In two early expropriation cases argued before the Iran-U.S. Claims Tribunal, the panels applied customary international law. In these decisions, *Tippets*⁹⁶ and *American International Group (AIG)*,⁹⁷ the Tribunal found that international law requires that full value be paid for expropriated property. In *Tippets*, the Tribunal determined the market value of the expropriated company, and awarded the U.S.

92 *Id.* at 1040-42.

93 Certain commentators question the utility of Iran-U.S. Claims Tribunal decisions as authority establishing rules of international law on expropriation, largely because of the unique circumstances surrounding the establishment of the Tribunal and the wording of the Algiers Accords that circumscribed the Tribunal's work. Katherarina A. Byrne, *Regulatory Expropriation and State Intent*, CAN. YBK. INT'L L. 89, 93 (2000); PETER T. MUCHLINSKI, *MULTILATERAL ENTERPRISES AND THE LAW* 508 (1995). Nevertheless, most observers agree that "the decisions of the Tribunal do constitute a very significant source of jurisprudential development of public international law." CHARLES N. BROWER & JASON BRUESCHKE, *THE IRAN-U.S. CLAIMS TRIBUNAL* 644 (1998); see also Jack Coe, Jr. & Noah Rubins, *Regulatory Expropriation and the Tecmed Case: Context and Contributions*, INTERNATIONAL INVESTMENT LAW AND ARBITRATION 597, 609-610 (2005).

94 Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 Aug. 1955, entered into force June 16, 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 899 [hereinafter, Treaty of Amity], available at www.parstimes.com/law/iran_us_treaty.html.

95 *Shahin Shane Ebrahimi (Shahin) v. Government of the Islamic Republic of Iran*, Award No. 560-44/46/47-3 (1994), 30 IRAN-U.S. C.T.R. 170, 177.

96 *Tippets, Abbett, McCarthy, Stratton (Tippets) v. TAMS-AFFA Consulting Engineers of Iran*, Award No. 141-7-2, 6 IRAN-U.S. C.T.R. 219 (1984).

97 *American International Group, Inc. (AIG) v. Government of the Islamic Republic of Iran*, Award No. 92-2-3 (1983), 4 IRAN-U.S. C.T.R. 96 (1983).

claimant the full value of its 50% interest.⁹⁸ In *American International Group*, the tribunal stated that

it is a general principle of public international law that even in a case of lawful nationalization the former owner of the nationalized property is normally entitled to compensation for the value of the property taken.⁹⁹

The court concluded that the proper method of valuation is the “fair market value . . . at the date of nationalization,” or, if that is not available,

The appropriate method is to value the company as a going concern, taking into account not only the net book value of its assets but also such elements as good will and likely future profitability, and the company been allowed to continue its business under its former management.¹⁰⁰

AIG concerned an insurance company that was 35% owned by U.S. nationals. The tribunal did not discuss any particular standard of compensation, but did use the going concern method of valuation to assess the investor’s interests, which corresponds to the full value of the enterprise.¹⁰¹

In another case, *INA Corporation*,¹⁰² the court applied the Treaty of Amity, which, as noted above, required full compensation equal to the fair market value of the expropriated property. In *dicta*, however, the opinion suggested that

at least as far as “large scale nationalizations of a lawful character [are concerned], international law has undergone a gradual reappraisal, the effect of which may be to undermine the doctrinal value of any ‘full’ or ‘adequate’ . . . compensation standard.”¹⁰³

Judge Lagergren echoed this sentiment in a separate opinion,¹⁰⁴ which Judge Holtzman separately downplayed as Lagergren’s personal view. Holtzman emphasized that while a few arbitral tribunals had stated that they were using an “appropriate compensation” standard, they had actually awarded full compensation.¹⁰⁵

Thus, in nearly every case where the Claims Tribunal ruled on the issue of compensation for expropriation under customary international law, it affirmed that

98 *Tippets*, *supra* note 96, at 225-8.

99 *AIG*, *supra* note 97, at 105, 6.

100 *Id.*

101 *See* Chapter 6, Section E (discussing methods of valuation).

102 *INA Corporation v. The Government of the Islamic Republic of Iran*, Awd. No. 184-161-1, 8 IRAN-U.S. C.T.R. 373 (1985).

103 *Id.*, at 378. *See also AGIP SpA v. Government of the People’s Republic of the Congo*, ICSID Case No. ARB/77/1, Award of Nov. 30, 1979, 8 Y.B. COMM. ARB. 133 (1983) (stating in *dicta* that the “principle of full compensation for losses is limited in certain circumstances”).

104 *INA*, *supra* note 102, at 390.

105 *Id.* at 393, 401.

full compensation is the appropriate standard.¹⁰⁶ Judge Allison, in a separate opinion in the *Shahin* case, summarized the Claims Tribunal's jurisprudence regarding the customary international law of expropriation:

In sum, there is virtual total uniformity in the Tribunal's rulings on the standard of compensation under international law. Every decision rendered by this Tribunal, whether based upon the Treaty of Amity or customary international law, or both of them, has concluded that compensation must equal the full value of the expropriated property as it stood on the date of taking. Moreover, every award rendered by this Tribunal, including the Award in the instant Cases, has provided claimants what the Tribunal determined to be the *full value* of their interest in the property taken, *regardless of whether the taking was lawful or unlawful* or whether the parties relied on the Treaty of Amity or customary international law.¹⁰⁷

Finally, in several contract-based arbitrations conducted under the auspices of the World Bank's International Center for the Settlement of Investment Disputes (ICSID),¹⁰⁸ tribunals also considered the international law of expropriation.¹⁰⁹ Two of these cases involve the expropriation of investments in Congo.¹¹⁰ In *AGIP*, the Congolese government nationalized the interests of a corporation 90% owned by Italian nationals. The contract specified the law of Congo as applicable, supplemented by international law.¹¹¹ *Benvenuti* involved the expropriation of a Congolese company in which Italian nationals held a 40% equity interest. Various actions of the Congolese State, culminating in the occupation of the company's plant by the army, precipitated the arbitral proceedings. Because the agreement between the investors and the State did not contain an express choice of law clause, the arbitrators, relying on Article 42(1) of the Washington Convention,¹¹² applied Congolese law supplemented by principles of international law.¹¹³ In both of these cases, the arbitrators awarded full compensation for the assets taken.

106 See e.g., *BP*, *supra* note 49; *TOPCO*, *supra* note 50; *Amoco International Finance Corp. (Khemco) v. Government of Iran*, 15 IRAN-U.S. C.T.R. 189, 266 (1987); *Sola Tiles, Inc. v. Government of the Islamic Republic of Iran*, Awd. No. 298-317-1 14 IRAN-U.S. C.T.R. 223 (1987); and *SEDCO, Inc. v. National Iranian Oil Company*, Awd. No. ITL 59-129-3, 10 IRAN-U.S. C.T.R. 180 (1986).

107 *Shahin*, *supra* note 95, Separate Opinion of Richard C. Allison, at para. 36 (emphasis added).

108 See Chapter 8.

109 ICSID cases considering expropriation according to the terms of bilateral investment treaties are discussed in Chapter 6, Section C.1.

110 *S.A.R.L. Benvenuti et Bonfant v. Peoples Republic of Congo*, ICSID Case No. ARB/77/2, Award of Aug. 8, 1980, 21 I.L.M. 740 (1982); *AGIP*, *supra* note 103.

111 *AGIP*, *supra* note 103 at 727.

112 See Chapter 8, Section B.2.b.

113 *Benvenuti*, *supra* note 110, at 752.

In the *LETCO v. Liberia* arbitration,¹¹⁴ the Tribunal applied Liberian law, but stated that Liberian law was consonant with international law, and that “according to international law . . . LETCO is entitled to compensation for damages for both its lost investments and its foregone future profits.”¹¹⁵

Thus, with the exception of *LIAMCO*,

every recent arbitral tribunal that has considered the issue has affirmed that the customary international law requires a state expropriating the property of a foreign national to pay the full value of that property, measured, where possible, by the market price. Although no tribunal has expressly invoked the Hull formula, the result has been the same.¹¹⁶

4. Treaties as Evidence of Customary International Law

One of the sources of customary international law is State practice as evidenced in the treaties they conclude. As one commentator explains:

A series of recurrence of treaties laying down a similar rule may produce a principle of customary international law to the same effect. Such treaties are thus a step in the process whereby a rule of international custom emerges.¹¹⁷

Most bilateral investment treaties (“BITs”) in effect today provide that full compensation should be paid following an expropriation. For example, the United States-Kazakhstan BIT provides that investments shall not be expropriated, directly or indirectly, unless the expropriation is for a public purpose, is performed in a nondiscriminatory manner, and upon payment of prompt, adequate, and effective compensation.¹¹⁸ The same is true with respect to the majority of BITs around the world.¹¹⁹ The expropriation provisions in these treaties are described in detail in Chapter 6.

114 *Liberian Eastern Timber Corporation (LETCO) v. Government of the Republic of Liberia*, ICSID Case No. ARB/83/2, Award of March 31, 1986, 26 I.L.M. 647 (1987)

115 *Id.* at 658, 670.

116 Norton, *supra* note 23, at 488. For further discussion of full compensation, see Chapter 6, Section E.

117 J.G. Starke, *Treaties as a “Source” of International Law*, 23 BRIT. YB. INT’L L. 341, 344 (1946). “[T]reaties . . . can provide evidence of a general conception of international customary law.” FOIGHEL, *supra* note 7, at 41. See also Lazare Kopelmanas, *Custom as a Means of the Creation of International Law*, 18 BITR. YB. INT’L L. 127 (1937).

118 United States-Kazakhstan BIT (1992), art. III(1). For further discussion of BITs, see Chapter 6. See also Andreas F. Lowenfeld, *Investment Agreements and International Law*, 42 COLUM. J. TRANSNAT’L L. 123 (2003) (arguing that the law of expropriation found in BIT and the ICSID Convention has become part of customary international law).

119 See, e.g., Australia-Vietnam BIT (1991), 30 I.L.M. 1064 (1991); Germany-Poland BIT (1989), 29 I.L.M. 333 (1990); United Kingdom-Panama BIT (1983), 23 I.L.M. 708 (1984); China-Japan BIT (1988), 28 I.L.M. 575 (1989).

Some have argued that these treaties, and the protections that they offer to foreign investment, are evidence of customary international law. Professor Brownlie opines that:

It is a fact that a very considerable number of hosts to foreign capital are willing to conclude treaties for the protection of investments which contain a provision for the payment of “prompt, adequate, and effective” compensation in cases of expropriation or, more frequently, “just compensation”. While these are negotiated deals, the pattern of agreements surely constitutes evidence of an international standard based upon the principle of compensation.¹²⁰

F.A. Mann also believed that “these treaties establish and accept and thus enlarge the force of traditional conceptions of the law of state responsibility for foreign investment.”¹²¹ Mann argued that States cannot credibly insist on the one hand that customary international law allows them to set the level of compensation following expropriation, and on the other hand accept the principle of full compensation in the BITs that they sign.¹²²

5. Negotiated Settlements

Many twentieth-century expropriation claims were settled by lump sum payments from the expropriating State to the home State of the foreign individuals and corporations whose property was taken. In these cases, the two governments negotiated to arrive at a total compensation amount for all outstanding claims, and then the receiving State distributed payments to individual investors (normally on a pro-rata basis).¹²³ In many of these settlements, the States involved agreed to an amount less than full compensation for the property expropriated.¹²⁴

One example of a lump sum settlement for less than full value compensation was concluded between the United States and China in 1979. Within the framework of efforts to normalize relations with China, the U.S. agreed to settle outstanding claims for a lump sum of US\$80.5 million,¹²⁵ which was substantially less than the estimated value of the total claims of American investors.¹²⁶ The claimants ultimately received approximately 14 per cent of the estimated value of their

120 BROWNIE, *supra* note 22, at 520 (citations omitted).

121 F.A. Mann, *British Treaties for the Promotion and Protection of Investment*, 52 BRIT. YB. INT'L L. 241, 249 (1981).

122 *Id.* For a contrary opinion, see Bernard Kishoiyian, *The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law*, 14 N.W.J. INT'L L. & BUS. 327 (1994).

123 See discussion of the United States Foreign Claims Settlement Commission in Chapter 10, Section G.

124 See, e.g., Chew, *supra* note 25, at 648.

125 Agreement Concerning the Settlement of Claims, May 11, 1979, U.S.-P.R.C., 30 U.S.T. 1958, reprinted in 18 I.L.M. 551 (1979).

126 Chew, *supra* note 25, at 629.

investments, on a principal-plus-interest basis.¹²⁷ A more recent lump sum settlement was negotiated in 1992 between the United States and Germany regarding the expropriation of assets of U.S. nationals by East Germany. Although such settlements usually do not include accrued interest, in this case the settlement included the payment of simple interest from the time that the U.S. properties were taken.¹²⁸

Some commentators have argued that the results of these lump sum settlement negotiations between States (*i.e.*, the payment of less than full compensation) create international custom, which constitutes one source of international law,¹²⁹ and should therefore be viewed as evidence of a corresponding customary international law norm.

The *Khemco* tribunal¹³⁰ took issue with this position, concluding that the existence of lump sum settlements for less than full value of property taken cannot be seen in and of themselves as evidence of any underlying legal principle.

as a rule, a State practice as reflected in settlement agreements cannot be considered as giving birth to customary rules of international law, unless it presents specific features which demonstrate the conviction of the State's parties that they were acting in application of what they consider to be settled law. The provisions of such an agreement, indeed, are the outcome of negotiations in which many motivations other than legal ones may have prevailed. This is especially true here, where certain commercial advantages given to companies (even if they were not expressly detailed in the agreements) produced the concessions that they accepted on the standard of compensation.

U.S. courts have taken the same approach.¹³¹ The Second Circuit Court of Appeals has stated that

the notion that, merely because a negotiated settlement will not result in full payment, a victim of expropriation has no right to more than partial compensation simply confuses adjudication with compromise . . . we should no more look to the outcome of such a process to determine the rights and duties of the parties in

127 Clagett, *supra* note 33, §12.05[3][a].

128 Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning the Settlement of Certain Property Claims, May 13, 1992, T.I.A.S. 11959; Matias F. Travieso-Diaz, *Alternative Recommendations for Dealing with Expropriated U.S. Property in Post-Castro Cuba*, 12 CUBA IN TRANSITION 101, 107 (ASCE 2002), available at <http://lanic.utexas.edu/project/asce/pdfs/volume12/travieso2.pdf>; Travieso-Diaz, *supra* note 44, at 226.

129 Statute of the International Court of Justice, art. 38(1) (1945), available at www.icj-cij.org.

130 *Khemco*, *supra* note 106, at 266.

131 *See, e.g., Banco Nacional de Cuba v. Chase Manhattan Bank*, 658 F.2d 875 (2d Cir. 1981).

expropriation matters than we would look to the results of settlements in ordinary tort or contract cases to determine the rules of damages to be applied.¹³²

Thus, for the purposes of international law formation, there may be an important distinction between negotiations that were clearly based upon perceptions of customary law and those based primarily upon economic and political considerations.¹³³ Since almost all lump settlement agreements have been concluded on the basis of a variety of interests, it is difficult to draw any general conclusions about the extent to which such negotiations reflect customary international law.¹³⁴

B. Current State of the Law of Expropriation

Many commentators, relying on the history and sources of law discussed above, draw the following conclusion concerning the international law of expropriation: A state may always expropriate property of investors within its borders; however, for such an expropriation to be “legal,” it must not be discriminatory against the investor, it must be for a public purpose, and it must be accompanied by full compensation, which must be prompt, adequate, and effective.¹³⁵ Thus, an expropriation that is non-discriminatory and for a public purpose is legal, but the requirement of compensation rule makes this legality conditional.¹³⁶ An expropriation that does not meet all of these requirements is “illegal.”¹³⁷ Expropriation that is discriminatory or not for a public purpose is considered illegal

132 *Id.* at 892.

133 *Khemco*, *supra* note 106, at 266.

134 It should be noted, however, that some commentators suggest that lump sum settlements do form part of the foundation of the international law of expropriation. *See, e.g.*, BURNS H. WESTON, RICHARD B. LILICH & DAVID BEDERMAN, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENT 1975-1995 (1999), which complements the earlier version of the same book examining settlement concluded before 1975, namely RICHARD B. LILICH & BURNS H. WESTON, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENT (1975) (arguing that while international lump sum settlements are certainly *lex specialis*, with every settlement reflecting the special underlying circumstances and motivation of each negotiation, there are principles which unite all the different agreements, especially with regards to the principle of the sanctity of private property).

135 Expropriation in violation of a treaty is also illegal. FOIGHEL, *supra* note 7, at 49. In such a case, however, the illegality will arise from the treaty breach (in addition to possible illegality arising from failure to comply with customary international law norms).

136 BROWNIE, *supra* note 22, at 514. Brownlie also discusses “[t]he practical distinctions between expropriation unlawful *sub modo*, i.e. only if no provision is made for compensation, and expropriation unlawful *per se*. . . .” *Id.* at 538-39.

137 BROWNIE, *supra* note 22, at 514-15, 519-20 (citing other conditions that may make an expropriation “unlawful”).

per se, whether or not compensation is paid.¹³⁸ This view of the law of expropriation has received considerable support in State practice and the jurisprudence of international tribunals.¹³⁹

As noted above, under customary international law, a State is sovereign within its territory, and is at liberty to take control of alien property. This sovereignty, however, exists within the framework of international law, which requires that the taking be nondiscriminatory and carried out for a public purpose and obliges the State to pay compensation in the full amount of the value of the property taken.¹⁴⁰ Professor Wortley explains:

Because a sovereign State may control and expropriate property in its territory, this does not mean that it can, at will, disregard the claims made, by virtue of public international law, to restitution or to just compensation, or that it may always insist on its own conception of private property.¹⁴¹

The state of customary international law discussed above is reflected in the *Restatement (Third) of the Foreign Relations Law of the United States*, Section 712, which provides in part:

A state is responsible under international law for injury resulting from:

- (1) A taking by the state of the property of a national of another state that
 - (a) is not for a public purpose, or
 - (b) is discriminatory, or
 - (c) not accompanied by provision for just compensation.¹⁴²

138 BROWNLIE, *supra* note 22, at 514-15 (contending that expropriation is also illegal if “it includes seizures which are a part of crimes against humanity or genocide, involve breaches of international agreements, are measures of unlawful retaliation or reprisal against another state . . . or concern property owned by a foreign state and dedicated to official state purposes”).

139 See the sources discussed in Section A, *supra*. See also BROWNLIE, *supra* note 22, at 514.

140 WORTLEY, *supra* note 27, at 12. See also von Mehren & Kourides, *supra* note 48, at 516, 517; *TOPCO*, *supra* note 50, at paras. 59-62; Kissam & Leach, *Sovereign Expropriation of Property and Abrogation of concession Contracts*, 28 *FORDHAM L. REV.* 177, 224 (1959); Abdel-Waheb, *Economic Development Agreements and Nationalization*, 30 *U. CINCINNATI L. REV.* 418, 440 (1961).

141 WORTLEY, *supra* note 27, at 12 (“What, indeed, does the state acquire by its act of expropriation? Simply a title by its own *national* law that other States may not recognize if they think that the title has been acquired in a manner not recognized by *international* law”). *Id.* at 16. See the discussion of invalidation of title in Chapter 10, Section E.

142 RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §712 [hereinafter, the RESTATEMENT]. See also *Marvin Roy Feldman Karpa v. Mexico*, ICSID Case No. ARB(AF)/99/1, Award of December 16, 2002, 42 *I.L.M.* 625 (2003) at para. 99 (stating that the “public purpose” test has little importance in most situations, since the test is so easily satisfied). See also UNCTAD, *Taking of Property*, paper no. UNCTAD/ITE/IIT/15 (2000), available at www.unctad.org/en/docs/psiteiid15.en.pdf.

The Restatement provides that for compensation to be “just,” it

must, in the absence of exceptional circumstances, be in an amount equivalent to the value of the property taken, or within a reasonable time thereafter with interest from the date of taking, and in a form economically usable by the foreign national.

Customary international law is also reflected in the Guidelines on the Treatment of Foreign Direct Investment (“Guidelines”)¹⁴³ promulgated by the World Bank in 1992, which are based on a broad survey of existing legal instruments.¹⁴⁴ As pointed out in the Introductory Note,¹⁴⁵ the Guidelines were the result of an attempt to “establish legal—or quasi-legal—guidelines or standards for the treatment of foreign direct investment.” The Guidelines were “based upon consideration of other pronouncements in the field, such as bilateral investment treaties,” but do not have any force of law. At the same time, many observers agree that the rules codified in the Guidelines “have considerable credibility,” as a result of the broad-based methodology and sources used to compile them. According to its drafters, at least, the Guidelines “would seem to approach more closely the status of an international agreement.”¹⁴⁶

Regarding expropriation, the Guidelines provide that:

[A] State may not expropriate or otherwise take in whole or in part a foreign private investment in its territory, or take measures which have similar effects, except . . . against the payment of appropriate compensation . . . Compensation for a specific investment taken by the State will, according to the details provided below, be deemed “appropriate” if it is adequate, effective, and prompt.¹⁴⁷

The specific requirements of customary international law for an expropriation to be “legal” are discussed in further detail below.¹⁴⁸

143 WORLD BANK, GUIDELINES ON THE TREATMENT OF FOREIGN DIRECT INVESTMENT (1992), 31 I.L.M. 1379 (1992), available at www-wds.worldbank.org (hereinafter the GUIDELINES). The GUIDELINES are reprinted in Appendix I.

144 The events leading to the drafting of the GUIDELINES are briefly discussed in Ibrahim Shihata & Antonio R. Parra, *Applicable Substantive Law in Disputes Between States and Private Foreign Parties: The Case of Arbitration under the ICSID Convention*, 9 ICSID REV-FOR. INV. L.J. 191 (1994). Some ICSID tribunals have looked to the GUIDELINES for support in matters of investment protection law, including expropriation. See, e.g., *Compania del Desarrollo de Santa Helena S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Award of Feb. 17, 2000 at para. 78, reprinted in 39 I.L.M. 1317, 1330 (2000).

145 Seymour J. Rubin, *Introductory Note* [to the World Bank: Report to the Development Committee and Guidelines on the Treatment of Foreign Direct Investment], 31 I.L.M. 1363 (1992).

146 *Id.*

147 GUIDELINES, *supra* note 143, at Guideline IV, §§ 1-2.

148 In the investment treaty context, see *Marvin Feldman v. Mexico*, *supra* note 142, at para. 137-141, 42 I.L.M. at 654-655 (examining the public purpose and non-discrimination tests, and noting the difficulty in establishing by sufficient evidence that an expropriation is illegal *per se*). The public purpose requirement is also arguably problematic on the grounds that the concept is not objective. See, e.g., Hans-Hermann Hoppe, *Fallacies of the Public Goods Theory and the Production of Security*, 9 J. LIBERTARIAN STUD. 27 (1989), available at www.mises.org, arguing that there is no objective way to distinguish “public” goods from

1. Public Purpose and Non-Discrimination

As mentioned earlier, expropriation must be carried out for a “public purpose” to be considered “legal” under international law.¹⁴⁹ “Public purpose” has been defined as “reasons of public utility, judicial liquidation and similar measures.”¹⁵⁰ General Assembly Resolution 1803 (on permanent sovereignty over natural resources) mentions the public purpose requirement, while the 1974 Charter of Economic Rights and Duties of States does not.¹⁵¹ Exceedingly few decisions turned on whether an expropriation was carried out for a “public purpose.”¹⁵² This may be because it is very easy for an expropriating state to couch any taking in terms of some “public purpose.”¹⁵³

An expropriation must also be “nondiscriminatory” to be considered “legal” under international law. A discriminatory taking is one that singles out a particular person or group of people without a reasonable basis. The arbitrator in *LIAMCO* reaffirmed the principle that a discriminatory expropriation would be *per se* unlawful.¹⁵⁴ Like the “public purpose” requirement, the “nondiscrimination” requirement is not extensively discussed in the literature or by international tribunals. As in the case of the “public purpose” requirement, this may be because proving a violation of this requirement can be extremely difficult.¹⁵⁵ The Restatement emphasizes that discrimination renders expropriation illegal only if unreasonable, and provides that:

classifications, even if based on nationality, that are rationally related to the state’s security or economic policies might not be unreasonable.¹⁵⁶

This position is echoed by Professor Brownlie:

The test of discrimination is the intention of the government: the fact that only aliens are affected may be incidental, and, if the taking is based on economic and social policies, it is not directed against particular groups simply because they own the property involved.¹⁵⁷

private ones. Similarly, it could be argued that public purpose is difficult, if not impossible, to objectively and rigorously define and identify in practice.

149 *But see LIAMCO, supra* note 51, 62 I.L.R. at 194 (“it is the general opinion in international theory that the public utility principle is not a necessary requisite for the legality of a nationalization”).

150 *Chorzów Factory, supra* note 10, at 22.

151 *See* discussion, *supra*, Section A.2.c.

152 *See also* Clagett, *supra* note 33, §12.01[1].

153 A challenge to an expropriation based on a claim that the expropriation was not for a “public purpose” would possibly be effective in the case of a dictator seizing property clearly for his or her personal use. RESTATEMENT, *supra* note 142, § 712, com. (f), at 200.

154 *LIAMCO, supra* note 51, 62 I.L.R. at 194.

155 M.N. SHAW, INTERNATIONAL LAW 751 (5th ed. 2003).

156 RESTATEMENT, *supra* note 142, §712, com. (f), at 200.

157 BROWNLIE, *supra* note 22, at 515 n.95 (citations omitted).

2. Compensation

a. Full Compensation as Standard under International Law

As Professor Brownlie notes, “it is significant that the right to compensation, on whatever basis, is recognized in principle.”¹⁵⁸ It is practically undisputed that payment of compensation in *some* amount is required following an expropriation, whether the taking is legal or illegal. As discussed above in the discussion of the history and sources of the international expropriation law, international law is generally considered to require that a State that expropriates the property of an investor pay to the investor the full value of the property taken. In a case involving a concession or other State contract, compensation should cover not only the loss of tangible property, but also the loss of contractual rights.¹⁵⁹ Evidence of this maxim can be found in the decisions of international tribunals,¹⁶⁰ the provisions of many investment treaties,¹⁶¹ and in the writings of commentators.¹⁶² As Professor Norton has observed,

Recent international tribunals have consistently affirmed a requirement under international law that full compensation be paid for expropriations of foreign prop-

158 *Id.* at 519.

159 Amerasinghe, *supra* note 23, at 37.

160 See Section A.3, *supra*. See also *Tecnicas Medioambientales Tecmed*, *supra* note 149, at para. 188, 43 I.L.M. 133, 183; *Wena Hotels v. Egypt* (Merits), ICSID Case No. ARB/98/4, Award of Dec. 8, 2000, at para. 96, reprinted in 41 I.L.M. 896 (2002); *S.D. Myers, Inc. v. Canada*, Partial Award of Nov. 13, 2000, at paras. 301-317 *et pass.*, reprinted in 40 I.L.M. 1408, 1490 (2001), and Second Partial Award (Damages) of Oct. 21, 2002, at paras. 122, 300, both available at www.dfait-maeci.gc.ca/tna-nac/disp/SDM_archive-en.asp (holding that full compensation for all economic losses proved by the claimant must be paid by the respondent); *Metalclad Corp. v. The United Mexican States*, Case No. ARB(AF)/97/a, Award of 30 August 2000, 40 I.L.M. 36 (2001), at para. 103 (discussing the problem of assessing the fair market value of an ongoing enterprise lacking a profit history); *Santa Elena*, *supra* note 145, at para. 78, 39 I.L.M. 1317, 1330.

161 See Section A.4, *supra*, and Chapter 6.

162 See, e.g., CHARLES HYDE, 3 INTERNATIONAL LAW 710-27 (1949); Alexander P. Fachiri, *International Law and the Property of Aliens*, 10 BRIT. YB. INT'L L. 32 (1929); Chandler P. Anderson, *Title to Foreign Confiscated Property*, 20 A.J.I.L. 528 (1926); Fawcett, *supra* note 4. *But see Penrose et al.*, *supra* note 36, at 352:

That the state should pay compensation for the takeover of private assets is not questioned, and, in general, both international and domestic law hold that in most circumstances the government is obliged to pay to the owner of property it nationalized a compensation that is fair/just/full/adequate/appropriate/effective. These terms are imprecise, can easily have different ethical, economic and legal implications, and are clearly not interchangeable.

See also Williams, *supra* note 7, at 162. For further discussion, *see, e.g.*, SHAW, *supra* note 155, at 743 *et seq.*; BROWNLIE, *supra* note 22, at 514, 519, 522 *et pass.*; Higgins, *supra* note 12, at 142; Derek William Bowett, *State Contracts with Aliens: Contemporary Developments on Compensation for Termination or Breach*, 59 BRIT. YB. INT'L L. 49, 59 (1988). For arguments that international law requires the payment of “appropriate” compensation rather than full compensation in some circumstances, *see* Amerasinghe, *supra* note 23.

erty. A theoretical debate persists over the scope of possible exceptions to that standard, but the recent decisions suggest that only truly extraordinary circumstances would be likely to support such exceptions.¹⁶³

The “full compensation” requirement may also be stated as a requirement that compensation for expropriation must be “prompt, adequate, and effective.”¹⁶⁴ In this context, “prompt” means that at or before the time of the taking, either compensation has been paid or provision has been made for a determination of the amount of compensation to be paid, with interest from the time of the taking.¹⁶⁵ The term “effective” indicates that compensation must be made in a freely-convertible currency. This precludes forms of payment such as soft currency, unmarketable bonds, and I.O.U.s.¹⁶⁶

“Adequate” compensation, as discussed above, means that the investor is paid the full value of the property taken, which in the case of an on-going business will normally correspond to the going-concern value.¹⁶⁷ Valuation should be made as of the time of the taking, but the investor should be indemnified by the State for any depression in value caused by the threat of expropriation prior to the time of the actual expropriation.¹⁶⁸ Pre-expropriation reduction in value resulting from background conditions or generally-applicable government measures, however, cannot generally be taken into account.¹⁶⁹

As mentioned earlier, the Restatement suggests that “exceptional circumstances” may justify less than full compensation in the event of expropriation.¹⁷⁰ The Restatement offers two examples of such exceptional circumstances: national agricultural land reform and war.¹⁷¹ In the case of land reforms, however, the Restatement exception to full compensation is limited: a less stringent standard would not be justified if the property taken is used in a business enterprise authorized or encouraged by the State, if the property was a going concern taken over and operated by the State, if the taking discriminated against aliens, or if the taking otherwise violated international law.¹⁷²

163 *Norton*, *supra* note 23, at 503.

164 *See id.* at 476.

165 Clagett, *supra* note 33, §12.01[1].

166 *Id.*

167 *Id.*

168 *Id.* §12.01[2].

169 *Id.*

170 RESTATEMENT, *supra* note 142, §712, com. (d), at 199.

171 *Id.* *See also* BROWNLIE, *supra* note 22, at 511-14.

172 *Id.*

Commentators have suggested other exceptions to the “full compensation” rule. Professor Brownlie lists the most widely advanced exceptions:

under treaty provisions; as a legitimate exercise of police power, including measures of defense against external threats; confiscation as a penalty for crimes; seizure by way of taxation or other fiscal measures; loss caused indirectly by healthy and planning legislation and the concomitant restrictions on the use of property; the destruction of property of neutrals as a consequence of military operations, and a taking of enemy property as part payment of reparation for the consequences of an illegal war.¹⁷³

Brownlie also suggests that expropriation is not illegal if carried out in connection with the nationalization of a major industry, as long as compensation is paid “on a basis compatible with the economic objectives of the nationalization, and the viability of the economy as a whole.”¹⁷⁴

Finally, arbitrators in several cases have suggested in *dicta* that less than full compensation would be payable following expropriation in certain circumstances. In *INA*, for example, Judge Lagergren opined that full compensation may not be payable in the context of large-scale nationalizations.¹⁷⁵

Thus, the circumstances in which, according to some observers, a State may be excused from paying full compensation for expropriated property can be divided into three categories: where there are treaty provisions to the contrary; where the taking is within the exercises of legitimate “police power,” both internal and external (including taxation, certain types of regulation, confiscation for crimes, or where the taking is the result of war); and in cases of large-scale nationalization for the purpose of reform.

b. Justifications for the Full Compensation Standard

It is obvious that an investor is harmed to the extent that his property is taken, and that he can only be made whole if he receives in compensation the actual value—or the “full” value—of the property. The State presumably benefits by taking the investor’s property, and should therefore pay its value to the investor.¹⁷⁶ It makes little difference to an investor *why* his property has been taken. Brice Clagett argues cogently that the measure of compensation should not depend upon the motivation for the taking:

[T]here remains a significant body of opinion, even including some Western scholars, arguing that when a particular expropriation is part of a broad-scale national-

173 *Id.* at 511-12. *See also id.* at 447 (“There is some debate as to the possibility of penal damages in international law”).

174 *Id.* at 514.

175 *See* text accompanying note 104, *supra*.

176 *See* RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* (1985) (discussing the legitimate purposes of certain State takings).

ization of an entire industry or segment of the economy, something less than full compensation—partial compensation—is all that is required. . . . I call [this theory] the “partial confiscation” theory. If a man steals \$10 from me and gives me back \$4, he has still stolen \$6. I am not able to understand why similar conduct by governments should be viewed any differently. And I have never seen any suggestion of a principled—or even an unprincipled—basis on which “partial” compensation might be measured or calculated.¹⁷⁷

The argument for a customary law standard of compensation independent of State intent is supported by the consideration that even fully “legal” expropriation must be accompanied by compensation of some kind. It stands to reason that, if the government’s admirable intentions do not exempt the State from paying compensation, such considerations should also be irrelevant in determining the *quantum* of compensation due. According to this view, the investor suffers no worse harm where the taking is motivated by malice, as compared to a “benevolent” expropriation.¹⁷⁸

c. Compensation for Illegal and Legal Expropriation

Some commentators suggest that the standard of compensation for expropriation depends upon whether the act is legal or illegal. Professor Bowett notes that:

There would seem to be little value in making the distinction between a lawful and an unlawful taking unless consequences flowed from it: and it would be extraordinary if the distinction was of no consequence.¹⁷⁹

Bowett maintains that there may in fact be three different standards of compensation, for (1) an unlawful taking, (2) a lawful ad hoc taking, and (3) a lawful, general act of nationalization.¹⁸⁰ Even if, as some commentators argue,¹⁸¹ full compensation need not be paid in cases of large-scale nationalization carried out for the purpose of reform, Bowett’s view appears to have been rejected by most tribunals.¹⁸²

Professor Brownlie notes:

The practical distinctions between expropriation unlawful sub modo, i.e. only if no provision is made for compensation, and expropriation unlawful per se, would seem to be these: the former involves a duty to pay compensation only for direct

177 Clagett, *supra* note 33, §12.04[2], pp. 12-15 to 12-16, citing Judge Lagergren’s concurrence propounding this theory in *INA Corporation v. Government of the Islamic Republic of Iran*, Awd. No. 184-161-1, 8 IRAN-U.S. C.T.R. 373 (1985).

178 See also Brownlie’s discussion of the relevance of intent and motive in connection with State responsibility, at BROWNIE, *supra* note 22, at 426 *et pass.*; *LIAMCO*, *supra* note 51, 62 I.L.R. at 194 (discussing the relevance of State intent).

179 Bowett, *supra* note 162, at 59.

180 *Id.* at 73.

181 Section B.2.a, *supra*.

182 See, e.g., notes 11-12 and 99 and accompanying text.

losses, i.e. the value of the property, the latter involves liability for consequential loss (*lucrum cessans*); the former confers a title which is recognized in foreign courts (and international tribunals), the latter produces no valid title.¹⁸³

Here, Brownlie implies that a lawful expropriation requires compensation only for direct losses. However, to the extent such payment constitutes less than “full” compensation, such an assertion would appear unjustified.¹⁸⁴

It has also been argued that where an expropriation is illegal (e.g., a taking that is discriminatory or not carried out for a public purpose), the host State is in the first instance obligated to make restitution in kind, if possible. Section 901 of the Restatement provides, for example:

[u]nder international law, a state that has violated a legal obligation to another state is required to terminate the violation and, ordinarily, to make reparations, including in appropriate circumstances restitution or compensation for loss or injury.¹⁸⁵

Even if a host State carries the obligation to make restitution, however, a court or arbitral ruling to this effect is practically unenforceable.¹⁸⁶

d. Valuation

While it is well settled under international law that the proper level of compensation following expropriation is “full” compensation, the method to be used in determining the precise magnitude of that compensation is far more controversial. For example, should full compensation be based upon the book value of the investor’s expropriated assets? Should modern assessment systems, such as the “discounted cash flow” method, be used? Are “future profits” part of the value of the investor’s property? How are intangibles, such as goodwill, to be measured? Various valuation methods and their application by international arbitral tribunals are discussed in Chapter 6.

3. Indirect and Creeping Expropriation

As noted in Chapter 1, direct expropriation, such as confiscation and nationalization, involves the physical seizure of assets or the formal transfer of title to

183 BROWNLIE, *supra* note 22, at 515 (footnotes omitted).

184 More widely accepted is Professor Brownlie’s assertion that a *per se unlawful* expropriation does not shift valid title, as might be recognized in national courts and international tribunals. See Chapter 10, Section E (discussing invalidation of title and exceptions to foreign sovereign immunity).

185 RESTATEMENT, *supra* note 142, § 901. See also, e.g., notes 11-12 and 99 and accompanying text.

186 See Chapter 10, Section F (nations do not have the right to use force against host States in response to unlawful expropriations).

them under local law.¹⁸⁷ Under customary international law, a range of other, subtler State measures may also constitute expropriation. As the OECD explains,

Expropriation or deprivation of property could also occur through interference by a state in the use of that property or with the enjoyment of the benefits even where the property is not seized and the legal title to the property is not affected. The measures taken by the State have a similar effect to expropriation or nationalisation and are generally termed “indirect”, “creeping”, or “de facto” expropriation, or measures “tantamount” to expropriation.¹⁸⁸

Indirect expropriation—regulatory interference that has an effect equivalent to expropriation—can be difficult to define or identify. In part, this is because customary international law also recognizes States’ need to engage in regulation in the normal exercise of police powers, to advance the welfare and safety of their populations. Some commentators have therefore suggested that generally-applicable regulations designed to achieve a “legitimate” purpose do not give rise to State liability and the concomitant obligation to compensate for the harm caused to foreign investors. Others insist that State measures should be considered expropriatory to the extent that their effect is to eliminate all (or nearly all) of an investment’s value. It is well-accepted, however, that expropriation need not be carried out through a single measure. Rather, “creeping” expropriation may occur where a series of State acts have the cumulative effect of depriving an asset of its value.

A number of international legal instruments include indirect takings within the definition of expropriation. As explained in Chapter 6, the North American Free Trade Agreement is typical of hundreds of investment protection treaties around the world, in that it provides that

No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory *or take a measure tantamount to nationalization or expropriation* of such an investment (“expropriation”), [except on payment of compensation].¹⁸⁹

OPIC’s Standard Contract defines “expropriation” to include “an act or series of acts of the foreign governing authority” where:

the act(s) (i) constitute an outright taking of the Investor’s property or (ii) *have the effect of taking the Investor’s insured investment in that the acts (A) prevent,*

187 See Chapter 1, Section C.

188 OECD DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, “*Indirect Expropriation*” and the “*Right To Regulate*” in *International Investment Law*, Working Papers On International Investment, Number 2004/4 (September 2004), available at www.oecd.org/dataoecd/22/54/33776546.pdf.

189 North American Free Trade Agreement, art. 1110(1) (emphasis added). *Cf. Methanex Corp. v. United States*, Final Award on Jurisdiction and Merits of Aug. 3, 2005 (NAFTA Chapter 11), available at www.state.gov/documents/organization/51052.pdf, at part IV-ch. D, paras. 6-7 (non-discriminatory regulations for a public purpose, such as environmental laws, not considered expropriation).

*unreasonably interfere with, deprive, or unduly delay effective enjoyment of the Investor's fundamental rights in the insured investment (rights are "fundamental" if without them the Investor is substantially deprived of the benefits of the investment). . . .*¹⁹⁰

Similarly, expropriation insurance policies issued by the World Bank's Multilateral International Guaranty Agency (MIGA) covers both "creeping" and indirect expropriation, providing compensation for losses:

due to any direct or indirect action or inaction, in one or a series of events, attributable to the Host Government which directly:

(a) deprives or prevents the Guarantee Holder from exercising its ownership rights or effective control of, or in all or a portion of the Guaranteed Investment; or

(b) deprives the Guarantee Holder or the Project Enterprise, as applicable, of the use and control of any funds constituting dividends, profits or other monetary benefits derived from the Guaranteed Investment [. . .].¹⁹¹

At the same time, however, the MIGA contract provides support for a limitation on indirect expropriation in relation to "legitimate" regulations:¹⁹²

No measure shall constitute an Expropriation under [the] above [Section], if it constitutes a bona fide, non-discriminatory measure of general application that governments normally take for the purpose of regulating economic activity, ensuring public safety, raising revenues or protecting the environment, unless the measure is designed by the Host Government to have a confiscatory effect.¹⁹³

190 OPIC Contract of Insurance, § 4.01 (emphasis added), *reprinted in* Appendix IV. *See* Chapter 3 for further discussion of OPIC.

191 MIGA Contract of Guarantee for Equity Investments, §§ 4.1-4.2 (2004) (hereinafter MIGA Contract), *reprinted in* Appendix VI. *See* Chapter 3 for further discussion of MIGA.

192 For further discussion of regulation as expropriation, see the discussion in Chapter 1, Section C and Chapter 6, Section C.1; also SHAW, *supra* note 155, at 740-42, *et pass.*; OECD DIRECTORATE, *supra* note 188 (surveying standards defining indirect and creeping expropriation by a variety of commentators and legal instruments); Burns H. Weston, *Constructive Taking Under International Law: A Modest Foray into the Problem of "Creeping Expropriation,"* 16 VA. J. INT'L. L. 103 (1975); Rudolph Dolzer, *Indirect Expropriation of Alien Property,* 1 ICSID REV.—FOR. INV. L.J. 41 (1986); Thomas Waelde & Abba Kolo, *Multilateral Investment Treaties and Environmental Expropriation of Foreign Investment, ALEXANDER'S GAS AND OIL CONNECTION—SPEECHES,* available at www.gasandoil.com/goc/speeches/waelde2.htm (version also at www.dundee.ac.uk/cepmlp/journal/html/vol5/vol5-2.html); Patrick J. Donovan, *Creeping Expropriation and MIGA: The Need for Tighter Regulation in the Political Risk Insurance Market, ACROSS BORDERS INT'L L.J.* 10 (2004), available at www.across-borders.com; Robert Volterra, *Mitigating Expropriation Risk for Oil & Gas Investment in the Caspian Region* (IEA Roundtable on Caspian Oil & Gas Scenarios, April 15, 2003), available at www.iea.org/textbase/work/2003/caspian/volterra.pdf.

193 MIGA Contract, *supra* note 191, § 4.2.

4. Other Investment-Related Norms: National Treatment and the International Minimum Standard

a. National Treatment

Some twentieth-century commentators maintained that a State was required under customary international law to treat aliens at least as well as it treats its own citizens.¹⁹⁴ In 1957, Isi Foighel surmised that

states are bound to give to the foreigner the same protection as is accorded to the country's own nationals in respect of his person or property. A lower degree of protection for the foreigner in this respect will be taken as a breach of the international law of aliens and will incur liability for the state of residence.¹⁹⁵

However, many observers take the position that, at least in commercial matters, no obligation exists at customary international law to offer "national treatment" to aliens.¹⁹⁶ The absence of such a duty was affirmed in the *Oscar Chinn* case. There, a U.K. citizen was engaged in short-haul shipping in Congo, then a Belgian colony. Mr. Chinn was driven out of business when the government of Belgium began to heavily subsidize a State-owned competitor. The U.K. espoused his claim against Belgium before the Permanent Court of International Justice, which found that Belgium was not responsible for the discrimination that Mr. Chinn had suffered:

Freedom of trade does not mean the abolition of commercial competition; it presupposes the existence of such competition. Every undertaking freely carrying on its commercial activities may find itself confronted with obstacles placed in its way by rival concerns which are perhaps its superiors in capital or organization. It may also find itself in competition with concerns in which States participate . . .¹⁹⁷

194 See, e.g., John Fischer Williams, *International Law and the Property of Aliens*, 9 BITR.YB. INT'L L. 1, 28 (1928). It is generally accepted that with regard to certain matters, aliens receive substandard treatment compared to that received by nationals. Professor Brownlie remarks that

it is not contended that the alien should have political rights in the host state as of right. Moreover, the alien must take the local law as he finds it in regard to regulation of the economy and restriction on employment of aliens in particular types of employment . . . More general variations may of course be created by treaty.

BROWNLIE, *supra* note 22, at 502.

195 FOIGHEL, *supra* note 7, at 46. See also *id.* at 47 ("the rules of international law against discrimination can be considered to be satisfied when foreigners are given formal equality with the nationals of the country in question in respect of protection in similar situations").

196 A.F.M. Maniruzzaman, *Expropriation of Alien Property and the Principle of Non-discrimination in International Law of Foreign Investment: An Overview*, 8 J. TRANSNAT'L L. & POL'Y 57 (1998); see also MUCHLINSKI, *supra* note 93, at 626-627; Georg Schwarzenberger, *Equality and Discrimination in International Economic Law*, in THE YEARBOOK OF WORLD AFFAIRS 164 (1971).

197 *The Oscar Chinn Case* (U.K. v. Belgium), Decision of Dec. 12, 1934, 1934 P.C.I.J. Rep., Series A/B, No. 63, at p. 84. For extended commentary and critique, see Todd Weiler,

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<i>Southern Pacific Properties, Ltd. v. Arab Republic of Egypt</i> (France Cour de Cassation), Decision of Jan. 6, 1987, 13 YBK. COMM. ARB. 152 (1988)	267
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<i>Westland Helicopters Ltd v. Arab Organisation for Industrialisation, et al.</i> , Award of April 19, 1994 28 ILM 688 (1989)	267
<i>Westland Helicopters v. Arab Republic of Egypt et al.</i> (Switz. Sup. Ct.), Decision of July 19, 1988, 16 YBK. COMM. ARB. 174 (1991)	267
<i>William L. Pereira Associates, Iran (Pereira) v. The Islamic Republic of Iran</i> , Awd. No. 116-1-3, 5 IRAN-U.S. C.T.R. 198 (1984)	6, 20
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<i>Youmans Claim</i> (U.S. v. Mex.), 4 R.I.A.A. 110 (1926)	128

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Manuel Abdala & Pablo Spiller, <i>Damage Valuation of Indirect Expropriation in International Arbitration Cases</i> , 14 AM. REV. INT'L ARB. 447 (2003)	246
Abdel-Waheb, <i>Economic Development Agreements and Nationalization</i> , 30 U. CINCINNATI L. REV. 418 (1961)	175
Pia Acconci, <i>Determining the Internationally Relevant Link between a State and a Corporate Investor</i> , 5 J. WORLD INV. & TRADE 139 (2004)	135
Ifeanyi Achebe, <i>The Legal Problems of Indigenization in Nigeria: A Lesson for Developing Countries</i> , 12 HASTINGS INT'L & COMP. L.R. 637 (1989)	150
Libby Adler & Peer Zumbansen, <i>The Forgetfulness of Noblesse: A Critique of the German Foundation Law Compensating Slave and Forced Laborers of the Third Reich</i> , 39 HARV. J. LEG. 1 (2002)	430
AJ.P. Agarwal, <i>Effect of Foreign Direct Investment on Employment in Home Countries</i> , 6 TRANSNAT'L CORPORATIONS 1 (1997)	xxviii
Vinod Agarwal, <i>Alternative Dispute Resolution Methods</i> , DFM Doc. No. 14 (March 2001)	380
Guillermo Aguilar Alvarez & William W. Park, <i>The New Face of Investment Arbitration: NAFTA Chapter 11</i> , 28 YALE J. INT'L L. 365 (2003), MEALEY'S INT'L ARB. REP., January 2004, 39	xl, 193

	PAGE
Adeoye Akinsanya, <i>International Protection of Direct Foreign Investments in the Third World</i> , 36 INT'L & COMP. L.Q. 58 (1987)	xxxiii, 69-70, 90, 97, 161, 297, 298
GEORGE ALDRICH, <i>THE JURISPRUDENCE OF THE IRAN-U.S. CLAIMS TRIBUNAL 603-04</i> (1996)	206
Stanimir A. Aleksandrov, <i>The "Baby Boom" of Treaty-Based Arbitrations and the Jurisdiction of ICSID Tribunals: Shareholders as "Investors" and Jurisdiction Ratione Temporis</i> , 4 L.& PRAC. INT'L COURTS & TRIBUNALS 19, 34 (2005)	409
Stanimir A. Aleksandrov, <i>Introductory Note to SGS Societe Generale de Pakistan, ICSID Case No. ARB/01/13</i> , 42 I.L.M. 1285, 1287 (2003)	121
Stanimir Aleksandrov, <i>Breaches of Contract and Breaches of Treaty: the Jurisdiction of Treaty-based Arbitration Tribunals to Decide Breach of Contract Claims in SGS v. Pakistan and SGS v. Philippines</i> , 5 J. WORLD INV. 555 (2004)	238
Stanimir Aleksandrov, <i>Non-Appearance before the International Court of Justice</i> , 33 COLUM. J. TRANSNAT'L L. 41 (1995)	336
Frank C. Alexander, Jr., <i>Production Sharing Contracts and Other Host Government Contracts</i> , 46 ROCKY MT. MIN. L. INST. 20-1 (2000), 3(1) OGEL (March 2005)	32, 50
Frank C. Alexander, Jr., <i>The Three Pillars of Security of Investment under PSCs and other HGCs</i> , FIFTY-FOURTH ANNUAL INSTITUTE ON OIL AND GAS LAW (Institute for Energy Law of the Center for American and International Law, Publication 640, Release 54, 2003)	32, 51, 53
Carsten Altig, <i>Piercing the Corporate Veil in American and German Law—Liability of Individuals and Entities: A Comparative View</i> , TULSA J. COMP. & INT'L L. 187 (1995)	409
C.F. Amerasinghe, <i>Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice</i> , 41 INT'L. & COMP. L. Q. 22 (1992)	122, 135, 157-58, 259
C.F. AMERASINGHE, <i>LOCAL REMEDIES IN INTERNATIONAL LAW</i> (2004)	410
C.F. AMERASINGHE, <i>STATE RESPONSIBILITY FOR INJURIES TO ALIENS</i> 281-282 (1967)	221
Austin Amissah, <i>The ACP/EEC Conciliation and Arbitration Rules</i> , 8 ARB. INT'L 167 (1992)	197
Tang An, <i>The Law Applicable to a Transnational Economic Development Contract</i> , 21 J. WORLD TRADE 95 (1987)	45

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Chandler P. Anderson, <i>Title to Foreign Confiscated Property</i> , 20 AM. J. INT'L L. 528 (1926)	178
APPIAN: APPIAN'S ROMAN HISTORY 409 (1912)	121
Arangio-Ruiz, <i>The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations</i> , 137 R.C.A.D.I. 419 (1972 III)	163, 178
Samuel Asante, <i>The Concept of the Good Corporate Citizen in International Business</i> , 4 ICSID REV.—FOR. INV. L.J. 1, 18 (1989)	242
Hans Bagner, Jeremy Carver, Bohuslav Klein & Wolfgang Kühn, <i>How to Avoid Conflicting Awards: the Lauder and CME Cases</i> , 5 J. WORLD INV. & TRADE 7 (2004)	222
ERIC N. BAKLANOFF, EXPROPRIATION OF U.S. INVESTMENT IN CUBA, MEXICO, AND CHILE (1975)	xxx, 9, 27, 160, 161, 425
C. Mark Baker, <i>Fulbright & Jaworski Conference on Arbitration</i> , Washington, D.C., Sept. 26, 2002	343
Stewart A. Baker & Mark D. Davis, <i>Establishment of an Arbitral Tribunal Under the UNCITRAL Rules: The Experience of the Iran-United States Claims Tribunal</i> , 23 INT'L LAW. 81 (1989)	311
Markham Ball, <i>Assessing Damages in Claims by Investors against States</i> , 16 ICSID REV.—FOR. INV. L.J. 408 (2001)	59, 247
Markham Ball, <i>Just Do It—Drafting the Arbitration Clause in an International Agreements</i> , 10(4) J. INT'L ARB. 29 (1993)	344-45
Russel Lawrence Barsh, <i>A Special Session of the U.N. General Assembly Rethinks the Economic Rights and Duties of States</i> , 85 A.J.I.L. 192 (1991)	xxx
James Barrows, <i>International Trends and Latest Changes in Oil Laws, Concession, and Production-Sharing Agreements Worldwide</i> , 1983 INST. INT'L OIL & GAS L. A-1	42
S. Bastid, <i>La Commission de conciliation franco-siamoise</i> , 1 ETUDES EN L'HONNEUR DE GEORGES SCELLE 1 (1950)	368
Joel C. Beauvais, <i>Student Article: Regulatory Expropriations Under NAFTA: Emerging Principles & Lingering Doubts</i> , 10 N.Y.U. ENV'T L.J. 245 (2002)	15
TIM BEDFORD & ROGER COOKE, <i>PROBABILISTIC RISK ANALYSIS: FOUNDATIONS AND METHODS</i> (2001)	1
BENG CHENG, <i>GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS</i> 112 (1993)	216

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Evrett W. Benton, <i>The Libyan Expropriations: Further Developments on the Remedy of Invalidation of Title</i> , 11 Hous. L. Rev. 924 (1974)	10, 430
YEARBOOK OF COMMERCIAL ARBITRATION, VOL. XXVI 18 (A.J. van den Berg, ed., 2001)	23
Klaus Peter Berger, <i>Integration of Mediation Elements Into Arbitration 'Hybrid' Procedures and 'Intuitive' Mediation By International Arbitrators</i> , 19 ARB. INT'L 387 (2003)	365
PETER BERNSTEIN, <i>AGAINST THE GODS: THE REMARKABLE STORY OF RISK</i> (1998)	1
C.F. Bergsten & E.M. Graham, <i>Needed: New International Rules for Foreign Direct Investment</i> , 7 Int'l Trade J. 15 (1992)	192
Klaus P. Berger, <i>The New Multilateral Investment Guaranty Agency Globalizing the Investment Insurance Approach Towards Development</i> , 15 SYR.J. INT'L L. & COM. 13 (1988)	xxvii, xxix, xxxv, 69, 98-100, 102, 104-05
C.F. Bergsten & E.M. Graham, <i>Needed: New International Rules for Foreign Direct Investment</i> , 7 INT'L TRADE J. 15 (1992)	192
Pieter H.F. Biekker, <i>The Oil Platforms Decision</i> , 91 A.J.I.L. 518 (1997)	418
Lord Justice Bingham, <i>The Problem of Delay in Arbitration</i> , 5(4) ARB. INT'L 333 (1989)	374
Doak Bishop & Lucy Reed, <i>Practical Guidelines for Interviewing, Selecting, and Challenging Party-Appointed Arbitrators in International Commercial Arbitration</i> , 14 ARB. INT'L 395, 408-09 (1998)	341
Andrea Bjorklund, <i>Waiver and the Exhaustion of The Local Remedies Rule in NAFTA Jurisprudence</i> , NAFTA INVESTMENT LAW AND ARBITRATION 253 (2004)	62, 133
Marc Blessing, <i>The Major Western and Soviet Arbitration Rules: A comparison of the Rules of UNCITRAL, UNCITRAL Model Law, LCIA, ICC, AAA and the Rules of the USSR Chamber of Commerce and Industry</i> , 6(3) J. INT'L ARB. 8 (1989)	311
KEITH W BLINN, ET AL., <i>INTERNATIONAL PETROLEUM EXPLORATION & EXPLOITATION AGREEMENTS: LEGAL, ECONOMIC, AND POLICY ASPECTS</i> (1986)	32, 42
Guy Block <i>et al</i> , <i>A Remarkable Example of Promotion of Arbitration and ADR: The Resolution of Disputes in the Belgian Newly Liberalized Energy Sector</i> , 18 ARB. INT'L 401 (2002)	365
Karl-Heinz Böckstiegel, <i>The Relevance of National Arbitration Law for Arbitrations under the UNCITRAL Rules</i> , 1(3) J. INT'L ARB. 223, 232-236 (1984)	312

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John Boloro, <i>Aspects of the Law on the Responsibility of a Host State for Injuries Caused to Foreign Investment During Internal Armed Conflicts: The ICSID Award in Asian Agricultural Products Limited (AAPL) v. Republic of Sri Lanka</i> , 18 S. AFRICAN YBK. OF INT'L L. 105 (1992)	220
Brian Eric Bomstein & Julie M. Levitt, <i>Much Ado About 1782: A Look At Recent Problems With Discovery In The United States For Use In Foreign Litigation Under 28 § 1782</i> , 20 U. MIAMI INTER-AM. L. REV. 429 (1989)	348
Michael Joachim Bonell, <i>UNIDROIT Principles 2004</i> , 2004 UNIFORM LAW REV. 5	49
Stephen R. Bond, <i>How to Draft an ICC Arbitration Clause</i> , 7 ICSID REV.-FOR. INV. L.J. 153, 157 (1992)	313, 322
Stephen Bond, <i>ICC Terms of Reference Rules Saves Time and Money While Promoting Common Understanding</i> , MEALEY'S INT'LARB. REP., Aug. 1991, 33	314, 322, 344
EDWIN BORCHARD, <i>DIPLOMATIC PROTECTION OF CITIZENS ABROAD</i> 817 (1915)	410
GARY BORN, <i>INTERNATIONAL COMMERCIAL ARBITRATION IN THE UNITED STATES</i> 5-8 (1994)	44, 309
Leo J. Bouchez, <i>The Prospects for International Arbitration: Disputes Between States and Private Enterprises</i> , 8 J. INT'L ARB. 81 (1991)	47, 52-53
Derek William Bowett, <i>State Contracts with Aliens: Contemporary Developments on Compensation for Termination or Breach</i> , 59 BR. Y.B. INT'L L. 49 (1988)	13, 47, 119, 125-26, 178, 181
Ronald A. Brand, <i>External Sovereignty and International Law</i> , 18 FORDHAM INT'L L. J. 1685 (1995)	130
David J. Branson & Richard E. Wallace, Jr., <i>Choosing the Substantive Law to Apply in International Commercial Arbitration</i> , 27 VA. J. INT'L L. 39 (1986)	47
David J. Branson & W.M. Tupman, <i>Selecting an Arbitral Forum: A Guide to Cost-Effective International Arbitration</i> , 24 VA. J. INT'L L. 4 (1984)	311
Thomas L. Brewer, <i>International Investment Dispute Settlement Procedures: The Evolving Regime for Foreign Direct Investment</i> , 26 LAW & POL'Y INT'L BUS. 633 (1995)	xxvii, 99, 392
A.F. Brooke II, <i>Great Expectations: Assessing the Contract Damages of the Take-or-Pay Producer</i> , 70 TEX. L. REV. 1469 (1992)	36

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Charles N. Brower, <i>Current Development in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal</i> , 21 INT'L LAW. 639, 658 (1987)	437
HENRY BROWN & ARTHUR MARRIOTT, ADR PRINCIPLES AND PRACTICE (2d ed. 2002)	379
HENRY BROWN & ARTHUR MARRIOTT, ADR PRINCIPLES AND PRACTICE (1993)	366
J. Jeffrey Brown, <i>The Jurisprudence of the Foreign Claims Settlement Commission: Viet Nam Claims</i> , 27 VA. J. INT'L L. 99, 100 (1986)	440-41
IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 289 (1963)	433, 435
IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (6th ed. 2003)	6, 53, 421
IAN BROWNLIE, SYSTEM OF THE LAW OF THE NATIONS 452 (1986)	221
CHARLES N. BROWER & JASON BRUESCHKE, THE IRAN-U.S. CLAIMS TRIBUNAL (1998)	168, 210
Charles N. Brower, <i>Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal</i> , 21 INT'L LAW. 639 (1987)	15, 19, 249
Charles N. Brower, <i>Investor-State Disputes Under NAFTA: The Empire Strikes Back</i> , 40 COLUM. J. TRANSNAT'L L. 43 (2001)	193, 212
Charles N. Brower & Lee A. Steven, <i>NAFTA Chapter 11: Who Then Should Judge?- Developing the International Rule of Law under NAFTA Chapter 11</i> , 2 CHI. J. INT'L L. 193 (2001)	194
IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (1990)	123-24, 126, 137, 157-59, 162, 165-66, 172, 174-75, 177-82, 186, 188
Aron Broches, <i>The Convention on the Settlement of Investment Disputes between States and Nationals of Other States: Applicable Law and Default Procedure</i> , in INTERNATIONAL ARBITRATION LIBER AMICORUM FOR MARTIN DOMKE 12 (1967)	336
Gianluca Brusco, <i>Eurocentrism and Political Conditionality: The Case of the Lomé Convention</i> , in EUROPE, DIPLOMACY AND DEVELOPMENT 103 (Carol Cosgrove-Sacks ed. & Carla Santos assist. ed., 2001)	197

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PETER BUCKLEY, <i>THE STRATEGY AND ORGANIZATION OF INTERNATIONAL BUSINESS</i> (1993)	xxxix
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Bundesministerium der Justiz, <i>Richtlinien für die Übernahme von Garantien für Direktinvestitionen im Ausland. Neufassung vom 19. August 2004</i> , BUNDESANZEIGER, no. 163 (31 August 2004), p. 19494.	95
Steven J. Burton, <i>Combining Conciliation with Arbitration of International Commercial Disputes</i> , 18 HASTINGS INT'L COMP. L. REV. 637, 639 (1995)	376
BURNS H. WESTON, RICHARD B. LILICH & DAVID BEDERMAN, <i>INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENT 1975-1995</i> (1999)	174
THOMAS BURGENTHAL, DINAH SHELTON & DAVID STEWARD, <i>INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL</i> (3d ed. 2002)	118
F.N. Burton & Hisashi Inoue, <i>Expropriations of Foreign-Owned Firms in Developing Countries: A Cross-National Analysis</i> , 18 J. WORLD TRADE L. 396 (1984)	25, 160-61
Katherarina A. Byrne, <i>Regulatory Expropriation and State Intent</i> , CAN. YBK. INT'L L. (2000)	168, 210
JAMES CABLE, <i>GUNBOAT DIPLOMACY: POLITICAL APPLICATIONS OF LIMITED FORCE</i> (1981)	433
2 HUGO GROTIUS, <i>DE JURE BELLI AC PACIS</i> , ch. 1, § 2; ch. 2, § 13 (A.C. Campbell trans., 1814)	433
Peter Cameron, <i>Creating a Legal Framework for Investment in the Commonwealth of Independent States Energy Sector: Lessons from the Energy Charter Experiment</i> , 1 TULSA J. COMP. & INT'L L. 233 (1994)	95
CANADA, GOVERNMENT OF, <i>L'ENTRAIDE JUDICIAIRE INTERNATIONALE: SERVICES JURIDIQUES FOURNIS PAR LE MINISTÈRE DES AFFAIRES EXTÉRIEURES CONCERNANT L'ENTRAIDE JUDICIAIRE INTERNATIONALE ET CERTAINES AUTRES MATIÈRES</i> 63 (1987)	410
A. A. CANCADO TRINDADE, <i>THE APPLICATION OF THE RULE OF EXHAUSTION OF LOCAL REMEDIES IN INTERNATIONAL LAW: ITS RATIONALE IN THE INTERNATIONAL PROTECTION OF INDIVIDUAL RIGHTS</i> (C.U.P. 1983)	62

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EILEEN CARROLL & KARL MACKIE, <i>INTERNATIONAL MEDIATION: THE ART OF BUSINESS DIPLOMACY</i> (2000)	402
DOMINIQUE CARREAU & PATRICK JUILLARD, <i>DROIT INTERNATIONAL ECONOMIQUE</i> 387 (2003)	xxix
Barry E. Carter, <i>International Economic Sanctions: Improving the Haphazard U.S. Legal Regime</i> , 75 CAL. L. REV. 1159, 1173 (1987). <i>See</i> 50 U.S.C. § 1701 <i>et seq.</i> (1982)	425-27
Bruno de Cazalet, <i>Construction Contracts in the Framework of BOT Projects</i> , 1998 INT'L BUS. L.J. 405 (1998)	37
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Chatterjee, <i>The Convention Establishing the Multilateral Guarantee Agency</i> , 36 INT'L & COMP. L.Q. 76 (1987)	69
Pat K. Chew, <i>Political Risk and U.S. Investments in China: Chimera of Protection and Predictability?</i> , 34 VA. J. INT'L L. 615 (1994)	72, 111, 113, 158, 160, 163, 165, 172
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Gordon Christenson, <i>U.S.-Rumanian Agreement of March 30, 1960</i> , 55 A.J.I.L. 452 (1961)	xxx
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Michael Clancy & Thomas W. Wälde, <i>Efficiency in Mediation: Solving a Complex Cross-border Energy Infrastructure Dispute in the Shadow of three Moving Regulatory Regimes</i> , 5 J. WORLD INV. & TRADE 257 (2004)	371

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Brice M. Clagett, <i>Present State of the International Law of Compensation for Expropriated Property and Repudiated State Contracts</i> , in PRIVATE INVESTORS ABROAD (1989)	xxxii, 45, 52, 134, 139, 144, 146, 159, 161, 166, 173, 177, 179, 180-82, 412, 438
Christopher Clement-Davies, <i>Public/Private Partnerships in Emerging Markets: Structuring the Concession Agreement</i> , BUS. L. INT'L 17	32
Margarita T.B. Coale, <i>Stabilization Clauses in International Petroleum Transactions</i> , 30 DENV. J. INT'L L. & POL'Y. 217 (2002)	51, 123
Matthew B. Cobb, <i>The Development of Arbitration in Foreign Investment</i> , MEALEY'S INT'L ARB. REP., April 2001, 146	433
Jack Coe, Jr. & Noah Rubins, <i>Regulatory Expropriation and the Tecmed Case: Context and Contributions</i> , INTERNATIONAL INVESTMENT LAW AND ARBITRATION 597, 609 (Weiler, ed. 2005)	12, 168
Jack Coe, Jr., <i>Metalclad—A Retrospective</i> , NAFTA ARBITRATION REPORTS 65 (Chris Thomas & Cameron Mowatt eds., 2002)	244
Jack Coe, Jr. & Noah Rubins, <i>Regulatory Expropriation and the Tecmed Case: Context and Contributions</i> , INTERNATIONAL INVESTMENT LAW AND ARBITRATION 597 (2005)	168, 200, 215, 224
Jack Coe, Jr., <i>Taking Stock of NAFTA Chapter 11 in Its Tenth Year: An Interim Sketch of Selected Themes, Issues, and Methods</i> , 36 VAND. J. TRANSNAT'L L. 1381 (2003)	193
R. Collins, <i>Alternative Dispute Resolution: Choosing the Best Option</i> , 2(3) AUSTRALIAN CONSTRUCTION LAW NEWSLETTER 3 (1989)	374
Michael Collins, <i>Privacy and Confidentiality in Arbitration Proceedings</i> , 11 ARB. INT'L 321 (1995)	309
COMMERCE, THE OFFICIAL NEWSLETTER OF THE C.I.S.-AMERICAN CHAMBER OF COMMERCE (Fall 1995)	xxxii, 26
<i>Comparison of the NAFTA, ICSID, Additional Facility and UNCITRAL Rules</i> , 11(4) J. INT'L ARB. 159 (1994)	311
Anthony Connerty, <i>The Role of ADR in the Resolution of International Disputes</i> , 12 ARB. INT'L 47 (1996)	365
George Coombs, Jr., <i>International Dispute Resolution</i> , in TRANSNATIONAL LITIGATION 7-12 to 7-14 (December 1992)	369
Giuditta Cordero Moss, <i>Contract Or License? Regulation of Petroleum Investment in Russia and the Role of Foreign Legal Advice</i> , 3(1) OGEL (March 2005) (reprinted in 3(11) CEPMLP JOURNAL	32

	PAGE
Carlos M Correa, <i>Investment Protection in Bilateral and Free Trade Agreements: Implications for the Granting of Compulsory Licenses</i> , 26 MICH. J. INT'L L. 331 (2004)	204
JEAN-PIERRE COT, INTERNATIONAL CONCILIATION 193 (1972)	369
W. LAURENCE CRAIG, WILLIAM W. PARK & JAN PAULSSON, ANNOTATED GUIDE TO THE 1998 ICC ARBITRATION RULES (1998)	313
W. LAURENCE CRAIG, WILLIAM W. PARK & JAN PAULSSON, INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION (3rd ed. 2000)	313-14, 341
Bernardo Cremades, <i>Global Mediation</i> , ISRAEL BAR ASS'N NEWSLETTER (May 3, 2003)	366
Bernardo Cremades and David Cairns, <i>Transnational Policy in International Arbitral Decision-Making: the Cases of Bribery, Money Laundering and Fraud</i> , DOSSIERS OF THE ICC INSTITUTE OF WORLD BUSINESS LAW—MONEY LAUNDERING, CORRUPTION AND FRAUD 65 (2003)	337
Luis Enrique Cuervo & Vernon Valentine Palmer, <i>Judicial Protection of Foreign Investors in Latin America: Exposé des Motifs</i> , 77 TUL. L. REV. 1053 (2003)	3
Justine Daly, <i>Has Mexico Crossed the Border on State Responsibility for Economic Injury to Aliens? Foreign Investment and the Calvo Clause in Mexico after the NAFTA</i> , 25 ST. MARY'S L. J. 1147 (1994)	45, 132
Gennady M. Danilenko, <i>International Jus Cogens: Issues of Law-Making</i> , 2(1) EUR. J. INT'L L. 42 (1991)	118
A.A. de Fina, <i>Different Strokes for Different Folks: Institutional Appointment of Arbitrators</i> , ARB. & DISP. RES. L.J., March 2000	340
A.A. de Fina, <i>The Party Appointed Arbitrator in Int'l Arbitrations: Role and Selection</i> , 15 ARB. INT'L 381, 392 (1999)	342
Georges R. Delaume, <i>The finality of arbitration involving states: recent developments</i> , 5 ARB. INT'L 21 (1989)	405
Joseph W. Dellapenna, <i>Foreign State Immunity in Europe</i> , 5 N.Y. INT'L L. REV. 51 (1992)	142, 422
JOSEPH W. DELLAPENNA, SUING FOREIGN GOVERNMENTS AND THEIR CORPORATIONS (2001)	142, 143
GEORGES R. DELAUME, LAW AND PRACTICE OF TRANSNATIONAL CONTRACTS (1988)	46, 58
GEORGES R. DELAUME, TRANSNATIONAL CONTRACTS: APPLICABLE LAW AND SETTLEMENT OF DISPUTES (1982)	42

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Georges R. Delaume, <i>How to Draft an ICSID Arbitration Clause</i> , 7 ICSID REV.-FOR. INV. L.J. 168 (1992)	42, 322
Georges R. Delaume, <i>The Convention for Settlement of Investment Disputes Between States and Nationals of Other States</i> , in 2 TRANSNATIONAL CONTRACTS, booklet 17 at 5 (1990)	319
Georges R. Delaume, <i>Sovereign Immunity and Transnational Arbitration</i> , 3 INT'L ARB. 28 (1987)	63
Eileen Denza & Shelagh Brooks, <i>Investment Protection Treaties: United Kingdom Experience</i> , 36 I.C.L.Q. 908 (1987)	192
Eileen D. Denza & Shelagh B. Brooks, <i>International Protection of Investment Treaties</i> , 36 INT'L & COMP. L.Q. 909 (1987)	191
YVES DERAIS & ERIC A. SCHWARTZ, A GUIDE TO ICC ARBITRATION 76-109 (2d ed. 2005)	313-14, 324, 328, 336, 345
V. S. Deshpande, <i>How International Arbitration can always Prevail over Litigation</i> , 4(4) J. INT'L ARB. 9 (1987)	373
John S. Diaconis, <i>Political Risk Insurance: OPIC's Use of a "Fiduciary Agent" to Facilitate Resolution of Subrogation Claims</i> , 23 INT'L LAW. 271 (1989)	71, 74
A.V. DICEY & J.H.C. MORRIS, CONFLICT OF LAWS (13th ed. 2000)	408
Michael Dickstein, <i>Revitalizing International Law Governing Concession Agreements</i> , 6 INT'L TAX & BUS. LAW. 54 (1988)	123
A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (<i>Liberty Classics</i> 8th ed. 1982) (1915)	119
Yoram Dinstein, <i>Diplomatic Protection of Companies under International Law</i> , INTERNATIONAL LAW: THEORY AND PRACTICE 505 (Karel Wellens ed., 1998)	409
Ricky H. Diwan, <i>Problems Associated with the Enforcement of Arbitral Awards Revisited</i> , 19 ARB. INT'L 55 (2003)	367
William S. Dodge, <i>Exhaustion of Remedies and Res Judicata under Chapter Eleven of NAFTA</i> , 23 HASTINGS INT'L & COMP. L. REV. 357, 361-62 (2000)	410
William Dodge, <i>International Decision: Metalclad Corp. v. Mexico</i> , 95 A.J.I.L. 910 (2001); Chapter 8, Section L.2.a.ii.	244
RUDOLF DOLZER & MARGRETE STEVENS, BILATERAL INVESTMENT TREATIES (1995)	235, 242, 409, 419
Rudolph Dolzer, <i>Indirect Expropriation: New Developments?</i> , 11 N.Y.U. ENVIRON. L. J. 64 (2003)	11, 200
Rudolf Dolzer, <i>Indirect Expropriation of Alien Property</i> , 1 ICSID REV.-FOR. INV. L.J. 41 (1986)	13, 184, 203

	PAGE
ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Rudolf Dolzer <i>et al.</i> ed., 1987)	125, 289
Lord Donaldson, <i>Alternative Dispute Resolution</i> , 58 ARBITRATION 102 (1992)	371
Patrick J. Donovan, <i>Creeping Expropriation and MIGA: The Need for Tighter Regulation in the Political Risk Insurance Market</i> , ACROSS BORDERS INT'L L.J. 10 (2004)	184
<i>Don't Sue</i> , THE ECONOMIST, October 26, 2002, at 34	399
Zachary Douglas, <i>The Hybrid Foundations of Investment Treaty Arbitration</i> , 74 BRIT. YB. INT'L L. 151, 282 (2003)	129
Stephen J. Doyle, <i>International Boycotts</i> , in THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS (Ved P. Nanda ed., 2005)	425
M. Hallward-Driemeier, <i>Do Bilateral Investment Treaties Attract Foreign Direct Investment? Only aBit—and They Could Bite</i> , WORLD BANK POLICY RESEARCH WORKING PAPER NO. 3121 (2003)	28
Patrick Dumbergy, <i>The Quest To Define “Fair And Equitable Treatment” for Investors under International Law: The Case of the NAFTA Chapter 11 Pope & Talbot Awards</i> , 3 J.WORLD INV. 657 (2002)	212
Hew Dundas, <i>Mediation in the Oil and Gas Industry</i> , 2(3) OIL, GAS & ENERGY LAW INTELLIGENCE (July 2004)	399
FREDERICK S. DUNN, THE PROTECTION OF NATIONALS (1932)	155
THE ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORTS	xxxix, 29
THE ECONOMIST INTELLIGENCE UNIT, COUNTRY RISK SERVICE	xxxix, 29
Pierre Michel Eisemann, <i>The Court of Arbitration: Outline of its Changes from Inception to the Present Day</i> , INTERNATIONAL CHAMBER OF COMMERCE, 60 YEARS OF ICC ARBITRATION 391, 397 (1984)	384
Mahmoud A. El-Gamal, <i>Interest and the Paradox of Contemporary Islamic Law and Finance</i> , 26 FORDHAM INT'L L.J. 108, 126 (2003)	61
Troy Elder, <i>The Case Against Awards of Specific Performance in Transnational Commercial Disputes</i> , 13(1) ARB. INT'L 1 (1997)	54, 436
RICHARD EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985)	xxxvii, 180
Claude B. Erb et al., <i>Political Risk, Financial Risk and Economic Risk</i> , 52:6 FINANCIAL ANALYSTS J. 28	25
<i>Foreign Investment Insurance</i> , Export Development Corporation (Brochure 05-95)	98

	PAGE
Alexander P. Fachiri, <i>Expropriation in International Law</i> , 6 BR. Y.B. INT'L L. 159 (1925)	155
Alexander P. Fachiri, <i>International Law and the Property of Aliens</i> , 10 BR. Y.B. INT'L L. 32 (1929)	178
Halliburton Fales, <i>A Comparison of Compensation for Nationalization of Alien Property with Standards of Compensation under United States Domestic Law</i> , 5 NORTHWESTERN J. INT'L L. & BUS. 871 (1983)	155
Abdullah Al Faruque, <i>Creating Customary International Law through Bilateral Investment Treaties: a Critical Appraisal</i> , 44(2) INDIAN J. INT'L L. 292 (2004)	190
Nazila Fathi, <i>Conservatives in Iran Battle the Spread of Foreign Investment</i> , , October 10, 2004, 20	38
J.E.S. Fawcett, <i>Some Foreign Effects of Nationalisation of Property</i> , 27 BR. Y.B. INT'L L. 355 (1950)	10, 155, 158, 160, 178
Dyalá Jiménez-Figueres, <i>Amicable Means to Resolve Disputes: How the ICC ADR Rules Work</i> , 21(1) J. INT'LARB. 91, 92 (2004)	379, 385
J.D. Fine, <i>Continuum or Chasm? Can West Meet East? Commercial Arbitration and Alternative Dispute Resolution Techniques in the Western Nations of the LAWASIA Region</i> , 6(4) J. INT'L ARB. 27, 31-33 (1989)	377
ROGER FISHER ET AL., <i>GETTING TO YES</i> 42-55 (1991)	370, 377
Robert D. Fischer & Roger S. Haydock, <i>International Commercial Disputes: Drafting an Enforceable Arbitration Agreement</i> , 21 WM. MITCHELL L. REV. 941, 947 (1996)	44, 309, 354
Vincent Fischer-Zernin et al, <i>Arbitration and Meditation: Synthesis or Antithesis?</i> 5(1) J. INT'L ARB. 21 (1988)	365-67
Peter F. Fitzgerald, <i>Overview of Risks in International Financing</i> , 707 PLI/COMM. L. & PRAC. COURSE HANDBOOK SER. 7 (1995)	17, 111
Gerald Fitzmaurice, <i>The Problem of the Non-Appearing' Defendant Government</i> , 51 BRIT. YB. INT'L L. 89 (1980)	336
ISI FOIGHEL, <i>NATIONALIZATION: A STUDY IN THE PROTECTION OF ALIEN PROPERTY IN INTERNATIONAL LAW</i> (1957)	xxvii, 9, 117, 135, 140, 155, 160, 171, 174, 185-86
RALPH H. FOLSOM ET AL., <i>INTERNATIONAL BUSINESS TRANSACTIONS</i> (1992)	42
L. Yves Fortier, <i>The Occasionally Unwarranted Assumption of Confidentiality</i> , 15 ARB. INT'L 131 (1999)	375

	PAGE
Yves Fortier, <i>Caveat Investor: The Meaning of “Expropriation” and the Protection Afforded Investors under NAFTA</i> , News from ICSID, Summer 2003 at 1	13,
Yves Fortier, <i>The Occasionally Unwarranted Assumption of Confidentiality</i> , 15 ARB. INT’L 131 (1999)	309
Steven Franklin & Gerald T. West, <i>The Overseas Private Investment Corporation amendments Act of 1978: A Reaffirmation of the Developmental Role of Investment Insurance</i> , 14 TEX. INT’L L. J. 1 (1979)	71
Elyse M. Freeman, <i>Regulatory Expropriation under NAFTA Chapter 11: Some Lessons from the European Court of Human Rights</i> , 42 COLUM J. TRANSNAT’L L. 177 (2003)	7
Jody Freeman, <i>The Contracting State</i> , 28 FLA. ST. U.L. REV. 155 (2000)	21
Paul Friedland & E. Wong, <i>Measuring Damages for the Deprivation of Income-Producing Property</i> , 6 ICSID REV.—FOR. INV. L.J. 400 (1991)	59, 248
Emmanuel Gaillard & Yas Banifatemi, <i>The Meaning of “And” in Article 42(1), Second Sentence, of the Washington Convention: The Role of International Law in the ICSID Choice of Law Process</i> , 18 ICSID REV.—FOR. INV. L.J. 375 (2003)	49
Emmanuel Gaillard, <i>The First Association of South East Asian Nations Award</i> , N.Y.L.J., Aug. 7, 2003 at 3	200
Emmanuel Gaillard, <i>Investment Treaty Arbitration and Jurisdiction Over Contract Claims: the SGS Cases Considered</i> , in INTERNATIONAL INVESTMENT LAW AND ARBITRATION 325 (2005)	238
Emmanuel Gaillard, <i>Some Notes on the Drafting of ICSID Arbitration Clauses</i> , 477 PLI/COMM. LAW & PRAC. COURSE HANDBOOK SER. 33 (1988)	269, 317, 319
Nick Gallus, <i>No Joy for British Mining Company at ICSID</i> , 2(4) OIL, GAS & ENERGY LAW INTELLIGENCE (2004)	241
Glenn Gallins, <i>Bilateral Investment Protection Treaties</i> , 2 J. ENERGY NAT. RESOURCES & ENV’T L. 77 (1984)	191
David A. Gantz, <i>Symposium: Global Trade Issues in the New Millenium: Potential Conflicts between Investor Rights and Environmental Regulation under NAFTA’s Chapter 11</i> , 33 GEO. WASH. INT’L L. REV. 651, 721 (2001)	76
David Gantz, <i>The Evolution of FTA Investment Provisions: From NAFTA to the United States-Chile Free Trade Agreement</i> , 19 AM. U. INT’L L. REV. 679 (2004)	213, 220

	PAGE
F.V. García Amador, <i>The Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation</i> , 12 LAW. AMERICAS-U. MIAMI J. INT'L L. 1 (1980)	165
F.V. Garcia-Amador, <i>State Responsibility in Case of "Stabilization" Clauses</i> , 2 J. TRANSNAT'L L. & POL'Y 23 (1993)	54, 59, 123, 132
Michael A. Geist, <i>Toward a General Agreement on the Regulation of Foreign Direct Investment</i> , 26 LAW & POL'Y INT'L BUS. 673 (1995)	xxxiii, 25, 27, 120, 131, 192
Anna Gelpern & Malcolm Harrison, <i>Ideology, Practice, and Performance in Privatization: A Case Study of Argentina</i> , 33 HARV. INT'L L.J. 240 (1992)	xxxii, xxxii
Judith Gill & M. Gearing, <i>Contractual Claims and Bilateral Investment: a Comparative Review of the SGS Cases</i> , J. INT'LARB. 397 (2004)	238
Stanley J. Glod, <i>The Foreign Claims Settlement Commission of the United States: Resolutions of International Claims in the Nineties and Beyond</i> , 37 FED. BAR NEWS & J. 140 (1990)	438, 439
George E. Glos, <i>The Effect of Foreign Decrees of Expropriation in the Courts of the Forum</i> , 19 S. TEX. L.J. 241 (1978)	430-31, 433
Stephen B. Goldberg, <i>The Dynamic of Mediation: Is Creative Genius the Key to Successful Mediation?</i> , paper given at the WIPO Conference on Mediation in Geneva, March 29, 1996	368, 370
Jean-Claude Goldsmith, <i>How to draft Terms of Reference</i> , 3 ARB. INT'L 298 (1987)	314
MICHAEL W. GORDON, <i>THE CUBAN NATIONALIZATIONS: THE DEMISE OF FOREIGN PRIVATE PROPERTY</i> (1976)	161
Richard J. Graving, <i>The International Commercial Arbitration Institutions: How Good A Job Are They Doing?</i> , 4 AM. U.J. INT'L L.& POL'Y 319, 323 n.12 (1989)	366
Cheryl W. Gray & William W. Jarosz, <i>Law and the Regulation of Foreign Direct Investment: The Experience from Central and Eastern Europe</i> , 33 COLUM. J. TRANSNAT'L L. 1 (1995)	xxvii, xxxi
Jonathan Clark Green, <i>Are International Institutions Doing Their Job?</i> , 90 AM. SOC'Y INT'L L. PROC. 62, 70 (1996)	348
Gavan Griffith, <i>Constitution of Arbitral Tribunals: The Duty of Impartiality in Tribunals or Choose your Arbitrator Wisely</i> , 16 THE ARBITRATOR: JOURNAL OF THE INSTITUTE OF ARBITRATORS AUSTRALIA 229 (1998)	339
James H. Grossman & David M. Frost, <i>Foreign Claims Settlement Commission of the United States—A Paradigm for International Claims Resolution</i> , 21 INT'L BUS. LAW. 276, 276-77 (1993)	439, 440-41

	PAGE
Scott K. Gudgeon, <i>United States Bilateral Investment Treaties: Comments on their Origin, Purposes and General Treatment Standards</i> , 4 INT'L TAX & BUS. LAW 105, 124 (1986)	219, 220, 225
Omar Guerrero <i>et al.</i> , <i>Piercing the Corporate Veil in Mexico</i> , COMP. L. YB. INT'L BUS. 375 (Dennis Campbell ed., 2004)	409
Andrew T. Guzman, <i>Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties</i> , 38 VA. J. INT'L L. (1998)	192
MAX HABICHT, POSTWAR TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES 226 (1931)	367, 369, 398, 401
GREER H. HACKWORTH, DIGEST OF INTERNATIONAL LAW (1943)	159
GREER H. HACKWORTH, DIGEST OF INTERNATIONAL LAW (1942)	158, 224
David Hacking, comments at meeting of Chicago International Dispute Resolution Association, Chicago, IL, Oct. 15, 1999	341
Joseph P. Hadley, <i>Use of Political Risk Insurance in Connection with Project Financings</i> , in INTERNATIONAL INFRASTRUCTURE PROJECTS VIII (1995)	39
Winthrop Haight, <i>Libyan Nationalization of British Petroleum Company Assets</i> , 6 INT'L LAW. 541 (1972)	430
Hans-Hermann Hoppe, <i>Fallacies of the Public Goods Theory and the Production of Security</i> , 9 J. LIBERTARIAN STUD. 27 (1989)	176-77
Richard Happ & Noah Rubins, <i>Awards and Decisions of ICSID Tribunals in 2004</i> , 47 GERM. YBK. INT'L L. 878, 913 (2004)	241
Richard Happ, <i>Dispute Settlement under the Energy Charter Treaty</i> , 45 GERMAN YBK. OF INT'L L. 331 (2003)	195
Inaamul Haque & Ruxandra Burdescu, <i>Monterey Consensus on Financing for Development: Response Sought from International Economic Law</i> , 27 B.C.I.C.L.Q. 219, 254 (2004)	69
Cedric Harris, <i>Abuse of the Arbitration Process-Delaying Tactics and Disruptions: A Respondent's Guide</i> , 9(2) J. INT'L ARB. 87 (1992)	374
PHILIPP HARMS, INTERNATIONAL INVESTMENT, POLITICAL RISK, AND GROWTH (2000)	xxxiv
H.L.A. HART, THE CONCEPT OF LAW (1961)	119
Peter M. Haas, <i>Why Comply, or Some Hypotheses in Search of an Analyst</i> , INTERNATIONAL COMPLIANCE WITH NON-BINDING ACCORDS 21 (Edith Brown Weiss ed., 1997)	116

	PAGE
Dominique Hascher, <i>ICC Practice in Relation to the Appointment, Confirmation, Challenge and Replacement of Arbitrators</i> , 6(2) ICC INT'L CT. ARB. BULL. 4, 6 (November 1995)	341
Jean R. Haynes, <i>International Arbitration may not be as Confidential as you Think—or Want</i> , CONFLICTING LEGAL CULTURES IN COMMERCIAL ARBITRATION 99	375
John N. Hazard, <i>Risks in Investing in the USSR: Can There Be Protection Against Them?</i> , 11 N.Y.L. SCH. J. INT'L & COMP. L. 457 (1990)	40
LOUIS HENKIN, <i>HOW NATIONS BEHAVE</i> 9-98 (2d ed. 1969)	116
Gerold Hermann, <i>Commentary on the UNCITRAL Conciliation Rules</i> , 6 YBK. COMM. ARB. 170, 174 (1981)	380-82, 397
Hans-Hermann Hoppe, <i>Banking, Nation States and International Politics: A Sociological Reconstruction of the Present Economic Order</i> 4:1 R. AUSTRIAN ECON. 55 (1990)	2
Hans-Hermann Hoppe, <i>On Certainty and Uncertainty, Or: How Rational Can Our Expectations Be?</i> , 10:1 R. AUSTRIAN ECON. 49 (1997)	2
Tom Hickman, <i>The Reasonableness Principle: Reassessing Its Place in the Public Atmosphere</i> , 63 CAMBR. L. J. 166 (2004)	224
Rosalyn Higgins, <i>Aspects of the Case Concerning the Barcelona Traction, Light & Power Company, Limited</i> , 11 VA. J. INT'L L. 327 (1971)	409
ROSALYN HIGGINS, <i>PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT</i> (1994)	54, 117, 125-26, 128-30, 132, 135, 140-42, 147, 156, 178, 186, 188, 162-63
ROSALYN HIGGINS, <i>THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS</i> (1963)	163
Rosalyn Higgins, <i>The Taking of Property by the State: Recent Developments in International Law</i> , 176 R.C.A.D.I. 259 (1982)	203, 250
ROSALYN HIGGINS, <i>THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS</i> (1963)	163
Ken Highet, <i>Nonappearance and Disappearance before the ICJ</i> , 81 A.J.I.L. 237 (1987)	336
Richard Hill, <i>Non-Adversarial Mediation</i> , 12(4) J. INT'L ARB. 135 (1995)	365

	PAGE
Richard Hill, <i>The Theoretical Basis of Mediation and Other Forms of ADR: Why They Work</i> , 14 <i>ARB. INT'L</i> 173 (1998)	365, 368-69, 399
Claire A. Hill, <i>How Investors React to Political Risk</i> , 8 <i>DUKE J. COMP. & INT'L L.</i> 283 (1998)	25
Steffen Hindelang, <i>Bilateral Investment Treaties, Custom and a Healthy Investment Climate: The Question of Whether BITs Influence Customary International Law Revisited</i> , 5 <i>J. WORLD INV.</i> 789 (2004)	190
MOSHE HIRCH, THE ARBITRATION MECHANISM OF THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES 43 (1993)	335
Michael F. Hoellering, <i>How to Draft an AAA Arbitration Clause</i> , 7 <i>ICSID REV.—FOR. INV. L.J.</i> 141 (1992)	322-23, 325
J. VAN HOF, COMMENTARY ON THE UNCITRAL ARBITRATION RULES: THE APPLICATION BY IRAN-U.S. CLAIMS TRIBUNAL (1991)	311
HANS-HERMANN HOPPE, <i>Banking, Nation States and International Politics: A Sociological Reconstruction of the Present Economic Order</i> , in <i>THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY</i> 61, 80 (1993)	434
Nina N. Hoque & J. Michael Robinson, <i>An Examination of the Build, Operate and Transfer Model for International Projects in Emerging Markets</i> , in <i>INTERNATIONAL INFRASTRUCTURE PROJECTS X-1</i> (1995)	34, 36
Gunther Horvath, <i>The Duty of the Tribunal To Render an Enforceable Award</i> , 18(2) <i>J. INT'L ARB.</i> 135 (2001)	367
Martin B. Howard, <i>Military and Paramilitary Activities in and against Nicaragua: The International Court of Justice's Jurisdictional Dilemma</i> , 7 <i>LOY. L.A. INT'L & COMP. L.J.</i> 379 (1984)	422
JAMES C. HSIUNG, <i>LAW AND POLICY IN CHINA'S FOREIGN RELATIONS</i> (1972)	160
HUMAN RIGHTS WATCH, <i>FAST TRACK LAND REFORM IN ZIMBABWE</i> , March 2002	10
Martin Hunter, <i>Modern Trends in the Presentation of Evidence in International Commercial Arbitration</i> , 3 <i>AM. REV. INT'L ARB.</i> 204 (1992)	328
Martin Hunter & Jan Paulsson, <i>A Code of Ethics for Arbitrators in International Commercial Arbitration</i> , 13 <i>INT'L BUS. LAW</i> 153, 155 (1985)	341
ICSID Annual Report, 2004 Annual Report, www.worldbank.org/icsid/pubs/1998ar/2004_icsid_ar_en.pdf	397

	PAGE
ICSID, HISTORY OF THE ICSID CONVENTION: DOCUMENTS CONCERNING THE ORIGIN AND THE FORMULATION OF THE CONVENTION 3 (1968)	392
ICSID, REPORT OF THE SECRETARYGENERAL TO THE ADMINISTRATIVE COUNCIL 2 (1991)	335
Virtus C. Igbokwe, <i>Developing Countries and the Law Applicable to International Arbitration of Oil Investment Disputes</i> , 14 J. INT'L ARB. 99 (1997)	45
Motomichi Ikawa, <i>Introduction</i> , in INTERNATIONAL POLITICAL RISK MANAGEMENT, EXPLORING NEW FRONTIERS 2 (Theodor H. Moran ed., 2001)	99
INTERNATIONAL CHAMBER OF COMMERCE, BILATERAL TREATIES FOR INTERNATIONAL INVESTMENT 7-8 (1977)	192
International Chamber of Commerce, CONGRESS REPORT: ICC 35TH WORLD CONGRESS 16 (2004)	313
<i>International Law Association, Committee on Diplomatic Protection of Persons and Property</i> , First Report of 69th Conference (2001)	139, 288
INTERNATIONAL LAW COMMISSION, COMMENTARIES TO THE ILC DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS 70 (2001)	216, 224
International Monetary Fund, Balance of Payments Manual (4th ed. 1977)	178
INTERNATIONAL MONETARY FUND, BALANCE OF PAYMENTS MANUAL (4th ed. 1977)	xxviii, 178
Kenneth S. Jacobs, <i>Reinvigorating ICSID with a New Mission and with Renewed Respect for Party Autonomy</i> , 33 VA. J. INT'L L. 123 (1992)	315-16, 318-19
Sigvard Jarvin, <i>La loi-type CNUDCI sur l'arbitrage commercial international</i> , 1996 REVUE DE L'ARBITRAGE 518	346
Sigvard Jarvin, <i>Objections to Jurisdiction</i> , in THE LEADING ARBITRATORS' GUIDE TO INTERNATIONAL ARBITRATION 83, 88 (Lawrence W. Newman & Richard Hill eds., 2004) 201	346
OPPENHEIM'S INTERNATIONAL LAW 927 (Sir Robert Jennings & Sir Arthur Watts eds., 1992)	122, 188, 235, 238
Robert Jennings, <i>State Contracts in International Law</i> , 27 BR. Y.B. INT'L L. 156 (1961)	122
DAVID A. JODICE, POLITICAL RISK ASSESSMENT: AN ANNOTATED BIBLIOGRAPHY (1985)	xxxiv

	PAGE
D.H.N. Johnson, <i>The Effect of Resolutions of the General Assembly of the U.N.</i> , 32 BR. Y.B. INT'L L. 97 (1955)	163
Guy de Jonquieres, <i>Foreign Direct Investment flow set to begin recovery UNCTAD DATA</i> , Financial Times (London, England), January 13, 2004 at 11	xxxix
George F. Jones, <i>Termination of Declarations under the Optional Clause: Military and Paramilitary Activities in and Against Nicaragua</i> , 20 TEX. INT'L L.J. 557 (1985)	422
Christopher C. Joyner, <i>The Reality and Relevance of International Law in the Post-Cold War Era</i> , THE GLOBAL AGENDA 211 (C.W. Kegley & E.R. Wittkopf eds., 1995)	116
Mark Kantor, <i>International Project Finance and Arbitration with Public Sector Entities: When is Arbitrability a Fiction?</i> , 24 FORDHAM INT. L.J. 1122, 1132 fn. 30 (2001)	81
Mark Kantor, posting on OGEMID investment law list server of April 20, 2005	111
Pierre Karrer, <i>Arbitration Saves! Costs: Poker and Hide-and-Seek</i> , 3(1) J. INT'L ARB. 35 (1986)	372
JOHN P. KARALIS, INTERNATIONAL JOINT VENTURES: A PRACTICAL GUIDE 207 (1992)	311, 313, 351-52
Pierre Karrer, <i>Arbitration Saves! Costs: Poker and Hide-and-Seek</i> , 3(1) J. INT'L ARB. 35, 39 (1986)	312, 314
PETER B. KENEN, THE INTERNATIONAL FINANCIAL ARCHITECTURE (2001)	xxxv, 19, 25
Dany Khayat, <i>Swembalt: When Less Is Not More—Expropriation and Compensation</i> , 2004(2) STOCKHOLM ARB. REP. 141	206
Mohamed I. Khalil, <i>Treatment of Foreign Investment in Bilateral Investment Treaties</i> , 7 ICSID Rev.-For. Inv. L.J. 339 (1992)	213
N. Stephan Kinsella, <i>Legislation and the Discovery of Law in a Free Society</i> , 11 J. Libertarian Stud. 132 (Summer 1995)	3
N. Stephan Kinsella, <i>A Civil Law to Common Law Dictionary</i> , 54 LA. L. REV. 1265 (1994)	4
Frederic L. Kirgis, <i>Enforcing International Law</i> , ASIL INSIGHTS, January 1996	116
Courtney Kirkman, <i>Fair and Equitable Treatment: Methanex v. United States and the Narrowing Scope of NAFTA Article 1105</i> , 34 LAW & POL'Y INT'L BUS. 343 (2002)	212

	PAGE
Bernard Kishoiyian, <i>The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law</i> , 14 N.W.J. INT'L L. & BUS. 327 (1994)	160, 172
Bernard Kishoiyian, <i>The Utility of Bilateral Investment Treaties in the Formulation of Customary International Law</i> , 14 N.W.J. INT'L L. & BUS. 327 (1994)	160, 172
Kissam & Leach, <i>Sovereign Expropriation of Property and Abrogation of concession Contracts</i> , 28 FORDHAM L. REV. 177 (1959)	175
FRANK H. KNIGHT, <i>RISK, UNCERTAINTY AND PROFIT</i> (1971 [1921])	1
William H. Knull, III & Noah Rubins, <i>Betting the Farm on International Arbitration: Is it Time to Offer an Appeal Option?</i> , 11 AM. REV. INT'L ARB. 531, 536-543 (2000)	44, 309
Lazare Kopelmanas, <i>Custom as a Means of the Creation of International Law</i> , 18 BITR. YB. INT'L L.127 (1937)	171
Kalliopi K. Koufa, <i>Specific Human Rights Issues: New Priorities</i> , U.N. Doc. E/CN.4/Sub.2/2004/40 (2004)	224
Bjorn Kunoy, <i>Developments in Indirect Expropriation Case Law in ICSID Transnational Arbitration</i> , 6 J. WORLD INV. & TRADE 467 (2005)	202
Edward M.A. Kwaw, <i>Trade Related Investment Measures in the Uruguay Round: Towards a GATT for Investment?</i> , 16 N.C.J. INT'L COMM. & REG. L. 309 (1991)	192
Anton van Langelaar, <i>Establishing Settlement Ranges by using Subject Matter Experts and Probability Analysis</i> , 71 ARBITRATION 1, 64 (2005)	402
Erik Langeland, <i>The Viability of Conciliation in International Dispute Resolution</i> , 50-Sep DISP. RESOL. J. 34 (1995)	373
Donald C. Langevoort, <i>Ego, Human Behavior, and Law</i> , 81 VA. L. REV. 853 (1995)	402
Thomas J. Lang, <i>Satisfaction of Claims Against Viet Nam for the Expropriation of U.S. Citizens' Property in South Viet Nam in 1975</i> , 28 CORNELL INT'L L.J. 265, 298 (1995)	426, 439
Ole Lando, <i>The Law Applicable to the Merits of the Dispute</i> , 2 ARB. INT'L 104 (1986)	328
Clifford Larsen, <i>International Commercial Arbitration</i> , ASIL INSIGHTS, April 1997, at 2	312
BRITISH PRACTICE IN INTERNATIONAL LAW 202 (Eli Lauterpacht ed., 1964)	13

	PAGE
Elihu Lauterpacht, <i>Issues of Compensation and Nationality in the Taking of Energy Investments</i> , 8 J. ENERGY & NAT. RES. L. 241 (1990)	249-50
HIRSCH LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 265 (1982)	226
Serge Lazareff, <i>The Language of Institutional Arbitration</i> , 8(1) ICC BULL. 18 (1997)	345
LCIA Director General's Review 2004, available at www.lcia.org (191 cases initiated in 2003 and 2004 combined)	320
T.N. Leach, <i>Frey v. Amoco Production Co.: Payment of Mineral Royalties on Take-or-Pay Settlements in Louisiana</i> , 67 TUL. L. REV. 840 (1993)	36
Charles Leben, <i>Hans Kelsen and the Advancement of International Law</i> , 9 EUR. J. INT'L L. 287 (1998)	392
Bruno Ledni, FREEDOM AND THE LAW 75 (3d. ed. 1991)	3
Stephen Lee, <i>Title to Foreign Real Property in Transnational Money Claims</i> , 32 COLUM. J. TRANSNAT'L L. 607 (1995)	429
Bart Legum, <i>The Innovation of Investor-State Arbitration Under NAFTA</i> , 43 HARV. INT'L L. J. 531 (2002)	193
BRUNO LEONI, FREEDOM AND THE LAW (3d. ed., Liberty Fund 1991) (1961)	3
Bruno Leurent, <i>Reflections on the International Effectiveness of Arbitration Awards</i> , 12 ARB. INT'L 269 (1996)	367
Tali Levy, <i>NAFTA's Provision for Compensation in the Event of Expropriation: A Reassessment of the "Prompt, Adequate and Affected" Standard</i> , 31 STAN. J. INT'L L. 423 (1995)	160, 200
Catherine Li, <i>Evaluating the Various Non-Litigation Processes for Resolving Disputes: The Cost-Effectiveness Approach</i> , 18(4) J. INT'LARB. 435 (2001)	372
William C. Lieblich, <i>Determining the Economic Value of Expropriated Income-Producing Property in International Expropriations</i> , 8 J. INT'L ARB. 37, 63 (1991)	247-50
Richard B. Lillich, <i>United States-Bulgarian Claims Settlement Agreement of July 2, 1963</i> , 4 VA. J. INT'L L. 187 (1964)	xxx
RICHARD B. LILLICH, PROTECTION OF FOREIGN INVESTMENT 117-46 (1965)	427
Richard B. Lillich, <i>Joint Ventures and the Law of International Claims</i> , 10 MICH. J. INT'L L. 430 (1989)	140

	PAGE
Troland S. Link, <i>Foreign Sovereign Immunity, Expropriation, Act of State, and Comity</i> , 703 PLI/COMM. L. & PRAC. HANDBOOK SER. 183 (1994)	140-41
Klaus Lionnet, <i>Arbitration and Mediation—Alternatives or Opposites</i> , 4(1) J. INT. ARB. 69 (1987)	365, 367
DAVID B. LIPSKY & RONALD L. SEEBER, THE APPROPRIATE RESOLUTION OF CORPORATE DISPUTES 17 (1996)	375, 378
Daniel R. Loritz, <i>Comment: Corporate Predators Attack Environmental Regulations: It's Time to Arbitrate Claims Filed Under NAFTA Chapter 11</i> , 22 LOY. L. INT'L & COMP. L. REV. 533, 546 (2000)	14
Tamara Lothien & Katharina Pistor, <i>Local Institutions, Foreign Investment and Alternative Strategies of Development: Some Views from Practice</i> , 42 COLUM. J. TRANSNAT'L L. 101 (2003)	xxxvii, xxxix
William A. Lovett, <i>Lessons from the Recent Peso Crisis in Mexico</i> , 4 TUL. J. INT'L & COMP. L. 143 (1996)	18
Lucinda A. Low, <i>Coping with the Foreign Corrupt Practices Act: A Primer for Energy and Natural Resource Sectors</i> , 2(2) CEPMLP INTERNET J. (1997)	22
EXPROPRIATION IN THE AMERICAS (Andreas Lowenfeld, ed., 1971)	xxx
ANDREAS LOWENFELD, INTERNATIONAL ECONOMIC LAW (2003)	24
ANDREAS LOWENFELD, INTERNATIONAL ECONOMIC LAW (2002)	xxxv
Andreas Lowenfeld, <i>Investment Agreements and International Law</i> , 42 COLUM. J. TRANSNAT'L L. 123 (2003)	28, 123, 159, 171
ANDREAS LOWENFELD, INTERNATIONAL PRIVATE INVESTMENT (2d ed. 1982)	42
Andreas Lowenfeld, <i>The Party-Appointed Arbitrator in International Controversies</i> , 30 TEX. INT'L L.J. 59 (1995)	340
Annette Magnusson & Hanna Larsson, <i>Recent Practice of the Arbitration Institute of the Stockholm Chamber of Commerce Prima Facie Decisions on Jurisdiction and Challenges of Arbitrators</i> , 2004(2) STOCKHOLM. ARB. REP. 47	309, 312
Peter Malanczuk, <i>State-State and Investor-State Dispute Settlement in the OECD Draft Multilateral Investment Agreement</i> , 3 J. ECON. L. 417, 423 (2000)	199
Peter Malanczuk, <i>State-to-state and investor-to-state dispute settlement in the OECD draft Multilateral Investment Agreement, in MULTILATERAL REGULATION OF INVESTMENT</i> 137 (E.C. Nieuwenhuys & Marcel M.T.A. Brus eds., 2001)	405

	PAGE
G.I. Malumfashi, <i>Environmental and Social Due Diligence Vis-à-Vis Political Risk Insurance: An Assessment of the Role of the Multilateral Investment Guarantee Agency (MIGA)</i> , 2(1) OIL & GAS LAW INTELLIGENCE (2004)	105
F. A. Mann, <i>The Consequences of an International Wrong in International and National Law</i> , 48 BRIT. YB. INT'L L. 1, 47, 55 (1977)	122, 127, 129, 154, 429, 432
F.A. MANN, FURTHER STUDIES IN INTERNATIONAL LAW 126 (1990)	54, 429
Howard Mann, <i>NAFTA and the Environment: Lessons for the Future</i> , 13 TUL. ENVTL. L.J. 387, 405-406 (2000)	14
D. Manning-Cabrol, <i>The Imminent Death of the Calvo Clause and the Rebirth of the Calvo Principle: Equality of Foreign and National Investors</i> , 26 L. POL'Y INT'L BUS. 1169 (1995)	159
A.F.M. Maniruzzaman, <i>Understanding Stabilization Techniques in Production Sharing Agreements: Some Remark</i> , 3(1) OGEL (March 2005)	32, 51
A.F.M. Maniruzzaman, <i>Expropriation of Alien Property and the Principle of Non-discrimination in International Law of Foreign Investment: An Overview</i> , 8 J. TRANSNAT'L L. & POL'Y 57 (1998)	185, 225
F.A. Mann, <i>British Treaties for the Promotion and Protection of Investment</i> , 52 BR. Y.B. INT'L L. 241 (1981)	172, 212, 238
F.A. Mann, <i>The Consequences of an International Wrong in International and National Law</i> , 48 BR. Y.B. INT'L L. 1 (1977)	122, 127, 129, 154
B. Thomas Mansbach, <i>Financing and Political Risk: Risk Sharing and Project Finance: The Programs of the Overseas Private Investment Corporation</i> , in STATE BAR OF TEXAS ADVANCED INTERNATIONAL LAW INSTITUTE, INVESTMENT AND TRADE WITH EMERGING ECONOMIES B-1 (Houston, Texas, May 14, 1993)	69, 71-73, 83, 87, 90, 98, 113
Geoffrey Marston, <i>The Aminoil-Kuwait Arbitration</i> , 17 J. WORLD TRADE L. 177 (1983)	55
Ramona Martinez, <i>Recognition and Enforcement of International Arbitral Awards Under the United Nations Convention of 1958: The "Refusal" Provisions</i> , 24 INT'L LAW. 487, 488 (1990)	335.
Masten & Keith J. Crocker, <i>Efficient Adaptation in Long-Term Contracts: Take-or-Pay Provisions for Natural Gas</i> , 75 AMERICAN ECONOMIC REVIEW 1083 (1985)	36
Arshad Masood, <i>Default Procedure in Arbitration under the World Bank Convention</i> , 22 L. REV. 1 (1970)	309, 351-53
Stefan Matiation, <i>Arbitration with Two Twists: Loewen v. United States and Free Trade Commission Intervention in NAFTA Chapter 11 Disputes</i> , 24 U. PENN. J. INT'L ECON. L. 451 (2003)	194

	PAGE
Wilf Mbanga, <i>Farmers are Seeking Compensation</i> , THE ZIMBABWEAN, May 13, 2005 4	406
TIMOTHY L. H. MCCORMACK, SELF-DEFENSE IN INTERNATIONAL LAW 240 (1996)	435
SURVEY OF INTERNATIONAL ARBITRATION SITES (J. Stewart McClendon ed., 1993)	340
Peter M. McGowan, <i>Arbitration Clauses as Waivers of Immunity from Jurisdiction and Execution Under the Foreign Sovereign Immunities Act of 1976</i> , 5 N.Y.L. SCH. J. INT'L & COMP. L. 409 (1984)	143
Douglas Earl McLaren, <i>The New ICC ADR Rules</i> , MEALEY'S INT'L ARB. REP., March 2002, at 21	384-86
Douglas E. McLaren, <i>Party-Appointed vs. List-Appointed Arbitrators</i> , 20 J. INT'L ARB. 233 (2003)	325
Earl McLaren, <i>Effective Use of International Commercial Arbitration: A Primer for In-house Counsel</i> , 19 J. INT'L ARB. 473, 473-476 (2002)	339
LORD MCNAIR, THE LAW OF TREATIES, 272 (1961)	232
Edward McWhinney, <i>The International Law-Making Process and the New International Economic Order</i> , 14 CAN. Y. B. INT'L L. 57 (1976)	165
CARRIE J. MENKEL-MEADOW, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (1995)	402
J. Michael Medina, <i>The Take-or-Pay Wars: A Cautionary Analysis for the Future</i> , 27 TULSA L.J. 283 (1991)	36
Robert B. von Mehren & P. Nicholas Kourides, <i>International Arbitrations Between States and Foreign Private Parties: The Libyan Nationalization Cases</i> , 75 AM. J. INT'L L. 476 (1981)	xxx, 45, 47, 161-62, 175
George M. von Mehren & Claudia T. Salomon, <i>Submitting Evidence in International Arbitration: A Common Lawyer's Guide</i> , 20(3) J. INT'L ARB. 285 (2003)	337
Maurice Mendelson, <i>The Runaway Train: The 'Continuous Nationality Rule' from the Panevezys-Saldutsikis Railway Case to Loewen</i> , INTERNATIONAL INVESTMENT LAW AND ARBITRATION 97, 123 (Weiler, ed. 2005)	137
Maurice Mendelson, <i>What Price Expropriation?: Compensation for Expropriation: the Case Law</i> , 79 A.J.I.L. 414 (1985)	247
THEODOR MERON, INVESTMENT INSURANCE IN INTERNATIONAL LAW (1976)	70

	PAGE
Stanley D. Metzger, <i>Property in International Law</i> , 50 VA. L. REV. 594 (1964)	159
MIGA, ABOUT MIGA www.miga.org/screens/about/members/members.htm	100, 106
MIGA ANNUAL REPORT 1995	xxxiv, 109
MIGA, ANNUAL REPORT 2004; www.miga.org/screens/pubs/annrep04/devthemes.htm	99, 100, 105
MIGA, COMMENTARY ON THE CONVENTION ESTABLISHING THE MIGA, ww.miga.org/screens/about/convent/comment.htm	101, 103-05, 107, 109
MIGA ENVIRONMENTAL GUIDELINES, www.miga.org/screens/policies/disclose/guidelin.htm	105
MIGA'S ENVIRONMENTAL AND SOCIAL REVIEW PROCEDURES, <i>Exclusions</i> § 15, www.miga.org/screens/policies/disclose/soc_rev.htm	106
MIGA INVESTMENT GUARANTEE GUIDE 5 (2005), www.miga.org/screens/pubs/guides/invest.htm	98, 101-04, 106-09
OPERATIONAL REGULATIONS OF THE MIGA 4, (2002), www.miga.org/screens/about/regulations/Operations-Regulations.pdf	99, 101-02, 104, 107, 109
Raymond F. Mikesell, <i>Petroleum Company Operations and Agreements in the Developing Countries</i> (1984)	42
RAYMOND F. MIKESSELL, <i>PETROLEUM COMPANY OPERATIONS AND AGREEMENTS IN THE DEVELOPING COUNTRIES</i> (1984)	42
Wendy Miles, <i>Practical Issues for Appointment of Arbitrators</i> , 20 J. INT'L ARB. 219 (2003)	348
RICHARD VON MISES, <i>PROBABILITY, STATISTICS, AND TRUTH</i> (1957)	1
LUDWIG VON MISES, <i>HUMAN ACTION: A TREATISE ON ECONOMICS</i> (4th ed. 1966)	1-2, 18
Bertrand Montembault, <i>The Stabilisation of State Contracts Using the Example of Oil Contracts: A Return of the Gods of Olympia?</i> , 2003 INT'L BUS. L. J. 593 (2003)	42, 51
John Humphrey Carlile Morris, <i>Torts in the Conflict of Laws</i> , 12 MODERN L. REV. 248 (1949)	408
John Humphrey Carlile Morris, <i>The Proper Law of a Tort</i> 64 HARV. L. REV. 881 (1951)	408
John Humphrey Carlile Morris and G.C. Cheshire, <i>The Proper Law of a Contract in the Conflict of Laws</i> 56 L.Q.R. 320 (1940)	408

	PAGE
Glenn Morris, <i>Piercing the Corporate Veil in Louisiana</i> , 52 LA. L. REV. 271 (1991)	409
Theodore H. Moran, <i>Political and Regulatory Risk in Infrastructure Investment in Developing Countries: Introduction and Overview</i> , 5(6) CEPMLP JOURNAL, at 3	3
THEODOR H. MORAN, INTERNATIONAL POLITICAL RISK MANAGEMENT, EXPLORING NEW FRONTIERS 41 (2001)	103
Michael L. Morkin, <i>How to Choose Arbitration</i> , in INTERNATIONAL ARBITRATION CHECKLISTS 209, 212-214 (Lawrence W. Newman & Grant Hanessian eds., 2004)	339
Michael Moser, <i>Dueling with Dragons</i> , Presentation on Dispute Resolution in China, given in Paris on May 9, 2005	396
Richard M. Mosk, <i>Expropriation: What to Do About It?</i> , 5 CAL. INT'L PRACT. 11 (1993-94)	9, 27, 40-41
Helen Mountfield, <i>Regulatory Expropriations in Europe: The Approach of the European Court of Human Rights</i> , 11 N.Y.U. ENVIRON. L. J. 136 (2003)	8
PETER T. MUCHLINSKI, MULTILATERAL ENTERPRISES AND THE LAW 508 (1995)	168, 185, 228
Peter Muchlinsky, <i>The Rise and Fall of the Multilateral Agreement on Investment</i> , FOUNDATIONS AND PERSPECTIVES ON INTERNATIONAL TRADE LAW 114 (Ian Fletcher ed., 2001)	192
Eva Muller, <i>How Do International Institutions Select Arbitrators?</i> 17 J. INT'L ARB. 157 (2000)	325.
Sean D. Murphy, <i>Contemporary Practice of the United States relating to International Law</i> , 95 A.J.I.L. 873, 881-885 (2001)	12
VED P. NANDA & DAVID K. PANSIUS, LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS (1995)	143
Horatio A. Grigera Naón, <i>The Settlement of Investment Disputes between States and Private Parties: An Overview from the Perspective of the ICC</i> , 1 J. WORLD INV. 59 (2000)	414
TRANSNATIONAL BUSINESS TRANSACTIONS, LAW OF (Ved P. Nanda ed., 1994)	43
Horacio Grigera Naón <i>Foreign Investment Arbitration in Latin America: The New Environment</i> , AMERICAN BAR ASSN. SECTION OF INTERNATIONAL LAW AND PRACTICE NEWSLETTER, Winter 1995	198
Horacio Grigera Naón, <i>The Settlement of Investment Disputes Between States and Private Parties</i> , 1 J. WORLD INV. 59, 63 (2000)	198

	PAGE
Marian Nash (Leich), <i>U.S. Practice: Bilateral Investment Treaties</i> , 87 AJIL 433 (1993)	xxxiii
K.V.S.K. NATHAN, <i>THE ICSID CONVENTION: THE LAW OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES</i> (2000)	xl
ALBERT JAY NOCK, <i>OUR ENEMY, THE STATE 3</i> (New York: Free Life Editions, 1973)	2
P. M. Norton, <i>Back to the Future: Expropriation and the Energy Charter Treaty</i> , in <i>THE ENERGY CHARTER TREATY</i> , <i>supra</i> note 28	200
Patrick M. Norton, <i>A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation</i> , 85 A.J.I.L. 474, 495 (1991)	157, 162, 166-67, 171, 178-79, 258
William Northcote, <i>Default, ex parte and Want of Prosecution Proceedings in International Commercial Arbitration</i> , 14 <i>ADVOCATE'S QUARTERLY</i> 319 (1992)	340
Grant Nulle, <i>IMF ignores causes of crisis</i> , <i>FINANCIAL TIMES</i> , August 18, 2003 at 10.	xxxv, 25
Lester Nurick & Stephen Schnably, <i>The First ICSID Conciliation: Tesoro Petroleum Corp. v. Trinidad & Tobago</i> , 1 <i>ICSID REV.—FOR. INV. L.J.</i> 340, 343 (1986)	372, 391, 400
Bede O.N. Nwete, <i>To What Extent can Stabilisation Clauses Mitigate the Investor's Risks in a Production Sharing Contract?</i> , 3(1) <i>OGEL</i> (March 2005)	32, 51
Amaechi David Nwokolo, <i>Is There a Legal and Functional Value for the Stabilisation Clause in International Petroleum Agreements?</i> , <i>CEPMLP ANNUAL REVIEW</i> 8 (2004)	51
D.P. O'CONNELL, <i>INTERNATIONAL LAW</i> 1035 (2 ed. 1970)	136
T. Modybo Ocran, <i>Bilateral Investment Protection Treaties: A Comparative Study</i> , 8 <i>N.Y.L. SCH. J. INT'L & COMP. L.</i> 401 (1987)	191
OECD, <i>CHECKLIST FOR FOREIGN DIRECT INVESTMENT INCENTIVES</i> 2003	xxxiii
OECD Directorate for Financial and Enterprise Affairs, <i>"Indirect Expropriation" and the "Right To Regulate" in International Investment Law</i> , Working Papers On International Investment, Number 2004/4 (September 2004)	183-84
D. Christopher Ohly, <i>A Functional Analysis of Claimant Eligibility</i> , in <i>INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS</i> 281 (Richard B. Lillich ed., 1983)	140

	PAGE
Andrew I. Okekeifere, <i>The UNCITRAL Model Law and the Problem of Delay in International Commercial Arbitration</i> , 14(1) J. INT'L ARB. 125 (1997)	373, 374
David M. Ong, <i>Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law?</i> 93 A.J.I.L. 771 (1999)	xxx
OPIC ANNUAL REPORT 21 (2002)	70, 72
OPIC DEVELOPMENT UPDATE: EXPANDING OPIC'S DEVELOPMENT IMPACTASSESSMENT (2003), www.opic.gov	85
<i>OPIC News</i> , Vol. 5 No. 11 (November 2003), www.opic.gov/OPICNews/0511/opicnews0511.pdf	71
OPIC PROGRAM HANDBOOK 1 (2004), www.opic.gov/pdf/publications/04_ProgramHandbook.pdf	70, 74-76, 78-79, 82-86, 89
FRANZ OPPENHEIMER, <i>THE STATE</i> 24 (New York: Vanguard Press, 1926)	2
ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), <i>DEVELOPMENT COOPERATION—1984 REVIEW</i> (1984)	xxxiv
Gary W. Orloff, <i>Private Political Risk Insurance for Energy Investors</i> , in MACLEAN INTERNATIONAL ENERGY NETWORK, <i>GOING INTERNATIONAL SEMINAR</i> (Dallas, Texas, July 28, 1993)	69, 87, 110-12
Francisco Orrego Vicuna, <i>Changing Approaches to the Nationality of Claims in the Context of Diplomatic Protection and International Dispute Settlement</i> , in LIBER AMICORUM IBRAHIM F.I. SHIHATA: INTERNATIONAL FINANCE AND DEVELOPMENT LAW 503 (S. Schlemmer-Schulte & K.-Y. Tung eds., 2001)	135
JEROME ORTSCHIEDT, <i>LA RÉPARATION DU DOMMAGE DANS L'ARBITRAGE COMMERCIAL INTERNATIONAL</i> 199 (2001)	247
<i>Outgoing Secretary General Bond Sees Greater Role for ICC Court</i> , 2 WORLD ARBITRATION AND MEDIATION REP. 164, 165 (June 1991)	384
S. Paksoy, <i>Foreign Investment and Exchange Regulations in Turkey</i> , 18 COMPARATIVE LAW YEARBOOK OF INTERNATIONAL BUSINESS 241 (1996)	18
Athena J. Pappas, <i>References on Bilateral Investment Treaties</i> , 4 ICSID REV.-FOR. INV. L.J. 189 (1989)	191
William W. Park, <i>Arbitration of International Contract Disputes</i> , 39 BUS. LAW. 1783 (1984)	337

	PAGE
William W. Park, <i>The Specificity of International Arbitration: The Case for FAA Reform</i> , 36 VAND. J. TRANSNAT'L L. 1241, 1258 n69 (2003)	335
Antonio Parra, <i>Principles Governing Foreign Investment as Reflected in National Investment Codes</i> , 7 ICSID REV.-FOR. INV. L.J. 428 (1992)	131
Antonio Parra, <i>The Screening Power of the ICSID Secretary</i> , 2(1) NEWS FROM ICSID 10 (1985)	322
Jan Paulsson & Nigel Rawding, <i>The Trouble with Confidentiality</i> , 1994 ICC INT'L COURT ARB. BULL. 48	375
Jan Paulsson, <i>Arbitration without Privity</i> , 10 ICSID REV.-FOR. INV. L.J. 232 (1995)	45
Jan Paulsson, <i>Continuous Nationality in Loewen</i> , 20 ARB. INT'L 213 (2004)	136
JAN PAULSSON, DENIAL OF JUSTICE UNDER INTERNATIONAL LAW (2005)	125
Jan Paulsson, <i>Arbitration Without Privity</i> , 10 ICSID REV.-FOR. INV. L.J. 232, 241 (1995)	197
Jan Paulsson, <i>Investment Protection Provisions in Treaties</i> , in INVESTMENT PROTECTION/LA PROTECTION DE L'INVESTISSEMENT 19 (2000)	215
JAN PAULSSON, NIGEL RAWDING, LUCY REED & ERIC SCHWARTZ, THE FRESHFIELDS GUIDE TO ARBITRATION AND ADR 49-66 (2d ed. 1999)	326
Vratislav Pechota, <i>The 1981 U.S.-Czechoslovak Claims Settlement Agreement: An Epilogue to Postwar Nationalization and Expropriation Disputes</i> , 76 A.J.I.L. 639	xxix
Julianne Peck, <i>The U.N. and the Laws of War: How Can the World's Peacekeepers Be Held Accountable?</i> , 21 SYRACUSE J. INT'L L. & COM. 283, 291	436
Edith Penrose, George Joffe & Paul Stevens, <i>Nationalization of Foreign-owned Property for a Public Purpose: An Economic Perspective on Appropriate Compensation</i> , 55 MODERN L. REV. 351 (1992)	xxx, xxxii, xxxvi, 160, 162, 178
Maura B. Perry, <i>A Model for Efficient Foreign Aid: The Case for Political Risk Insurance Activities of the Overseas Private Investment Corporation</i> , 36 VA. J. INT'L L. 511 (1996)	71, 74
Branko Peselj, <i>The New Yugoslav-American Claims Agreement</i> , 59 A.J.I.L. 362 (1965)	xxx

	PAGE
Chris M. Peter, <i>MIGA and GRIP: Two International Investment Insurance Programmes</i> , 12 <i>WORLD COMPETITION: LAW AND ECONOMICS REVIEW</i> 95 (1989)	99
P. Peters, <i>Exhaustion of Local Remedies: Ignored in Most Bilateral Investment Treaties</i> , 44(2) <i>NETHERLANDS INT'L L. REV.</i> 233 (1997)	62, 133
JEAN-PIERRE COT, <i>INTERNATIONAL CONCILIATION</i> 1 (1972)	399
Elizabeth Pietanza, <i>Comment: Winning the Risky Global Business Game: Parrying the Thrusts from Terrorism with an International Insurance Coalition</i> , 34 <i>CAL. W. INT'L L.J.</i> 85 (2003)	81
Eric Posner, <i>Probability Errors: Some Positive and Normative Implications for Tort and Contract Law</i> , <i>U. CHIC. L. & ECON., OLINWORKING PAPER</i> No. 161 (2002)	402
Felix Praendl, <i>Measure of Damages in International Commercial Arbitration</i> , 23 <i>STANFORD J. INT'L L.</i> 263 (1987)	59, 60
PricewaterhouseCoopers, <i>Jahresbericht 2003. Investitionsgarantien der Bundesrepublik Deutschland. Direktinvestitionen Ausland</i> (Hamburg: PricewaterhouseCoopers, 2004) 13	95-96
PricewaterhouseCoopers, <i>Jahresbericht 2004. Investitionsgarantien der Bundesrepublik Deutschland. Direktinvestitionen Ausland</i> (Hamburg: PricewaterhouseCoopers, 2005) 21	95
Raymond R. Probst, "Good Offices" in <i>International Relations in the Light of Swiss Practice and Experience</i> , 201 <i>RECUEIL DES COURS [R.C.A.D.I.]</i> 211 (1987)	416
RAMESH F. RAMSARAN, <i>NEGOTIATING THE LOMÉ IV CONVENTION</i> (1990)	197
William Rant <i>et al.</i> , <i>ICSID's Emerging Jurisprudence: The Scope of ICSID's Jurisdiction</i> , 19 <i>N.Y.U. J. INT'L L. & POL.</i> 33, 36 (1986)	311, 314, 320-21, 324-25, 328, 345
Michael R. Reading, Note, <i>The Bilateral Investment Treaty in ASEAN: A Comparative Analysis</i> , 42 <i>DUKE L.J.</i> 679 (1992)	191
ALAN REDFERN, MARTIN HUNTER, NIGEL BLACKABY & CONSTANTINE PARTASIDES, <i>LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION</i> 40 (4th ed. 2004)	314, 328, 395, 398
ALAN REDFERN & MARTIN HUNTER, <i>LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION</i> 443 (3d ed. 1999)	81
LUCY REED, JAN PAULSSON & NIGEL BLACKABY, <i>GUIDE TO ICSID ARBITRATION</i> (2004)	235, 243, 334, 387
Lucy Reed and John Beechey, panel discussion at "International Dispute Resolution by the Rules," Conference sponsored by the American Bar Association, Washington, D.C., Sept. 12, 2003	319

	PAGE
Klaus Reichert, <i>Confidentiality in International Mediation</i> , 59-Jan DISP. RESOL. J. 60 (2005)	374
Linda C. Reif, <i>Conciliation as a Mechanism for the Resolution of International Economic and Business Disputes</i> , 14 FORDHAM INT'L L.J. 578, 585 (1991)	372, 376
RENATO RIBEIRO, NATIONALIZATION OF FOREIGN PROPERTY IN INTERNATIONAL LAW (1977)	10
WILLIAM M. RICHMAN & WILLAM L. REYNOLDS, UNDERSTANDING CONFLICT OF LAWS (2002)	408
GEORGE L. RIDGEWAY, MERCHANTS OF PEACE 325-326 (1938)	384
Stefan A. Riesenfeld, <i>The Ethiopia-United States Compensation Agreement: Dicey Ending to a Spicy Tale</i> , 5 INT'L TAX & BUS. LAW. 239 (1987)	427
Heins Rindler, <i>The Insurance of Austrian Investment Abroad against Political Risk: a Comparative Approach with Special Regard to Developmental Aspects</i> , 47 ÖSTERREICHISCHE ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT UND VÖLKERRECHT 17 (1994)	98
Leonard L. Riskin, <i>Mediation and Lawyers</i> , 43 OHIO ST. L.J. 29 (1982)	378
David Rivkin, <i>IBA Rules on the Taking of Evidence in International Commercial Arbitration</i> , 24a YBK. COMM. ARB. 408, 409 (1999)	328
Patricia Robin, <i>The BIT Won't Bite: The American Bilateral Investment Treaty Program</i> , 33 AM. U.L. REV. 931, n.93 (1984)	xxix
Myrna Robinson-Waters & Christopher Hamel-Smith, <i>The New Oil Tax Regime: Taxation or Expropriation?</i> , PETROLEUMWORLD, July 23, 2005	33
J. Michael Robinson, <i>The Build, Own, and Transfer Model for International Projects in Emerging Markets</i> , 8 INT'L Q. 126 (1996)	34
Rode, <i>The American-Polish Claims Settlement Agreement of March 30, 1960</i> , 55 A.J.I.L. 452 (1961)	xxx
RAYMOND RODY, INTERNATIONAL BUSINESS NEGOTIATIONS: STRATEGIES, TACTICS AND PRACTICES (2002)	xxxix
Robert Rosenstock, <i>The ILC and State Responsibility</i> , 96 A.J.I.L. 792 (2002)	202
Ronald D. Rotunda, <i>Cautionary Lessons from American Securities Arbitration: Litigation v. Arbitration</i> , 5 ARB. INT'L 199 (1989)	373
MURRAY N. ROTHBARD, MAN, ECONOMY, AND STATE: A TREATISE ON ECONOMIC PRINCIPLES (1962)	18

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MURRAY N. ROTHBARD, <i>WHAT HAS GOVERNMENT DONE TO OUR MONEY?</i> (4th ed. 1990)	18
C. Rousseau, <i>Echec de la procédure d'enquête det de conciliation dans l'affaire du déroutement de l'avion transportant de Rabat à Tunis les chefs nationalistes algériens le 22 octobre 1956</i> , 62 R.G.D.I.P. 691 (1958)	369
Malcolm D. Rowat, <i>Multilateral Approaches to Improving the Investment Climate in Developing Countries: The Cases of ICSID and MIGA</i> , 33 HARV. INT'L L. J. 103, 107 (1992)	25, 27, 69-70, 90, 104, 109-12. 328
Andres Rozental, <i>The Charter of Economic Rights and Duties of States and the New International Economic Order</i> , 16 VA. J. INT'L L. 309 (1976)	165
MAURO RUBINO-SAMMARTANO, <i>INTERNATIONAL ARBITRATION LAW</i> 5 (1990)	400, 403
Noah Rubins, <i>Loewen v. United States: The Burial of an Investor-State Claim</i> , 21 ARB. INT'L 1, 23 (2005)	xl, 136, 153
Noah Rubins, <i>Must the Victorious Claimant Relinquish Title to Expropriated Property?</i> 4 J. WORLD INV. 481 (2003)	12
Noah Rubins, <i>The Arbitral Innovations of Recent U.S. Free Trade Agreements: Two Steps Forward, One Step Back</i> , 8 INT'L BUS. L.J. 865 (2003)	213
Noah Rubins, <i>The Final Damages Award in CME v. Czech Republic, B.V. v. Czech Republic: An Overview</i> , MEALEY'S INT'L ARB. REP., September 2003 at 35	255
Noah Rubins, <i>Investment Arbitration in Brazil</i> , 4 J. WORLD INV. 1071 (2003)	197, 198
Noah Rubins, <i>The Notion of Investment in International Investment Arbitration</i> , ARBITRATING INVESTMENT DISPUTES 283, 320 (Norbert Horn ed., 2004)	213, 220, 327
Noah Rubins, <i>Swembalt: An Introduction and the Dilemma of Default</i> , 2004(2) STOCKHOLM ARB. REP. 119	206, 319
Noah Rubins, <i>The Arbitral Seat is No Fiction</i> , MEALEY'S INT'L ARB. REP. (Jan. 2001)	315-16
Noah Rubins, <i>The Enforcement and Annulment of International Arbitration Awards in Indonesia</i> , 20 AM. U. INT'L L. REV. 359 (2005)	325.
Noah Rubins, <i>Manifest Disregard of the Law and Vacatur of Arbitral Awards in the United States</i> , 12 AM. REV. INT'L ARB. 363, 364-367 (2001)	326

	PAGE
Sharon D. Rucolo, <i>The Foreign Sovereign Immunities Act: Encouraging Foreign Plaintiffs to Sue Foreign Sovereigns in American Courts</i> , 25 RUTGERS L. J. 517 (1994)	145
Frank Ruddy, <i>Book Review: Foreign Investment in the Present and a New International Economic Order</i> , 84 A.J.I.L. 961 (1990)	xxxix
Hélène Ruiz Fabri, <i>The Approach Taken by the European Court of Human Rights to the Assessment of Compensation for “Regulatory Expropriations” of the Property of Foreign Investors</i> , 11 N.Y.U. ENVIRON. L.J. 148 (2003)	8
Valerie H. Ruttenberg, Comment, <i>The United States Bilateral Investment Treaty Program: Variations on the Model</i> , 9 U. PA. J. INT’L BUS. L. 121 (1987)	191
Jeswald Salacuse, <i>Mediation In International Business</i> , in STUDIES IN INTERNATIONAL MEDIATION: ESSAYS IN HONOR OF JEFFREY Z. RUBIN (Jacob Bercovitch ed., 2003)	396
Jeswald W. Salacuse, <i>BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing Countries</i> , 24 INT’L LAWYER 655 (1990)	191
Jeswald W. Salacuse, <i>Towards a New Treaty Framework for Direct Foreign Investment</i> , 50 J. AIR L. & COMM. 969 (1985)	192
Claudia T. Salomon, <i>Selecting an International Arbitrator: Five Factors to Consider</i> , MEALEY’S INT’L ARB. REP., Oct. 2002, at 25	181, 336-37
Frank E.A. Sander, <i>Varieties of Dispute Processing</i> , 70 F.R.D. 79, 114 (1976)	366
Gloria L. Sandrino, <i>The NAFTA Investment Chapter and Foreign Direct Investment in Mexico: A Third World Prospective</i> , 27 VAND. J. TRANSNAT’L L. 259 (1994)	12
Georgio Sacerdoti, <i>The Source and Evolution of International Legal Protection for Infrastructure Investments Confronting Political and Regulatory Risks</i> , 5(7) CEPMLP JOURNAL, 4	3
Michael E. Schneider, <i>Combining Arbitration with Conciliation</i> , 2(1) OIL, GAS & ENERGY LAW INTELLIGENCE (March 2003)	367
Eric Schwartz, <i>International Conciliation and the ICC</i> , 5(2) ICC INT’L COURT ARB. BULL. 5 (1994)	371, 384
CHRISTOPH SCHREUER, <i>THE ICSID CONVENTION: A COMMENTARY</i> (2001)	387, 409
Mulyana & Jan K. Schaefer, <i>Indonesia’s New Framework for International Arbitration A Critical Assessment of The Law And Its Application By The Courts</i> , 17 MEALEY’S INT’L ARB. REP. 39, 57 (2002)	46

	PAGE
Thomas O. Schelling, <i>An Essay on Bargaining</i> , 46 AM. ECON. REV. 281, 300 (1956)	40
Christoph Schreuer, <i>Fair and Equitable Treatment in Arbitral Practice</i> , 6 J. WORLD TRADE & INV. 357 (2005)	212, 235
Christoph Schreuer, <i>Travelling the BIT Route: of Waiting Periods, Umbrella Clauses and Forks in the Road</i> , 5(2) J. WORLD INV. & TRADE 231 (2004)	234
George Schwarzenberger, <i>Principles and Standards of International Economic Law</i> , 117 R.C.A.D.I. 1, 71 (1966)	232
Steven Schwebel, <i>Arbitration and the Exhaustion of Local Remedies</i> , JUSTICE IN INTERNATIONAL LAW 171 (Grotius 1994)	62, 133, 135
Stephen Schwebel, <i>Investor-State Disputes and the Development of International Law: the Influence of Bilateral Investment Treaties on Customary International Law</i> , 98 PROCEEDINGS OF THE ANNUAL MEETING OF THE A.S.I.L. 27 (2004))	190
Sarah Schano, <i>The Scattered Remains of Sovereign Immunity for Foreign States after Republic of Argentina v. Weltover, Inc.—Due Process Protection or Nothing</i> , 27 VANDERBILT J. TRANSNAT'L L. 673 (1994)	142-43
Stephen M. Schwebel, <i>The Story of the U.N.'s Declaration on Permanent Sovereignty Over Natural Resources</i> , 49 A.B.A.J. 463 (1963)	163-64
Peter F. Schlosser, <i>Coordinated Transnational Interaction in Civil Litigation and Arbitration</i> , 12 MICH. J. INT'L L. 150, 170 n.84 (1990)	314
Michael E. Schneider, <i>The Terms of Reference</i> , ICC BULL. SUPP. 26 (1997)	342
CHRISTOPH SCHREUER, <i>THE ICSID CONVENTION: A COMMENTARY</i> (2001)	348
Eric A. Schwartz, <i>The Domain of Arbitration and Issues of Arbitrability: The View from the ICC</i> , 9 ICSID REV-FOR. INV. L.J. 17, 19 (1994)	320
Johnson Schwartz, <i>Court-Assisted Discovery in Aid of International Commercial Arbitrations: Two Recent U.S. Cases Regarding the Applicability of 28 U.S.C. § 1782</i> , 15(9) J. INT'L ARB. 53 (1998)	348
Stephen M. Schwebel, <i>The Story of the U.N.'s Declaration on Permanent Sovereignty Over Natural Resources</i> , 49 A.B.A.J. 463 (1963)	163-64
EUGENE SCOLES ET AL., <i>CONFLICT OF LAWS</i> (3d ed. 2000)	408

	PAGE
Sarah Scofield, <i>A Report on The London Court of International Arbitration (LCIA): History, Practices, Past Procedures, and the New Rules</i> , WORLD ARB & MED. REP., Oct. 1998, at 269	314, 336
IGNAZ SEIDL-HOHENVELDERN, CORPORATIONS IN AND UNDER INTERNATIONAL LAW (1987). 16 <i>Case Concerning Barcelona Traction, Light & Power Co.</i> (Belg. v. Spain), 1970 I.C.J. 4, 42 (Second Phase), 46 I.L.R. 178	409
Jamal Seifi, <i>Investor-State Arbitration v. State-to-State Arbitration in Bilateral Investment Treaties</i> , 1(4) OIL, GAS & ENERGY LAW INTELLIGENCE (September 2003)	419
Seymour J. Rubin, <i>Introductory Note</i> (to the World Bank Report to the Development Committee and Guidelines on the Treatment of Foreign Direct Investment), 31 I.L.M. 1363 (1992)	176
M.N. SHAW, INTERNATIONAL LAW (5th ed. 2003)	54, 126-27, 400, 409, 435-37
Robert B. Shanks, <i>Insuring Investment and Loans Against Currency Inconvertibility, Expropriation, and Political Violence</i> , 9 HASTINGS INT'L & COMP. L. REV. 417 (1986)	12, 16, 71, 74, 76, 78-79, 159, 166
M.N. SHAW, INTERNATIONAL LAW (1991)	128, 132-37, 177-78, 184
DONALD SHEA, THE CALVO CLAUSE: A PROBLEM OF INTER-AMERICAN AND INTERNATIONAL LAW AND DIPLOMACY (1955)	xxxiii, 434
Ibrahim F.I. Shihata, <i>Destination Embargo of Arab Oil: Its Legality under International Law</i> , 68 A.J.I.L. 591 (1974)	120, 176, 425
Ibrahim F.I. Shihata, <i>Factors Influencing the Flow of Foreign Investment and the Relevance of a Multilateral Investment Guaranty Scheme</i> , 21 Int'l Law. 671 (1987)	xxxv, 69, 99, 106
IBRAHIM F.I. SHIHATA, LEGAL TREATMENT OF FOREIGN INVESTMENT: THE WORLD BANK GUIDELINES (1993)	xxix, xxxiv
IBRAHIM F.I. SHIHATA, MIGA AND FOREIGN INVESTMENT—ORIGINS, OPERATIONS, POLICIES AND BASIC DOCUMENTS OF THE MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA) (1988)	98
Ibrahim F.I. Shihata, <i>Recent Trends Relating to Entry of Foreign Direct Investment</i> , 9 ICSID REV.-FOR. INV. L.J. 47 (1994)	xxxiii
Ibrahim Shihata, <i>The Settlement of Disputes Regarding Foreign Investment: The Role of the World Bank, With Particular Reference to ICSID and MIGA</i> , 1 AM. U. J. INT'L L. & POL'Y 97, 102-103 (1986)	326
Ibrahim F.I. Shihata, <i>Towards a Greater Depolitization of Investment Disputes: The Role of ICSID and MIGA</i> , 1 ICSID REV.-FOR. INV. L.J. 1 (1986)	69-70, 434

	PAGE
Mary M. Shirley, <i>The What, Why, and How of Privatization: A World Bank Perspective</i> , 60 <i>FORDHAM L. REV.</i> S23 (1992)	xxxii
Daniel W. Shuman, <i>The Psychology of Deterrence in Tort Law</i> , 42 <i>U. KAN. L. REV.</i> 115, 127-29 (1993)	402
Bruno Simma, <i>The Work of the International Law Commission at its 52nd Session, Report of the Ad Hoc Committee of Legal Advisers to the Council of Europe on International Law</i> , Sept. 4, 2000 at 24, published at http://legal.coe.int/international/docs/2000/cahdi(2000)inf7eonly.pdf	136, 283
Linda R. Singer, <i>SETTLING DISPUTES 24-25</i> (1990)	366
Ian Sinclair, <i>Nationality of Claims: British Practice</i> , 27 <i>BRIT. YB. INT'L L.</i> 125 (1950)	135-36
Anthony Sinclair, <i>The Origins of the Umbrella Clause in the International Law of Investment Protection</i> , 20 <i>ARB. INT'L</i> 411 (2004)	234-35
Jose Luis Siqueiros, <i>Bilateral Treaties on the Reciprocal Protection of Foreign Investment</i> , 24 <i>CAL. W. INT'L L. J.</i> 255 (1994)	192
F. Blaine Sloan, <i>The Binding Force of a "Recommendation" of the General Assembly of the United Nations</i> , 25 <i>BR. Y.B. INT'L L.</i> 1 (1948)	163
HERBERT SMITH, <i>ARBITRATION UPDATE 1</i> (Jan. 2004)	391
James F. Smith, <i>Mediation and the Principles of UNIDROIT</i> , in <i>CONTRATACIÓN INTERNACIONAL. COMENTARIOS A LOS PRINCIPIOS SOBRE LOS CONTRATOS COMERCIALES INTERNACIONALES DEL UNIDROIT</i> 237 (1998)	366, 369, 399
Ernest E. Smith & John S. Dzienkowski, <i>A Fifty-Year Perspective on World Petroleum Arrangements</i> , 24 <i>TEX. J. INT'L L.</i> 13 (1989)	31-34
Ernest E. Smith & John S. Dzienkowski, <i>A Fifty-Year Perspective on World Petroleum Arrangements</i> , 24 <i>TEX. J. INT'L L.</i> 13 (1989)	31-34
ERNEST E. SMITH ET AL., <i>INTERNATIONAL PETROLEUM TRANSACTIONS</i> (1993)	42
Hans Smit, <i>American Assistance to Litigation in Foreign and International Tribunals: Section 1782 of Title 28 of the U.S.C. Revisited</i> , 25 <i>SYR. J. INT'L L. & COM.</i> 1, 5-8 (1998)	315-17
Hans Smit, <i>The Future of International Arbitration: A Single Transnational Institution?</i> , 25 <i>COLUM. J. TRANSNAT'L L.</i> 9 (1986)	348
Robert H. Smit, <i>An Inside View of the ICC Court</i> , 10 <i>ARB. INT'L</i> 53 (1994)	313-14

	PAGE
Abby Cohen Smutny, <i>State Responsibility and Attribution: When Is a State Responsible for the Acts of State Enterprises?</i> , INTERNATIONAL INVESTMENT LAW AND ARBITRATION 17 (Todd Weiler ed., 2005)	128
Christer Söderlund, <i>The State as a Party in Arbitration and Issues of Sovereign Immunity</i> at 5, Presented on September 17, 2004 in Almaty, Kazakhstan	67
David A. Soley, <i>ICSID Implementation: An Effective Alternative to International Conflict</i> , 19 INT'L LAW. 521, 524 (1985)	313
Neil Sorenson, <i>Bilateral Investment Treaties and Disputes</i> , BILATERALS.ORG (2001), bilaterals.org/article.php3?id_article=122	395
M. SORNARAJAH, INTERNATIONAL LAW OF FOREIGN INVESTMENT (1994)	192, 289, 433
M. Sornarajah, <i>Power and Justice in Foreign Investment Arbitration</i> , 14 J. INT'L ARB. 103 (1997)	433
M. SORNARAJAH, THE SETTLEMENT OF FOREIGN INVESTMENT DISPUTES 128, 131 (2000)	132, 407-09
Ole Spiermann, <i>Individual Rights, State Interests and the Power to Waive ICSID Jurisdiction under Bilateral Investment Treaties</i> , 20 ARB. INT'L 179 (2004)	392
Christopher Staker, <i>Diplomatic Protection of Private Business Companies: Determining Corporate Personality for International Law Purposes</i> , 61 BRIT. YB. INT'L L. 155 (1991)	409
<i>The Argentine Crisis: A Chronology of Events After The Sovereign Default</i> , Standard & Poor's, April 12, 2002	41
Thomas R. Stauffer, <i>Valuation of Assets in International Takings</i> , 17 ENERGY L.J. 459 (1996)	258
J.G. Starke, <i>Treaties as a "Source" of International Law</i> , 23 BR. Y.B. INT'L L. 341 (1946)	171
Philip R. Stansbury, <i>Planning Against Expropriation</i> , 24 INT'L LAW. 677 (1990)	28, 39-42
J.G. Starke, <i>Treaties as a "Source" of International Law</i> , 23 BR. Y.B. INT'L L. 341 (1946)	171
Charles R. Stevens & Kazunobu Takahashi, <i>The East Asian Preference for Conciliation: An Example in a Kabuki Play</i> , 5 ARB. INT'L 43 (1989)	377
SUSAN STRANGE, MAD MONEY, WHEN MARKETS OUTGROW GOVERNMENTS (1998)	xxxix

	PAGE
SUSAN STRANGE, <i>THE RETREAT OF THE STATE: THE DIFFUSION OF POWER IN THE WORLD ECONOMY</i> (1996)	xxxix
<i>Don't Sue</i> , THE ECONOMIST, October 26, 2002, at 34	399
Pheng Low Sui, <i>The Influence of Chinese Philosophies on Mediation and Conciliation in the Far East</i> , 62(1) ARBITRATION 16 (1996)	377
Allanna Sullivan, <i>Plunging Back: Western Oil Giants Return to the Countries That Threw Them Out</i> , WALL STREET J., Mar. 5, 1995, § A, at 1, col. 1	xxxii
Erik Suy, <i>Innovations in International Law-Making Processes</i> , in THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE 187 (1978)	163
Thomas J. Tallerico & J. Adam Behrendt, <i>The Use of Bifurcation and Direct Testimony Witness Statements in International Commercial Arbitration Proceedings</i> , 20(3) J. INT'L ARB. 295, 295-296 (2003)	316
K. Tamas, <i>The ELSI Case and the Rule of the Exhaustion of Local Remedies</i> , RESPONSIBILITY OF STATES—THESAURUS ACROASIMUM 341 (Thessaloniki, 1993)	410
Kenji Tashiro, <i>Conciliation or Mediation during the Arbitral Process: A Japanese View</i> , 12(2) J. INT'LARB. 119 (1995)	367, 396
Ruth Teitelbaum, <i>Recent Developments in the Interpretation of Most Favored Nation Clauses</i> , 22(3) J. INT'L ARB. 225 (2005)	233
RAVI C. TENNEKON, THE LAW AND REGULATION OF INTERNATIONAL FINANCE (1991)	346, 348
Fernando R. Tesón, <i>State Contracts and Oil Expropriations: The AMINOIL-Kuwait Arbitration</i> , 24 VA. J. INT'L L. 323 (1984)	55
WILLIAM TETLEY, INTERNATIONAL CONFLICT OF LAWS, 10-11 (1994)	408
Patrick Thieffry, <i>Negotiating Settlement of Disputes Provisions in International Business Contracts: Recent Developments in Arbitration and Other Processes</i> , 45 BUS. LAW 577 (1990)	329
Adam Thomson, <i>Argentina defiant towards private creditors</i> , FINANCIAL TIMES (London, England), March 11, 2004, 11	xxxvi
J.C. Thomas, <i>Reflections on Article 1105 of NAFTA: History, State Practice and the Influence of Commentators</i> , 17 ICSID REV.—FOR. INV. L.J. 21 (2002)	212, 217
Jennifer Tobin & Susan Rose-Ackerman, <i>Foreign Direct Investment and the Business Environment in Developing Countries: The Impact of Bilateral Investment Treaties</i> , YALE LAW & ECONOMICS RESEARCH PAPER NO. 293 (2004)	192

	PAGE
Leon E. Trakman, <i>Confidentiality in International Commercial Arbitration</i> , ARB. INT'L (2002);	374
Johannes Trappe, <i>Conciliation in the Far East</i> , 5 ARB. INT'L 183 (1989)	368, 377, 395
Matias F. Travieso-Diaz, <i>Some Legal and Practical Issues in the Resolution of the Cuban Nationals' Expropriation Claims Against Cuba</i> , 16 PA. J. INT'L BUS. L. 217 (1995)	10, 161, 173, 438, 440
Matias F. Travieso-Diaz, <i>Some Legal and Practical Issues in the Resolution of Cuban Nationals' Expropriation Claims Against Cuba</i> , 16 U. PA. J. INT'L BUS. L. 217 (1995)	10
Volker Triebel, <i>The Choice of Law in Commercial Relations: A German Perspective</i> , 37 I.C.L.Q. 935 (1988)	408
W. Michael Tupman, <i>Challenge and Disqualification of Arbitrators in International Commercial Arbitration</i> , 38 INT'L & COMP. L.Q. 26, 50 (1989)	325-26
Gillian Turner, <i>Investment Protection through Arbitration: The Dispute Resolution Provisions of the Energy Charter Treaty</i> , 1 INT'L ARB. L. REV. 166 (1998)	196
Nicholas C. Ulmer, <i>Drafting the International Arbitration Clause</i> , 20 INT'L LAW. 1335, 1339 (1986)	
UNCTAD Dispute Resolution Course, Module 2.2 (2003)	376, 394
UNCTAD/U.N.E.P., FOREIGN DIRECT INVESTMENT AND THE PROMOTION OF SUSTAINABLE HUMAN DEVELOPMENT (1999)	xxviii
UNCTAD, <i>Taking of Property</i> , UNCTAD/ITE/IIT/15 (2000), www.unctad.org/en/docs/psiteiitd15.en.pdf , at 24 <i>et seq.</i>	8, 12, 21
United Kingdom, FOREIGN AND COMMONWEALTH OFFICE, RULES REGARDING INTERNATIONAL CLAIMS (1985)	410
United Nations, Conference on Trade and Development (UNCTAD), DISPUTE SETTLEMENT: STATE-STATE, UNCTAD Series on issues in international investment agreements, UNCTAD/ITE/IIT/2003/1 (2003)	405-06, 415
United Nations, Conference on Trade and Development (UNCTAD), BILATERAL INVESTMENT TREATIES 1959-1999 3-4 (2000)	192
United Nations, Conference on Trade and Development (UNCTAD), BILATERAL INVESTMENT TREATIES IN THE MID-1990s 75 (1998)	242
United Nations, Conference on Trade and Development (UNCTAD), 1 INTERNATIONAL INVESTMENT AGREEMENTS: KEY ISSUES 240 (2000)	202, 204-05, 213, 227-28, 234

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United Nations, Conference on Trade and Development (UNCTAD), <i>Trends in International Investment Agreements: An Overview</i> , paper no. UNCTAD/ITE/IIT/13 (1999)	189-90
United Nations, Conference on Trade and Development (UNCTAD), WORLD INVESTMENT REPORT 6 (2004)	191
United Nations, International Law Commission, <i>Report of the Int'l Law Comm'n on the Work of its Thirtieth Session</i> , U.N. Doc. No. A/CN.4/SER.A/1978/Add.1, Part 2, at 30 (1978)	232
UN Centre on Transnational Corporations, <i>The New Environment</i> , UNCTC Current Studies, Series A, No. 16 (1990)	xxxv
UN Department of Econ. & Social Development, Transnational Corporations and Management Division, World Investment Reports 1992: Transnational Corporations as Engines of Growth at 4, U.N.Doc. ST/CTC/130, U.N. Sales No. E.92.II.A.19 (1992)	xxxi
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USAID, USAID History, www.usaid.gov	71
Detlev F. Vagts, <i>Dispute-Resolution Mechanisms in International Business</i> , 3 RECUEIL DES COURS [R.C.A.D.I.] 9 (1987)	11, 13
Detlev F. Vagts, <i>Protecting Foreign Investment: An International Law Perspective</i> , in <i>Foreign Direct Investment in the 1990s: A New Climate in the Third World</i> 110 (Cynthia Day Wallace ed., 1990)	48, 116
Detlev F. Vagts, <i>Protecting Foreign Investment: An International Law Perspective</i> , in <i>FOREIGN DIRECT INVESTMENT IN THE 1990s: A NEW CLIMATE IN THE THIRD WORLD</i> 110 (Cynthia Day Wallace ed., 1990)	48, 116
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Kenneth J. Vandavelde, <i>U.S. Bilateral Investment Treaties: The Second Wave</i> , 14 MICH. J. INT'L L. 621 (1993)	192
KENNETH J. VANDEVELDE, UNITED STATES INVESTMENT TREATIES: POLICY AND PRACTICE (1992)	191-92, 225-26, 238
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Stephen Vasciannie, <i>The Fair And Equitable Treatment Standard In International Investment Law And Practice</i> , 70 BRIT. YB. INT'L L. 99 (2000)	212-13, 215, 220
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Herman Verbist, <i>The Practice of the ICC International Court of Arbitration with Regard to the Fixing of the Place of Arbitration</i> , 12 ARB. INT'L 347 (1996)	320
Francisco Orrego Vicuña, <i>Changing Approaches to the Nationality of Claims in the Context of Diplomatic Protection and International Dispute Settlement</i> , in LIBER AMICORUM IBRAHIM F.I. SHIHATA: INTERNATIONAL FINANCE AND DEVELOPMENT LAW 503 (S. Schlemmer-Schulte & K.-Y. Tung eds., 2001)	408
Francisco Orrego Vicuña, <i>Bilateral Investment Treaties and the Most-Favored-Nation Clause: Implications for Arbitration in the Light of a Recent ICSID Case</i> , Presentation to Swiss Arbitration Association Conference, Zurich, Jan. 25, 2002	233
PAUL H. VISHNY, GUIDE TO INTERNATIONAL COMMERCIAL LAW (1994)	65, 70, 143, 262, 344
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Stefan Wagstyl, <i>Investment flows into region at record levels: Although still beset by problems, much of the former Communist bloc is also experiencing surprising economic growth</i> , FINANCIAL TIMES (London, England), October 21, 2003 at FT Report—Central and Eastern Europe: Finance Pg. 1	xxxix
J.M. Wagner, <i>International Investment, Expropriation and Environmental Protection</i> , 29 GOLDEN GATE U.L. REV. 465 (1999)	211
Thomas W. Wälde, <i>Investment Arbitration Under the Energy Charter Treaty—From Dispute Settlement to Treaty Implementation</i> , 12 ARB. INT'L 429 (1996)	371

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Thomas W. Wälde, <i>Mediation/Alternative Dispute Resolution in Oil, Gas and Energy Transactions: Superior to Arbitration/Litigation from a Commercial and Management Perspective</i> , 13(8) CEPMLP JOURNAL (2003)	371, 377, 400-01
Thomas W. Wälde, <i>Pro-Active Mediation of International Business and Investment Disputes Involving Long-Term Contracts: From Zero-Sum Litigation to Efficient Dispute Management</i> , 1 OIL, GAS & ENERGY LAW INTELLIGENCE (September 2003)	37, 377-78
Thomas Wälde & Todd Weiler, <i>Investment Arbitration under the Energy Charter Treaty in the Light of New NAFTA Precedents</i> , INVESTMENT TREATIES AND ARBITRATION 159, 161 (G. Kaufmann-Koehler/B. Stucki, eds. 2002)	xxxiv
Dagmar Coester-Waltjen, <i>German Conflict Rules and the Multinational Enterprise</i> , 6 GA. J. INT'L & COMP. L. 197 (1976)	408
Jonathan Walters, <i>Caspian Oil and Gas: Mitigating Political Risks for Private Participation</i> , 7(5) CEPMLP J. at 2 (2001)	5
Thomas W. Wälde & George N'Di, <i>Stabilizing International Investment Commitments: International Law versus Contract Interpretation</i> , 31 TEX. INT'L L.J. 216 (1996)	21
Thomas W. Wälde & George N'Di, <i>Stabilising International Investment Commitments: International Law versus Contract Interpretation</i> , 1 CEPMLP J (Professional Paper PP13) (1994)	51
Thomas W. Wälde, <i>Investment Arbitration under Energy Charter Treaty: From Dispute Settlement to Treaty Implementation</i> , 12 ARB. INT'L 429 (1996)	195-96
Andrew Walter, BRITISH INVESTMENT TREATIES IN SOUTH ASIA: CURRENT STATUS AND FUTURE TRENDS 14 (2000), http://personal.lse.ac.uk/wyattwal/British%20Investment%20Treaties%20in%20South%20Asia.pdf	242
THE ENERGY CHARTER TREATY: AN EAST-WEST GATEWAY FOR INVESTMENT AND TRADE (Thomas W. Wälde ed., 1996)	195
Thomas W. Wälde, <i>The "Umbrella" Clause in Investment Arbitration—A Comment on Original Intentions and Recent Cases</i> , 6 J. WORLD INV. & TRADE 184 (2005)	234
Thomas W. Wälde, <i>The Treatment of the "Umbrella" or "Pacta Sunt Servanda" Clause in the SGS v. Pakistan Jurisdictional Decision (2003): Correct?</i> , 1(5) OIL, GAS & ENERGY LAW INTELLIGENCE (December 2003)	240
MARGARET WANG, <i>Are Alternative Dispute Resolution Methods Superior to Litigation in Resolving Disputes in International Commerce?</i> , 16 ARB. INT'L 189 (2000)	342, 373

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James D. Wangelin, <i>Effective Selection of Arbitrators in International Arbitration</i> (1999), www.sdma.com/sedgwick/updates/articles/litigation-trial/?internationalarbitration.html	309
Philip R. Weems, Philip R. Weems, <i>An Introduction to Upstream Government Petroleum Contracts: Their Evolution and Current Use</i> , 3(1) OGEI (March 2005)	32
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Prosper Weil, <i>Problèmes relatifs aux contrats passés entre un Etat et un particulier</i> , 128 R.C.A.D.I. 94, 130 (1969)	238
THE EU, THE WTO AND THE NAFTA: TOWARDS A COMMON LAW OF INTERNATIONAL TRADE? (Joseph H.H. Weiler, ed., 2000)	24
Todd Weiler, <i>A First Look at the Interim Merits Award in S.D. Myers v. Canada</i> , 24 HASTINGS INT'L & COMP. L. REV. 87 (2001); DOMINIQUE CARREAU & PATRICK JUILLARD, DROIT INTERNATIONAL ÉCONOMIQUE 501 (2003)	207
Todd Weiler, <i>NAFTA Article 1105 and the Free Trade Commission: Just Sour Grapes, Or Something More Serious?</i> , 29 INT'L BUS. LAWYER 491 (2001)	194
NAFTA INVESTMENT LAW AND ARBITRATION: PAST ISSUES, CURRENT PRACTICE, FUTURE PROSPECTS (Todd Weiler ed., 2004)	193
Todd Weiler, <i>Prohibitions against Discrimination in NAFTA Chapter 11</i> , NAFTA INVESTMENT LAW AND ARBITRATION 27 (Todd Weiler ed., 2004)	
Todd Weiler, <i>Saving Oscar Chin [sic]: Non-Discrimination in International Investment Law</i> , INTERNATIONAL INVESTMENT LAW AND ARBITRATION 557 (Weiler, ed. 2005)	185-86, 225, 230
Gerald T. West, INVESTMENT INSURANCE AND DEVELOPMENTAL IMPACT (2001)	99, 105
JOHN WESTLAKE, A TREATISE ON PRIVATE INTERNATIONAL LAW, WITH PRINCIPAL REFERENCE TO ITS PRACTICE IN ENGLAND 237 (2d ed. 1880)	408
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Burns H. Weston, "Constructive Takings" Under International Law: A Modest Foray into the Problem of "Creeping Expropriation", 16 VA. J. INT'L L. 103 (1975)	13, 184, 204

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J. GILLS WETTER, <i>THE INTERNATIONAL ARBITRAL PROCESS</i> 27 (1962)	406
Gillis Wetter, <i>The Present Status of the International Court of Arbitration of the ICC: An Appraisal</i> , 1 AM. REV. INT'L ARB. 91 (1990); Hans Smit, <i>supra</i> note 18, at 26-27. 1 AM. REV. INT'L ARB. 91 (1990); Hans Smit, <i>supra</i> note 18, at 26-27.	314
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ROBERT R. WILSON, <i>THE INTERNATIONAL LAW STANDARD IN TREATIES OF THE UNITED STATES</i> 103 (1953)	218, 219
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Peter M. Wolrich, <i>ICC ADR Rules: The Latest Addition to ICC's Dispute Resolution Services</i> , ICC INT'L COURT ARB. BULL. 7, 8-9 (2001)	384-86
The World Bank, 1 WORLD DEBT TABLES 1992-93, 20 (1992)	xxix
WORLD BANK, <i>GUIDELINES ON THE TREATMENT OF FOREIGN DIRECT INVESTMENT</i> (1992), 31 I.L.M. 1379 (1992)	176, 223, 248, 306, Appendix I
B. A. WORTLEY, <i>EXPROPRIATION IN PUBLIC INTERNATIONAL LAW</i> (1959)	6, 15, 54, 429
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G. H. Yu, <i>China's foreign exchange regulations and direct foreign investment</i> 28(6) JOURNAL OF WORLD TRADE 99 (1994)	18
H.L. Yu & Lawrence Shore, <i>Independence, Impartiality and Immunity of Arbitrators—US and English Perspectives</i> , 52 INT'L & COMP. L.Q. 935, 963 (2003)	319
Zakariye, <i>Insurance Against Political Risks in Oil Development</i> , 4 J. ENERGY NAT. RESOURCES & ENV'T'L. L. 217 (1986)	69
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