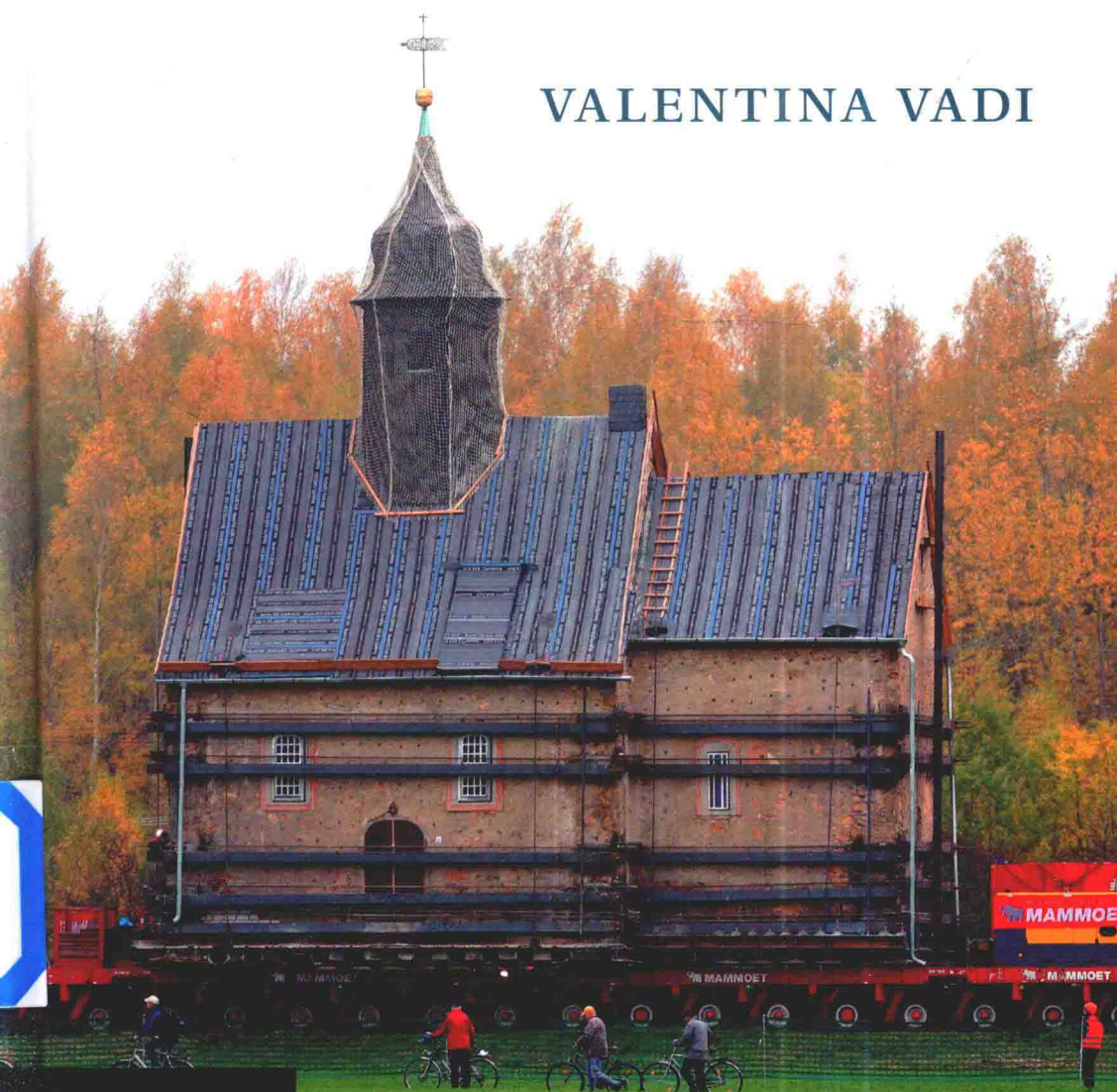


Cultural Heritage in International Investment Law and Arbitration

VALENTINA VADI



CAMBRIDGE

CULTURAL HERITAGE IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION

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CULTURAL HERITAGE IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION

Can states adopt protectionist cultural policies? What are the limits, if any, to state intervention in cultural matters? A wide variety of cultural policies may interfere with foreign investments, and a tension therefore exists between the cultural policies of the host state and investment treaty provisions. In some cases, foreign investors have claimed that cultural policies have negatively affected their investments, thereby amounting to a breach of the relevant investment treaty. Investment treaty arbitration constitutes a sophisticated means of dispute settlement. As a result, foreign investors choose to take their disputes to investment treaty tribunals when such disputes nevertheless contain obvious cultural issues. This study maps the relevant investor-state arbitrations concerning cultural elements and shows that arbitrators have increasingly taken cultural concerns into consideration in deciding cases brought before them, eventually contributing to the coalescence of general principles of law demanding the protection of cultural heritage.

VALENTINA VADI is a reader in international economic law at Lancaster University. She was previously an Emile Noël Fellow at the Jean Monnet Center for International and Regional Economic Law, New York University, and a Marie Curie Fellow at Maastricht University. Her main areas of research are in international economic law and international cultural law.

A mia madre

FOREWORD

It is my pleasure to present to the reader this monograph by Valentina Vadi, which she prepared during the years 2011–2013, as a Marie Curie post-doctoral fellow of Maastricht University's Faculty of Law. Valentina Vadi has recently published a book on *Public Health in International Investment Law and Arbitration* (2012), which is based on her PhD dissertation, which she successfully defended at the European University Institute in Florence. In the present book, Valentina Vadi explores another area in which investment law meets the concern of states and local communities to protect important non-market values. After the public health concern explored in her previous book, here Valentina Vadi examines the cultural heritage concern. Whereas transnational economic activity is a source of cultural exchange between countries and can promote greater cultural liberty, tensions between investment and culture also frequently arise. This book shows how legitimate concerns for the protection of the cultural heritage or cultural identity of the host state may lead to limitations of transnational economic activity, which are then adjudicated by arbitral tribunals or other fora where such investment disputes are settled. What is remarkable in Valentina Vadi's approach to the study of these issues, is the equal ease with which she analyses the domains of international investment law and international cultural law. The first two chapters, in fact, give a succinct presentation of those two sub-fields of international law, thereby setting the scene for the other chapters in which the multiple tensions and conciliations between them are analysed in great detail, and in a style which combines legal rigour with elegance and clarity. I warmly recommend this book to the reader interested in the legal aspects of economic and cultural globalization.

Bruno De Witte
Professor of European Union Law,
Maastricht University and European University Institute, Florence

PREFACE

The original idea for this book came about in 2007 during the time I spent as a researcher at the European University Institute in Florence, Italy. Not only is Florence a World Heritage site of ineffable beauty but it was also a financial capital during the Renaissance period, home to philosophical inquiry and capital flows, religious iconoclasm and supreme artistic expression, power struggles and influential political thinking. Money and beauty undeniably attract the interest of many; and my investigation started at the crossroads between two major fields of international law dedicated to the study of these concepts: international investment law and international cultural law. Coming across a large number of culture-related investment treaty arbitrations, I began to wonder why so many culture-related cases had been arbitrated before investment treaty tribunals. Since 2007 my investigation has focused on how arbitral tribunals have adjudicated these disputes and what implications this emerging jurisprudence could have for international law.

On a more personal level, the book reconciles two streams of passionate interest: interest in law and the social sciences, and interest in art and architecture that my mother – architect and professor of art history – passed on to me. This book is a tribute to the beauty of Florence and other heritage sites all around the world – to their inhabitants, and to those who struggle for the protection of their heritage as a fundamental component of their human rights. May the protection of cultural heritage flourish further and promote respect for human dignity and peaceful dialogue among nations.

V.V.

New York, 1 November 2013

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In writing this book, I have benefited from the inspiration of many people. I thank Francesco Francioni, Hildegard Schneider, Gus Van Harten, Ana Filipa Vrdoljak and Bruno De Witte for their mentorship, guidance and support. I also gratefully acknowledge the Marie Curie Fellowship granted by the European Commission for the furtherance of this study. The research leading to these results has received funding from the European Union Seventh Framework Programme. The book reflects my views only and not necessarily those of the Union.

Parts of this book were presented at conferences and seminars held in: Beijing, Boston, Buckingham, Florence, Glasgow, Groningen, Lancaster, London, Maastricht, Minneapolis, Montreal, Onati, Prague, Rome, Siena, Singapore, Southampton, Turin, Washington D.C. and York. Convening four international conferences on law and culture – one at the European University Institute in 2008, one at New York University (Villa La Pietra) in 2010 and two at Maastricht University in 2013 – also helped me to frame discourse and engage in interdisciplinary approaches. I greatly benefited from the comments received on these occasions. In particular, I thank Alexander Bauer, Judith Carter, Claire Cutler, Emily Den, Antonietta di Blase, Federico Lenzerini, Amanda Perry-Kessaris, Sol Picciotto, Sarah Sargent, Della Scott-Ireton, M. Sornarajah, Peter Van den Bossche, Laura Westra and Jacques Werner for their comments on earlier parts of my research. I also thank my colleagues Suzanne Jongste and Esther Crombach for inspiring me in so many fruitful ways. I am grateful to Sinead Moloney, Finola O'Sullivan, Elizabeth Spicer and Nienke van Schaverbeke at Cambridge University Press for accompanying this book from proposal to publication.

On a personal note, I thank my fiancé Gianluca for his love and support, and my parents, Lidiana and Carlo, and grandmother, Lora, for encouraging me in every possible way.

V.V.

New York, 1 November 2013

TABLE OF INSTRUMENTS

Additional Protocol between the United States of America and the Republic of Poland to the Treaty between the United States of America and the Republic of Poland concerning Business Relations of 21 March 1990, Brussels, 12 January 2004,	282
African Charter on Human Rights and Peoples' Rights ('Banjul Charter'), adopted by the Organization of African Unity (OAU) in 1981, 21 ILM 58	34, 84, 215
Agreement between the Czech Republic and the Republic of South Africa for the Promotion and Reciprocal Protection of Investments, 14 December 1998	286
Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for the Promotion and Protection of Investments, 21 May 1981 in force 21 October 1988, UKTS No. 16 (1989) (UK-Malaysia BIT) 149, 152, 153	
Agreement Establishing the World Trade Organization, 15 April 1994, 33 ILM (1994)	46, 47, 53, 59, 60, 174, 180, 191
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 5 December 1979, 18 ILM 1434	22
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 ILM 1997 (1994) 60, 174,	180
Agreement on Trade-Related Investment Measures (TRIMS Agreement), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 UNTS 186	60, 79
American Convention on Human Rights, 22 November 1969, 9 ILM 673 (1970)	28, 47, 84
Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) as amended in 1965, 606 UNTS 294	59
Articles of Agreement of the International Finance Corporation (IFC), 25 May 1955, 264 UNTS 118	249

- Articles of Agreement of the International Monetary Fund (IMF), 22 July 1944, in force 27 December 1945, 2 UNTS 40 58
- Athens Charter for the Restoration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, Athens 1931, available at www.icomos.org/en/charters-and-text?id=167:the-athens-charter-for-the-restoration-of-historic-monuments 17, 21
- Canada-US Free Trade Agreement (CUSFTA) in force 1 January 1989, 27 ILM (1988) 281 282
- Charter for an International Trade Organization (Havana Charter), Final Act of the United Nations Conference on Trade and Employment, held at Havana, Cuba from 21 November 1947 to 24 March 1948, UN Doc. 1948 II.D.4.1 (1948) 59, 60
- Charter of the United Nations, 26 June 1945, in force 24 October 1946, 1 UNTS XVI 143, 147
- Constitution of the United Nations Educational, Scientific, and Cultural Organization (UNESCO Constitution), London, 16 November 1945, in force 4 November 1946, 4 UNTS 275 (1945) 15, 21, 24, 41, 167
- Convention concerning the Protection of the World Cultural and Natural Heritage (WHC), Paris, 16 November 1972, in force 17 December 1975. 11 ILM 1358 23, 27, 31, 43, 94-108, 110, 113-17, 122, 128, 132, 134-6, 174, 214, 216, 250, 254
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, in force 7 August 1956, 249 UNTS 240 17, 21, 25, 28, 30-1
- Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights [ECHR]) 4 November 1950, in force 3 September 1953, 213 UNTS 222 84
- Convention on the Elimination of All Forms of Discrimination against Women, in force 3 September 1981, 1 UNTS 1249 35
- Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003, in force 20 April 2006, 2368 UNTS 3 166, 168, 174-7, 181-3, 202-3, 217
- Convention on Biological Diversity (CBD), Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 ILM 818 (1992) 187
- Convention on Conservation of Migratory Species, 23 June 1979, 19 ILM 11 228
- Convention on the Elimination of All Forms of Racial Discrimination, in force 4 January 1969, 660 UNTS 195 35

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231 25
- Convention on Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277 257
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CCD), Paris, 20 October 2005, in force 18 March 2007, 2440 UNTS 311 43, 52-3, 165-73, 183, 195, 202-3, 217, 280, 284
- Convention on the Protection of Underwater Cultural Heritage (CPUCH), Paris, 2 November 2001, in force 2 January 2009, 40 ILM 37 138, 142-3, 146-8, 154-5, 159
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), New York, 10 June 1958, 330 UNTS 38 78, 252
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention or Washington Convention), Washington, 18 March 1965, in force 14 October 1966, 575 UNTS 159 73, 78, 83, 150-2, 200, 252, 264
- Council of Europe, Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), 10 October 2005, CETS No. 199 34-5, 287
- Council Regulation 1007/2009, 2009 O.J. (L 286) 36 (EC) 227
- Declaration on Environment and Development (Rio Declaration), Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF 151/6/Rev.1, Rio de Janeiro, 14 June 1992, 31 ILM 874 (1992) 53, 213
- Declaration on the Human Environment (Stockholm Declaration), 16 June 1972, UN Doc A/Conf 48/14/rev. 1, 11 ILM 1416 (1972)
- Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, GA Res. 2625, UN GAOR Res., 25th sess., Supp. No. 28, at 123-4, UN Doc. A/8028 (1970) 89
- Declaration on the Right to Development, General Assembly Resolution 41/128 of 4 December 1986, 21 ILM 58 52
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNGA Res. 47/135, 18 December 1992, 32 ILM 911 (1993) 182, 211
- Energy Charter Treaty (ECT), 17 December 1994, 2080 UNTS 95, 34 ILM 360 (1995) 261, 279

- General Agreement on Tariffs and Trade 1994 (GATT 1994), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 ILM 1153 (1994) 47, 191–4, 270
- General Agreement on Trade in Services (GATS), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B to the WTO Agreement, 33 ILM 1167 (1994) 60, 192–4
- Germany–Costa Rica BIT, 13 September 1994, in force 5 November 1997 118
- Interim Convention on Conservation of North Pacific Fur Seals, 9 February 1957, 314 UNTS 105 228
- International Convention for the Regulation of Whaling, 2 December 1946, 161 UNTS 72 228
- International Convention on Salvage, 28 April 1989, in force 14 July 1996, UKTS 93 (1996) 145
- International Covenant on Civil and Political Rights (ICCPR), UNGA Resolution 2200 (XXI), 16 December 1966, in force 23 March 1976, 6 ILM 368 (1967) 36, 211–12, 219, 227
- International Covenant on Economic, Social and Cultural Rights (ICESCR), UNGA resolution 2200 (XXI), 16 December 1966, in force 3 January 1976, 993 UNTS 3 36, 38, 166–7, 219
- International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169), 27 June 1989, 160 UNTS 384 207–8, 213, 232
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits from their Utilization to the Convention on Biological Diversity, Nagoya, 29 October 2010, not yet in force 181, 232
- North American Agreement on Environmental Cooperation (NAAEC), 13 September 1993, 32 ILM 1480 287
- North American Free Trade Agreement (NAFTA), 17 December 1992, in force 1 January 1994, (1993) 32 ILM 289 55, 57, 63, 68, 77, 86, 116, 119, 124–6, 189–90, 193, 221, 223–5, 252–3, 255, 265, 282–4, 289
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GA Resolution A/RES/63/117, 10 December 2008, in force 5 May 2013 38
- Protocol III on Cultural Cooperation to the Cariforum EPA 281
- Rome Statute of the International Criminal Court (ICC Statute), 17 July 1998, in force 1 July 2002, 37 ILM 999 21
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, 38 ILM 769 25

Trans-Pacific Strategic Economic Partnership Agreement,
Brunei–Chile–Singapore–New Zealand (Trans-Pacific SEP), 18 July
2005 278–9

Treaty between the United States of America and the Government of
[Country] Concerning the Encouragement and Reciprocal Protection of
Investment (2012 US Model BIT) 65, 184, 252

Treaty between the United States of America and the Republic of
Ecuador Concerning the Encouragement and Reciprocal Protection of
Investment, (US–Ecuador BIT), 27 August 1993, in force 11 May 1997
229, 242

Treaty of Waitangi, United Kingdom–New Zealand, 6 February 1840
279

Understanding on Rules and Procedures Governing the Settlement of
Disputes (DSU), Marrakesh Agreement Establishing the World Trade
Organization, Annex 2, 33 ILM 1226 (1994) 273

United Nations Convention on the Law of the Sea (UNCLOS),
December 1982, in force 28 July 1994, 33 ILM 1309 22, 141–2, 146–8,
154–5

United Nations Declaration on the Rights of Indigenous Peoples
(UNDRIP), GA Res. 61/295, UN Doc A/RES/61/295, 13 September
2007, 46 ILM 1013 (2007) 34, 187, 204, 206–11, 229, 232, 234, 257–8

United States–Chile Free Trade Agreement, in force 1 January 2004
283

Universal Declaration of Human Rights (UDHR), GA Res. 217 (III),
UN GAOR, 3rd Sess., UN Doc. A/810 (1948), 10 December 1948 35, 84,
166, 175, 268

Universal Declaration on Cultural Diversity, November 2001, ILM
41 (2002) 15, 19, 52–3, 165–8, 188, 194–5

Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, in
force 27 January 1980, 1155 UNTS 331 43, 82, 100, 134, 155, 171, 246,
256–7, 263–5, 267

TABLE OF CASES

Investment Arbitration

This table contains an alphabetical listing of all arbitral awards cited in the text. The awards are cited to a print source, where this was available at the time of this writing. Unreported awards and notices of intent are cited by giving a docket number, where one has been used. The majority of such awards can be accessed electronically on one or more of the following websites: www.worldbank.org/icsid (the official ICSID website); www.state.gov (the official site of the Government of the United States); <http://ita.law.uvic.ca> and, in the case of claims under NAFTA, www.naftaclaims.com.

ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary, ICSID Case No. ARB/03/16, Award (Merits), 2 October 2006 64, 274

Allard, Peter A. v. Government of Barbados, Notice of Dispute, 8 September 2009, available at www.graemehall.com/legal/papers/BIT-Complaint.pdf 130

Andre, John R. v. Government of Canada, Notice of Intent to Submit Claim to Arbitration Pursuant to Chapter Eleven of the North American Free Trade Agreement, 19 March 2010 225

Asian Agricultural Products Ltd. v. Sri Lanka (AAPL v. Sri Lanka), ICSID Case No. ARB/87/3, Award, 27 June 1990, 4 ICSID Reports 245 (1997) 134, 200, 266

Biloune and Marine Drive Complex Ltd v. Ghana Investments Centre and the Government of Ghana, UNCITRAL ad hoc Tribunal, Award on Jurisdiction and Liability, 27 October 1989, 95 ILR 253, 270

Burlington Resources Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010 229, 243

Chemtura Corporation (formerly Crompton Corporation) v. Canada, PCA NAFTA Chapter 11, Award, 2 August 2010 (*Chemtura* award) 273

Clayton William Ralph, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada (Clayton/Bilcon v. Canada), PCA Case No. 2009-04, Notice of Arbitration, 26 May 2008 125, 288-9

- Clayton/Bilcon v. Government of Canada*, Statement of Defense of the Government of Canada, 4 May 2009 125, 289
- CMS Gas Transmission Co. v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, 44 ILM 205 (2005) 270
- Compañía del Desarrollo de Santa Elena SA v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, 39 ILM (2000) 1317 120–1, 123
- Empresas Lucchetti, S.A., and Lucchetti Peru, S.A. v. Republic of Peru*, ICSID Case No. ARB/03/4, Award, 7 February 2005 129
- Foresti, Piero, Laura De Carli and Others v. Republic of South Africa*, ICSID Case No. ARB(AF)/07/1, Award, 4 August 2010 (*Foresti Award*) 285
- Glamis Gold Ltd v. United States of America*, ICSID Award, NAFTA Chapter 11, 8 June 2009 3, 116, 124, 126, 131, 221, 225, 230–1, 254, 269, 273
- Grand River Enterprises Six Nations Ltd et al. v. United States of America*, ICSID UNCITRAL NAFTA Chapter 11, Award, 12 January 2011 124, 222–4, 231, 233, 252, 254–5
- Impregilo S.p.A. v. Argentina*, ICSID Case No. ARB/07/17, Award, 21 June 2011 127
- Inceysa Vallisoletana SL v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006 261
- Kuwait, Government of v. American Independent Oil Co [Aminoil]*, 66 ILR 1984, 587 260
- Lemire, Joseph Charles v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011 184–6, 198
- Lemire, Joseph Charles v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 184–5, 189, 196–7, 200–1, 265
- Lemire, Joseph Charles v. Ukraine*, ICSID Case No. ARB/06/18, Award, Dissenting Opinion, 1 March 2011 185, 198–9
- Levy, Renée Rose, and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, registered on 24 June 2011 119
- Maffezini (Emilio Augusto) v. Kingdom of Spain*, ICSID Case No ARB/97/7, Award (Jurisdiction), 13 November 2000, 5 ICSID Rep 396 253, 288
- Malaysian Historical Salvors Sdn Bhd v. Government of Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction (*MHS Award on Jurisdiction*), 17 May 2007 148–51, 153

- Malaysian Historical Salvors Sdn Bhd v. Government of Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment (MHS Decision on the Application for Annulment), 16 April 2009 151-2
- Malaysian Historical Salvors Sdn Bhd v. Government of Malaysia*, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, Dissenting Opinion of Judge Mohamed Shahabudeen 152
- Methanex Corp. v. United States*, UNCITRAL NAFTA Tribunal, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005, 44 ILM 1345 252, 261-2
- Micula and Others v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 24 September 2008 267-8
- Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award, 15 March 2002, 41 ILM 862 (2002) 153
- Mitchell (Patrick) v. Democratic Republic of Congo*, ICSID Case No. ARB/99/7, Decision on the Application for Annulment of the Award, 1 November 2006 270
- MTD Equity Sdn. Bhd & MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 24 May 2004 63, 126
- Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction, 15 December 2010 243
- Myers, S.D. Inc. v. Canada*, UNCITRAL, First Partial Award, 13 November 2000 197
- Parkerings-Compagniet AS v. Republic of Lithuania*, Award, ICSID Case No. ARB/05/8, 11 September 2007 3, 127-8, 131, 254, 269
- Paushok Sergei et al. v. Mongolia*, Award on Jurisdiction and Liability, 28 April 2011 127
- Pey Casado, Victor and President Allende Foundation v. Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008 186
- Pey Casado, Víctor and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Application for Annulment of the Republic of Chile, 18 December 2012 186
- Phoenix Action Ltd v. the Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009 261
- Plama Consortium Ltd v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008 261
- Saluka Investments BV (The Netherlands) v. Czech Republic*, UNCITRAL Partial Award, 17 March 2006 68, 286