

OXFORD INTERNATIONAL
ARBITRATION SERIES

CORRUPTION IN
INTERNATIONAL
INVESTMENT
ARBITRATION

ALOYSIUS P. LLAMZON



OXFORD

CORRUPTION IN INTERNATIONAL INVESTMENT ARBITRATION

ALOYSIUS P. LLAMZON

Permanent Court of Arbitration, The Hague

A.B., J.D. (Ateneo de Manila), LL.M., J.S.D. (Yale)



OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© Oxford University Press 2014

The moral rights of the author have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2014935236

ISBN 978-0-19-871426-2

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: LOUKAS MISTELIS

*Professor of Transnational Commercial Law and Arbitration
Queen Mary, University of London*

CORRUPTION IN INTERNATIONAL
INVESTMENT ARBITRATION

OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: LOUKAS MISTELIS

The aim of this series is to publish works of quality and originality on specific issues in international commercial and investment arbitration. The series aims to provide a forum for the exploration of important emerging issues and those issues not adequately dealt with in leading works. It should be of interest to both practitioners and scholarly lawyers.

Editorial Board

PROFESSOR LAWRENCE BOO

Deputy Chairman, Singapore International Arbitration Centre

LORD LAWRENCE COLLINS OF MAPESBURY

Professor, University College London

Honorary and Emeritus Fellow, Wolfson College, Cambridge

PAUL FRIEDLAND

Global Head of the White & Case International Arbitration practice group, New York

PROFESSOR CATHERINE KESSEDJIAN

Professor of European Business Law and International Dispute Resolution,

University of Panthéon-Assas, Paris II, France

PROFESSOR VAUGHAN LOWE

Chichele Professor of Public International Law and Fellow of All Souls College, University of Oxford

PROFESSOR WILLIAM W. PARK

Professor of Law, Boston University

PROFESSOR HANS VAN HOUTTE

Director of the Institute for International Trade Law, University of Louvain (KULeuven)

PROFESSOR FRANCISCO ORREGO VICUÑA

Professor of Law at the Heidelberg University Center for Latin America in Santiago

SERIES EDITOR'S PREFACE

This series of monographs is dedicated to specific issues in international arbitration law and practice, and gives authors the opportunity and the challenge of a more in-depth treatment than is possible in leading generalist works. It also provides an international forum for the profound exploration of important practical and theoretical matters and will further the development of arbitration as a self-luminous academic discipline and major international legal practice area.

This tenth book in this series addresses a significant topic of major practical importance and also one that has various pervasive theoretical and comparative law ramifications, namely transnational corruption in investment arbitration. The author has completed a doctoral thesis on the same topic at Yale University and converted his thesis to a book and we are delighted to include it in the series.

The mere allegation or suspicion of (transnational) corruption invariably makes lawyers and arbitrators alike quite uncomfortable, to say the least. While legal professionals are trained to deal with illegal and criminal activities and their legal consequences in a domestic context, arbitrators in international investment or commercial cases only rarely confront clear cases of corruption. Reported cases go back to the 1960s with the often-cited award in ICC case 1110 (1963) where the sole arbitrator Judge Lagergren refused to assume jurisdiction in a case with an alleged bribery. Since then, things have changed quite a bit and in both commercial and investment cases. Cases such as *World Duty Free v. Kenya* (2006) or *Metal-Tech v. Kazakhstan* (2013) indicate some 'coming of age' and that arbitrators can take a measured and calm approach to issues of corruption.

Oftentimes corruption is associated with an undisputed illegality with clear consequences and sanctions of criminal and administrative law and also with civil law consequences; for example bribes paid to government officials to secure public contracts. Increasingly, however, transnational corruption belongs to a grey area of no clear condemnation in a given legal system: facilitation of major contracts through government officials or their relatives, 'favours' or gifts made to ease access to some major procurement processes, sometimes excessive corporate hospitality are some of these examples where corruption may not be clearly illegal, at least in some legal systems but it would raise eyebrows and concerns to all lawyers confronted with the facts. Furthermore, not all arbitrators would subscribe to the same code as to what is a corrupt practice and what is not. The OECD and other international formulating agencies have worked towards adoption of international instruments of international acceptance dealing with bribery and corruption from a regulatory perspective.

The privacy and occasional confidentiality linked to arbitration proceedings have made arbitration a forum where parties may refer their disputes in order to avoid the critical public eye where certain practices may belong to the 'grey area' or qualify as corrupt ones. In the realm of investment arbitration, of course, the public interest and the quest for transparency are quite significant. As a result arbitration lawyers and arbitrators are becoming well aware of corruption and its consequences on proceedings before them.

Against this background, this topical book has two inter-related objectives: (a) to study the phenomenon of corruption in international investment and its relationship with investment arbitration, and the associated growing movement in international law to prevent and criminalize such conduct; and (b) to develop a framework for arbitral decision-making when issues of corruption arise in investment arbitration proceedings. In the process this book undertakes what arguably is the first comprehensive analysis of all investment arbitration cases (both treaty and contract-based) where corruption was raised as an issue and/or dealt with by the tribunal in some noteworthy manner. As a corollary it also explores the history and modern manifestations of transnational corruption, and provides a typology of corrupt practices in foreign investment.

The book is organized in three distinct parts: Part I explores the phenomenon of corruption in foreign investment and the various international efforts to control transnational corruption. Chapter 2 on the Arbitrating Transnational Corruption provides a working definition of transnational corruption, including practices tantamount to corruption and categories by which corruption can be identified. In this regard two polar ideological-political positions are identified. The chapter also takes a historical perspective on transnational corruption from the formation of complex human societies, to colonialism and the first expressions of modern transnational corruption, up until the more recent continued adherence to the relativism of morality and ethics. Chapter 3 classifies the many modalities of transnational corruption in two broader categories – transactional and variance bribery (the governmental action purchased); and political and economic risk (the risk sought to be abated). Chapter 4 addresses the International Efforts to Combat Corruption in Foreign Investment. The attention is first focused on state activities and then on the OECD Anti-Bribery Convention and the various regional instruments inspired by that treaty, culminating in the UN Convention Against Corruption. Efforts by multinational corporations, intergovernmental organisations, and NGOs to formulate norms and codes of conduct to guide their foreign investment relationships are also considered. The chapter ends with a measured and realistic assessment of the strengths and vagaries of the current regime of international anti-corruption law.

Part II is dedicated to the trends in arbitral jurisprudence concerning corruption. Chapter 5 sets out The Scope of the Inquiry: Treaty vs. Contract ‘Investment Arbitration’ and also discusses how investment arbitration differs from international *commercial* arbitration. Chapter 6 is a thorough discussion of the relevant cases, in particular, decisions and awards in 20 cases identified as significant for the study of corruption in international investment arbitration. Chapter 7 presents Emergent Trends and identifies the prevalent nine trends arising from the 20 cases discussed in Chapter 6.

Finally, Part III seeks to integrate the findings in Parts I and II of the book and is more prescriptive in character. Chapter 8 highlights the apparent inability of anti-corruption norms to affect outcomes in investment arbitration. In this respect the chapter also reflects on the possible reasons behind most arbitrators’ lack of engagement with corruption issues. Chapter 9 discusses the difficulties inherent in proving corruption, including in deciding the proper standard of proof and who bears the burden of proof. Chapter 10 then consolidates the discussion of arbitral decision-making on corruption through the lens of State responsibility. The work then concludes with Chapter 11 which discusses the competing policy goals that vie for supremacy in every decision investment arbitrators make concerning corruption. The policies that are central to international investment arbitration—investor protection, good governance, and economic development—are all considered under the prism

of international anti-corruption norms, leading to the proposal of an alternate typology for transnational corruption that may better assist arbitrators in the resolution of difficult corruption-related issues.

In this highly important topic the author offers his readership a thorough research, unparalleled analytical skills, moderation and realism, and lucid writing which combined facilitate insights, measured critique, new findings, useful and constructive proposals, and a very reader-friendly text, taking an important subject and presenting it in an appealing fashion for both academics and practitioners. The book provides very useful guidance to lawyers and arbitrators alike and can provide the basis of a renewed and more profound discussion of transnational corruption in investment arbitration. It can also generate more interest in some normative action to combat corruption.

I am delighted to introduce this book, the tenth one in the Oxford International Arbitration Series, which originates from an extensive academic research but is also systematized to allow for practical impact. I am confident it will be used by academics and practitioners alike and belongs to all good arbitration and international law libraries. It certainly makes a real contribution to the discussion of transnational corruption in international investment arbitration and can provide a useful tool to arbitrators and arbitration lawyers.

Loukas Mistelis
Livadeia/Amman
25 April 2014

FOREWORD

Fostering national development is one of the twin goals of international investment law. Foreign capital, technology, and enterprise are, of course, indispensable for development, but meaningful and self-sustaining national development is neither achieved nor measured simply in terms of increases in physical infrastructure and GDP. A critical ingredient for self-sustained development in any state is good governance based on the rule of law as an integral part of its political ecology. Good governance is a critical component of economic opportunity, because those about to sink capital, technology, and enterprise in pursuit of profit must rely upon it in their business planning. For these reasons, bribery of officials and the consequent corruption of national legal systems is a significant issue for international investment law, that part of international law designed to facilitate foreign direct investment to accelerate the economic development of recipient states. The elimination of corruption is a central policy-goal that has been confirmed in lofty, if yet general terms, in major multilateral conventions as Dr Llamzon demonstrates in this brilliant book.

Everyone condemns bribery and corruption. No one argues that the practices are beneficial or even value neutral. The challenge in this area of law has never been securing an international consensus that money-honest government is good and that the corruption of public officials is bad. The problem has been devising a method to implement that consensus in the detailed investment transactions that take place in a world in which many states have weak or corrupt legal systems and even in states in which bribery of public officials is, for all intents and purposes, the coin of the realm.

Responsibility for implementing the international policy has fallen to investment tribunals operating under bilateral and multilateral investment treaties. Their very varied decisions (and non-decisions), brilliantly dissected here by Dr Llamzon, show just how difficult a task it is.

The challenge for investment tribunals faced with cases in which bribery or corruption has been alleged is usually presented as evidentiary: determining whether bribery occurred. Actually, the real task often begins with that factual determination, for at that point, far thornier questions come to the fore and even though they may not be expressed but merely hover in the background, they may influence decision. These types of questions cover a wide range for example, what was the purpose of the payment—whether to ‘grease’ a transaction that was otherwise lawful or to secure the waiver of an important law or regulation that should have been applied or to create an entirely fictional transaction whose only economic function is to mulct the State while the partners in corruption, investor and official, share the spoils? Was the bribe ‘offensive’ or ‘defensive’, i.e., was it paid to initiate the investment or was it paid once the investment had been sunk and if the latter, was it paid to protect the investment from what would have been an unlawful interference by the official soliciting the bribe? Was the bribe solicited by an official or eagerly pressed by the investor? What was the degree of volition or coercion of the briber? Was the official soliciting the bribe acting on his or her own behalf, or was it a case in which the official was ‘robbing for the Crown’, as an official in one instance explained apologetically to his victim, in Horacio Verbitzky’s

celebrated exposé?¹ Whether or not bribery occurred, was the investment otherwise *bona fide* and was it of real benefit to the host state? If so should that factor play a role in determining the lawfulness of the investment as well as in assessing the damages to which the investor might be entitled?

Although, *in limine*, one may ask whether these questions should even be posed. As a constitutive matter, should the international policy guiding investment tribunals be one of zero tolerance? If it is, the only question for the tribunal confronting allegations of bribery is whether it occurred. If it has, none of the other, post-factual questions would even be admissible. The apparent moral clarity and simple ability to implement such a constitutive principle generates its own problems: it punishes only one party while rewarding the other in a bilateral transaction in which both parties are *in pari delicto*; in so doing it may actually incentivize official demands for bribes.

Dr Llamzon tackles these difficult questions, in terms of international and national law, morality and professional ethics. His analysis of every published case involves a detailed treatment of the facts and arguments of the parties and not simply quotation of a sentence in the award. As a result of this painstaking methodology, he is able to reconstruct for his readers how the tribunals actually grappled with the issues. The end-product is a most accurate description of decision trends along with searching appraisals of them in terms of policies which can contribute to accomplishing the goals of international investment law and world public order. Dr Llamzon's cautious introduction of the law of State responsibility as a corrective for the asymmetric tendency in decision trends is brilliant. Overall, this book will prove indispensable to scholars, international legislators, international arbitrators, and counsel who argue before them.

It will continue to be indispensable, for the problems Dr Llamzon treats bode to stay with us. Even if all the governments of the world were suddenly to become effective constitutional democracies, corruption would not disappear. Recall Gibbon's observation of the later Roman Empire: 'Corruption, the most infallible symptom of constitutional liberty, was successfully practised: honours, gifts, and immunities were offered and accepted as the price of an episcopal vote'² Indeed, it is especially in effective constitutional democracies that corruption seems inescapable or, as Gibbon puts it, 'infallible' precisely because, in such social arrangements, each person is free to cultivate identities and to be subject to multiple loyalty systems. What we call 'corruption' is the product of two competing loyalties, one of which must be betrayed, in a specific case, in order to serve the other and rare is the loyalty system that directs its subjects simply to yield to another. To be sure, Jesus of Nazareth, in one notable exception, enjoined his followers to 'render unto Caesar the things which are Caesar's and unto God the things that are God's'.³ Alas, even this seemingly unequivocal conflicts rule can require case-by-case interpretation.

W. Michael Reisman
Yale Law School
July 3, 2014

¹ Horacio Verbitsky, *Robo para la corona: los frutos prohibidos del árbol de la corrupción*, Planeta, 1991.

² 3 Gibbon, *Decline and Fall of the Roman Empire* 385.

³ Matthew 22: 20-22.

ACKNOWLEDGEMENTS

This book is the culmination of work done in pursuit of the Doctor of the Science of Law (JSD) degree at Yale Law School. There are so many to whom I am indebted for having helped me reach this terminus. First mention must go to my dissertation advisor, Professor W. Michael Reisman, whose mentoring and scholarship in international law and beyond have set a lifelong standard to aspire towards. Professors Susan Rose-Ackerman and Lea Brilmayer, as well as Guillermo Aguilar-Alvarez, provided valuable advice from the inception of the project. The support of the Howard M. Holtzmann Fellowship in International Dispute Resolution, the John M. Olin Fellowship in Law, Economics, and Public Policy, and the faculty committee that awarded the work the Ambrose Gherini Prize at Yale is gratefully acknowledged.

My current and former colleagues at the Permanent Court of Arbitration in The Hague, at the Ateneo de Manila University School of School, at *Skadden, Arps, Slate, Meagher & Flom* in Hong Kong, at *Romulo Mabanta Buenaventura Sayoc & de los Angeles* in Manila, as well as my professors and fellow students at Yale Law School and the Ateneo have had an inestimable impact upon this work. Many members of the academy, bench, and bar met in connection with my work at the PCA have helped clarify aspects of the topic and educated me, *in situ*, on the nature of arbitration itself—Professor Francisco Orrego Vicuña, Professor Pierre-Marie Dupuy, Judge Stephen Schwebel, and Professor Jan Paulsson bear special mention in this regard.

Among the many fora where aspects of this work were presented and discussed, I am grateful to those who participated in panel discussions at the 2008 Annual Meeting of the American Society of International Law in Washington, D.C., the 2010 Society of International Economic Law Biennial Meeting in Barcelona, and the 2014 International Council for Commercial Arbitration (ICCA) Congress in Miami.

I am also grateful to the editors and staff of Oxford University Press. The Editorial Board of the International Arbitration Series has been very supportive of this work. Rachel Holt, Matthew Humphrys, Vicky Pittman, and Caroline Quinnell have all played key roles in editing the work into its current shape.

Most importantly, I am indebted to my family. My deepest gratitude is reserved for my wife Ginny, without whose support this book would simply not exist. My parents Teodoro and Petrona and brother Benjamin have always supported and prayed for success in everything I have undertaken. Last and not least are my daughters Clara and Beatriz. You may not know it yet, my darlings, but your coming into our lives lent the sense of purpose and inspiration necessary to see this through.

TABLE OF CASES

INTERNATIONAL ARBITRATION AND COURT CASES

Abaclat et al. v. Argentine Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011	5.21–5.23, 5.24–5.27
Abyei Arbitration (Government of Sudan v. Sudan People's Liberation Movement/Army), Permanent Court of Arbitration, Award, 22 July 2009	8.31
African Holding Co. of America Inc. and Société Africaine de construction au Congo SARL v. République Démocratique du Congo, ICSID Case No. ARB/05/21, Award, 2008	6.219–6.223, 7.12, 7.20, 7.27, 7.30, 8.18, 10.26
Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. The Argentine Republic, ICSID Case No. ARB/03/19, Order in Response to a Petition for Transparency and Participation as Amicus Curiae	5.16
Ahmadou Sadio Diallo (Guinea v. DR Congo), Merits, Judgment, I.C.J. Reports 2010, p. 639	10.10
Ahmadou Sadio Diallo, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 582	10.10
Alabama Claims Arbitration (1874), 1 Moore International Arbitrations 495	8.04
Azpetrol International Holdings B.V. et al. v. Republic of Azerbaijan, ICSID Case No. ARB/06/15, Award 8 September 2009	6.65–6.71, 7.08, 7.18, 9.02
Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment, I.C.J. Reports 1970, p. 3	8.04, 10.10
Certain Phosphate Lands in Nauru (Nauru v. Australia), 1992 I.C.J. 240	10.81
Citizens United v. Federal Election Commission, 558 U.S. 8 (2010)	2.32
Corfu Channel Case (United Kingdom v. Albania), Merits, Judgment, 9 April 1949, 1949 ICJ Rep. 4, 18	9.13
Diplomatic and Consular Staff in Tehran (United States v. Iran), Judgment, 24 May 1980, 1980 I.C.J. 29	10.43, 10.92
Division of Water From the River Meuse (Netherlands v. Belgium), 1937 P.C.I.J. (Series A/B) No. 70, 4, 77	8.14
Ecuador v. United States, US-Ecuador Bilateral Investment Treaty Arbitration, PCA Administered	10.16
EDF (Services) Ltd v. Romania, ICSID Case No. ARB/05/13, Award, 8 October 2009	6.257–6.268, 7.15, 7.20, 7.27, 7.29, 9.02, 9.18, 10.19–10.21, 10.23, 10.25, 10.29, 10.37, 10.53
Electronica Sicula S.p.A. (ELSI) (United States v. Italy), Judgment, I.C.J. Reports 1989, p. 15	8.04, 10.10
Estate of Jean-Baptiste Caire (France) v. United Mexican States, 5 R.I.A.A. 516 (1929)	10.53, 10.63
Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines, ICSID Case No. ARB/03/25, Award, 16 August 2007; Decision on Annulment, 23 December 2010	5.17, 6.55, 6.158, 6.162, 6.169–6.218, 7.12, 7.23, 7.27, 7.30, 7.32, 8.18, 9.02, 10.07, 10.19–10.20, 10.24–10.26, 10.87, 11.34
F-W Oil Interests Inc. v. Republic of Trinidad and Tobago, ICSID Case No. ARB/01/14, Award, 3 March 2006	6.148–6.157, 7.08, 7.11, 7.27, 7.29, 9.07, 10.20, 10.23, 11.29
Gabchikovo-Nagyymaros Project (Hungary/Slovakia), 1997 I.C.J. 7	10.72
German Settlers in Poland, P.C.I.J. Advisory Opinion, B.6, p. 22 (1923)	10.03

Globex Trading Resource Corp. and Globex International Inc. v. Ukraine, ICSID Case No. ARB/09/11, Award, 1 December 2010	5.18–5.19
Grisbadarna Arbitration (Norway/Sweden), Permanent Court of Arbitration (1909)	10.86, 10.89
Grynberg (Rachel S.) et al. and RSM Production Corp. v. Grenada, ICSID Case No. ARB/10/6, Award, 10 December 2010	6.274, 10.20
Guyana v Suriname, Award of 17 September 2007, PCA Awards Series Vol. 8 (T.M.C. Asser)	6.288, 7.07, 7.25, 7.27
Hamester v. Republic of Ghana, ICSID Case No. ARB/07/24, Award, 18 June 2010	9.13, 10.46
Himpurna California Energy Ltd (Bermuda) v. P.T. (Persero) Perusahaan Listrik Negara (Indonesia), Final Award, 4 May 1999; 14 Mealy's Int'l Arb. Rep. 14	8.24, 9.17
ICC Case No. 1110 <i>see</i> Westinghouse v. National Power Corp.	
ICC Case No. 1180 (1963).	7.05
ICC Case No. 3916 (1982)	6.227
ICC Case No. 4145	9.11, 9.16
ICC Case No. 5622	9.13, 9.17
ICC Case No. 6401	9.17
ICC Case No. 6497	9.09
ICC Case No. 7047	9.16
ICC Case No. 8891	9.11
Inceysa Vallisoletana, S.L. v. Republic of El Salvador, ICSID ARB/03/26, Award of 2 August 2006	6.55, 6.60, 6.158–6.168, 6.184, 6.203, 7.11, 7.23–7.24, 7.27, 8.18, 9.02, 10.23, 11.34
Industria Nacional de Alimentos, S.A. and Indalsa Perú, S.A. v. Republic of Peru, ICSID Case No. ARB/03/4, Award, 7 February 2005; Decision on Annulment, 5 September 2007.	3.19, 5.04, 6.112–6.131, 7.11, 7.27, 7.31, 8.18, 8.26, 10.23, 11.30
Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment, I.C.J. Reports 2012, p. 99.	4.98
Lanco International Inc. v. The Argentine Republic, ICSID Case No. ARB/97/6, Preliminary Decision on Jurisdiction, 8 December 1991	5.11
Loewen Group Inc. and Raymond L. Loewen v. United States of America, ICSID Case No. ARB (AF)/98/3, Award, 26 June 2003	5.10
Lucchetti v. Peru <i>see</i> Industria Nacional de Alimentos, S.A. and Indalsa Perú, S.A. v. Republic of Peru	
Maffezini v. Spain, Case No. ARB/97/7, Decision on Objections to Jurisdiction, 25 January 2000	1.24
Malaysian Historical Salvors v. Malaysia Malaysian Historical Salvors Sdn, Bhd v. Government of Malaysia, ICSID Case No. ARB/05/10, Decision on the Application for Annulment, 16 April 2009.	5.18
Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Rep. 1994, 112	10.46
Metal-Tech Ltd v. Republic of Uzbekistan, ICSID Case No. ARB/10/3, Award, 4 October 2013.	1.40, 6.43–6.57, 6.280, 6.289, 7.03, 7.06–7.08, 7.10, 7.12–7.13, 7.19, 7.22, 7.25, 7.27, 7.30, 7.32, 8.10, 8.25, 9.02, 9.06–9.08, 9.10, 9.13, 9.20, 9.24, 9.26, 10.93, 11.05
Methanex v. United States, NAFTA/UNCITRAL Arbitration Rules, Final Award on Jurisdiction and Merits, 3 August 2005.	2.33–2.34, 5.04, 5.38, 6.102–6.111, 7.11, 7.29, 9.11, 10.20, 10.23
Micula v. Romania, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 24 September 2008.	9.06

Table of Cases

Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America) [1984] ICJ Rep. 392, 1986 I.C.J. 14, 268	8.14, 9.08
Moses Case (Mexico v. United States), 3 Int'l Arb. 3127 (1871).	10.03
Niko Resources (Bangladesh) Ltd v. People's Republic of Bangladesh, BAPEX, and PETROBANGLA, ICSID Case Nos. ARB/10/11 and ARB 10/18, Decision on Jurisdiction, 19 August 2013	6.275–6.289, 8.14, 8.25, 9.02, 9.13
North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) (Merits) 1969 I.C.J. Rep. 4	4.92
Oil Platforms (Islamic Republic of Iran v. United States of America) (2003) 42 I.L.M. 1334	9.24
Oostergetel v. Slovak Republic, UNCITRAL Final Award, 23 April 2012	6.51
Petrolane Inc. v. Islamic Republic of Iran, 27 IUSCT Rep. 92 (1991)	10.56
Philip Morris v Australia, Hong Kong–Australia Investment Treaty, PCA Case No. 2012-12	8.05
Phoenix Action Ltd v. Czech Republic, ICSID Case No. ARB/06/5, Award, 15 April 2009	5.23, 7.05, 11.32, 11.40
Republican Party of Minn. v. White, 536 U.S. 765 (2002).	2.36
Romak S.A. v. Republic of Uzbekistan, PCA Case No. AA280, Award, 26 November 2009.	5.22, 5.28
Rompetrol v. Romania, ICSID Case No. ARB/06/3, Award, 6 May 2013	9.13, 9.15–9.16, 9.20–9.22, 9.24, 9.26
RSM Production Corp. v. Grenada, ICSID Case No. ARB/05.14 (Annulment Proceeding), Decision on RSM Production Corp.'s Application for a Preliminary Ruling of 29 October 2009, 7 December 2009	6.269–6.273, 7.14, 7.27, 7.29
Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan, ICSID Case No. ARB/05/16, Award, 29 July 2008	6.224–6.230, 7.14, 7.27, 7.29, 8.19, 10.20, 10.26
Salini Costruttori SPA and Italstrade SPA v. Kingdom of Morocco, ICSID, Decision on Jurisdiction, 23 July 2001, 42 I.L.M. 606.	5.23, 6.158, 10.39, 11.32
Sedelmayer v. Russian Federation, Stockholm Chamber of Commerce Rules, Award of 7 July 1998.	5.23, 11.32
SGS v. Philippines, Case No. ARB/02/6, Decision on Jurisdiction, 29 January 2004	1.24
Siag and Vecchi v. Arab Republic of Egypt, ICSID Case No. ARB/05/15, Award, 1 June 2009.	6.240–6.256, 7.12, 7.20–7.21, 7.31, 9.16, 9.19, 10.26
Siemens A.G. v. Argentine Republic, ICSID Case No. ARB/02/8, Decision on Jurisdiction, 3 August 2004; Award, 6 February 2007	6.58–6.64, 6.280, 6.289, 7.08, 7.18, 7.25, 7.30, 8.25, 9.02
Southern Pacific Properties v. Arab Republic of Egypt, ICSID Case No. ARB/84/3, Award, 20 May 1992, 32 I.L.M. 933 (1993).	1.40, 6.71–6.80, 7.11, 7.21, 7.27, 7.33, 10.19–10.20, 10.23, 10.25, 10.70, 10.87
SPP v. Egypt <i>see</i> Southern Pacific Properties v. Arab Republic of Egypt	
TanESCO v IPTL <i>see</i> Tanzania Electric Supply Co. v. Independent Power Tanzania Ltd	
Tanzania Electric Supply Co. v. Independent Power Tanzania Ltd, ICSID Case No. ARB/98/8, Final Award, 12 July 2001	5.32, 6.90–6.101, 7.11, 7.27, 7.30, 10.23
Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6	10.86
Thunderbird Gaming Corp. v. Mexico, NAFTA Arbitration under the UNCITRAL Arbitration Rules, Award, 26 January 2006.	1.24, 1.27, 5.14, 5.38, 6.132–6.147, 7.11, 7.25, 7.27, 7.30, 8.02, 8.15, 8.18, 8.26, 9.03, 10.23–10.24, 11.36
Tokios Tokeles v. Ukraine, Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004.	1.24, 6.158

Table of Cases

TSA Spectrum de Argentina S.A. v. Argentine Republic, ICSID Case No. ARB/05/5, Award, 19 December 2008	6.231–6.239, 7.27, 7.30, 8.18, 10.23
Wena Hotels Ltd v. Arab Republic of Egypt, ICSID Case No. ARB/98/4, Award, 8 December 2000	6.81–6.89, 6.246, 7.11, 7.20, 7.27, 7.30, 10.23, 10.87
Westinghouse v. National Power Corp., Republic of the Philippines, ICC Case No. 1110, Preliminary Award, 19 December 1991	5.42, 6.22, 9.17
World Duty Free Co. Ltd v. Republic of Kenya, ICSID Case No. ARB/00/7, Award, 4 October 2006	5.17, 5.30, 5.32, 5.37, 5.42, 6.01–6.43, 6.51–6.52, 6.55–6.57, 6.60, 6.169, 6.203, 6.219, 6.222, 6.227, 6.255, 6.275, 6.280, 6.283–6.284, 6.289, 7.03, 7.05–7.08, 7.10–7.12, 7.19, 7.22, 7.25–7.27, 7.30, 7.32–7.33, 8.10, 8.25, 8.36, 9.02, 10.02, 10.04, 10.07–10.08, 10.19–10.20, 10.23–10.24, 10.26–10.32, 10.52, 10.61, 10.67, 10.70, 10.88–10.89, 10.93, 10.95, 10.99, 11.05, 11.19, 11.34, 11.41
Yukos v. Russian Federation, Energy Charter Treaty, PCA Case No. AA227, UNCITRAL Arbitration Rules	5.05

NATIONAL COURT CASES

France

European Gas Turbines v. Westman, Court of Appeal of Paris, 30 September 1993.	6.22
--	------

United Kingdom

Attorney General for Hong Kong v. Reid [1994] A.C. 324.	2.13
B (Children) (FC), In re [2008] UKHL 35	9.16
Bater v Bater [1950] 2 All E.R. 458	9.16
Holman v Johnson (1775) 1 Cowp. 341	6.34
Lemenda Trading Co. Ltd v. African Middle East Petroleum Co. Ltd [1988] 1 Q.B. 428.	10.26
Miller v. Minister of Pensions [1947] 2 All ER 372.	9.16
R. (Al-Saddoon) v. Secretary of State for Defence [2009] EWCA Civ 7; [2010] Q.B. 486.	10.28
Tinsley v Milligan [1994] 1 A.C. 340.	6.33
Trendtex Trading Corp. Ltd v. Central Bank of Nigeria [1977] 1 All E.R. 881	10.28
Westacre Investments Inc. v. Judoimport-SDPR Holdings Co. Ltd [1999] Q.B. 740	11.13

United States

Citizens United v. Federal Election Commission, 558 U.S. 8 (2010)	2.32
Republican Party of Minn. v. White, 536 U.S. 765 (2002).	2.36
United States v. Uriel Sharef et al. (No. 11–1056), District Court for Southern District of New York.	6.64
U.S. Securities and Exchange Commission v. Uriel Sharef et al. (No. 11–9073), District Court for Southern District of New York	6.64

TABLE OF LEGISLATION

TREATIES, CONVENTIONS AND INSTRUMENTS

African Union Convention on Preventing and Combating Corruption	
2003	1.16, 4.04, 4.53–4.56
Art. 4(b)	4.55
(g)–(h)	4.56
Art. 5	4.55
Art. 7	4.55
Art. 9	4.55
Art. 15(6)	4.56
Art. 22(1)	4.56
(5)	4.56
Convention Establishing the Multilateral Investment Guarantee Agency	
1985	11.41
Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965	
	1.23, 5.17–5.19, 5.22–5.29, 5.31–5.35, 6.10, 6.13, 6.29, 6.52, 6.69, 6.74, 6.93, 6.126–6.127, 6.184, 6.231, 6.241, 6.273, 6.275, 10.14, 10.17, 10.31, 11.30, 11.32
Art. 25	5.17–5.19, 5.22, 6.242
(1)	6.93
Art. 41(2)	6.127
Art. 42(1)	10.28, 10.31
(3)	8.37
Art. 43	6.51, 6.124, 9.06
Arts. 43–45	9.13
Art. 48(3)	8.31
Art. 51(1)	6.60
Art. 52	5.33
(1)	6.201
(b)	6.206
(d)	6.130, 6.206
(e)	6.206, 8.31
Art. 53	5.33
Art. 54	5.33
Council of Europe Civil Law Convention on Corruption 1999.	
	1.16, 4.04, 4.39–4.44, 4.48, 4.95
Art. 1	4.40
Art. 2	4.39
Art. 5	4.41, 10.70
Art. 8(1)	4.42, 4.95
(2)	4.42

Council of Europe Criminal Law Convention on Corruption 1999	
	1.16, 4.04, 4.39, 4.45–4.56, 4.71
Art. 2	4.46
Arts. 2–14	4.48
Art. 3	4.46
Art. 5	4.48
Arts. 7–8	4.39
Arts. 7–11	4.48
Art. 19	4.49
Council of Europe, Resolution No. (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption 1997	
Principle 17	4.94
Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran	
	10.14
Declaration of the Government of the Democratic and Popular Republic of Algeria Relating to the Commitments Made by Iran and the United States	
	10.14
Energy Charter Treaty 1994	
	6.66, 6.69
Inter-American Convention Against Corruption 1996.	
	1.16, 4.04, 4.50–4.52
Art. VI	4.51
Art. VIII	4.51–4.52
Art. IX	4.51–4.52
Art. XII(3)	4.52
Art. XIII	4.52
Art. XIV	4.52
International Court of Justice Statute 1998	
Art 38(1)(c)	8.14
International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts 2001	
	10.08, 10.12–10.13, 10.16–10.17, 10.30, 10.33, 10.39–10.43, 10.46–10.48, 10.50, 10.64, 10.71–10.81, 10.94, 10.96, 10.107
Pt 2	10.17
Pt 3	10.17

Art. 2	10.40	Art. 18	4.88
(b)	10.71	Art. 19	4.88, 10.67
Art. 3	10.51	Art. 20	4.88
Art. 4	10.03, 10.47	Art. 30(2)	4.64, 4.89
Arts. 4–11	10.46	(9)	4.64
Art. 5	10.46	Art. 34	4.65, 6.284
Art. 7	10.03, 10.50–10.52, 10.55–10.62, 10.69, 10.96	Art. 43	4.94
Art. 8	10.47, 10.59, 10.61	UN Convention on the Law of the Sea 1982	
Art. 11	10.58	Annex VII	6.288
Art. 17	10.59	UN Convention on the Recognition and	
Art. 20	10.13, 10.58, 10.73, 10.79	Enforcement of Foreign Arbitral	
Art. 33	10.13	Awards 1958.	5.33–5.34, 5.38, 8.11, 10.68
Art. 42	10.107	Art. V(2)(b)	5.33
Art. 45	10.79, 10.81, 10.84	UN General Assembly Resolution No.	
(b)	10.85	A–RES–174(II), 21 November 1947 ...	8.04
Art. 55	10.17	UN General Assembly Resolution No.	
North American Free Trade Agreement		3514 (XXX), 15 December 1975	4.57
1992	6.104, 6.135, 10.09	UN General Assembly Resolution No.	
Chap. 11	6.134, 10.31	58/4, U.N. GAOR 58th Sess.,	
Art. 1101	6.109	Agenda Item 108, U.N.	
Art. 1102	6.109	Doc. A/RES/58/4 (2003).	4.04
Art. 1105	6.109, 6.138, 6.143	UNCITRAL Model Law on International	
Art. 1110	6.109	Commercial Arbitration 1985	5.33
Art. 1120.1(c)	5.10	UNESCO Convention for the Protection	
OECD Convention on Combating Bribery		of the World Cultural and Natural	
of Foreign Public Officials in		Heritage 1972.	6.74
International Business Transactions		Vienna Convention on the Law of Treaties	
1997	1.16, 1.39, 2.03, 4.04, 4.06, 4.14, 4.24–4.38, 4.40, 4.47–4.48, 4.50–4.51, 4.54, 4.60, 4.81, 4.83, 6.52, 10.05, 10.54, 10.66–10.67, 10.91, 11.03, 11.20	1969	4.03, 6.284, 10.31
Art. 1	4.28	Art. 7(1)	10.48
(1)	2.03, 4.27, 10.54, 10.66	(2)	10.48
Art. 3(4)	4.29, 4.32	Art. 26	6.199
OECD Declaration No. 7 (1976)	4.25	Art. 31(1)	11.30
OECD Recommendation on the Tax		(3)(c)	10.31
Deductibility of Bribes to Foreign		Art. 45	10.86
Public Officials 1996.	4.28	Art. 50	4.03, 10.59–10.60, 10.86
UN Convention Against Corruption		Art. 53	4.98
2003	1.16, 4.04, 4.57–4.65, 4.81, 4.88–4.89, 4.94, 4.101, 4.106, 4.110, 4.118, 6.52, 8.09, 10.67, 10.91, 11.20	Art. 73	10.60
Art. 4	4.89, 10.67		
Art. 5	10.67		
Art. 15	4.63, 4.88–4.89, 10.67		
Art. 16	4.61		
(1)	4.61		
(2)	4.61		
Art. 17	4.88, 10.67		

ARBITRATION RULES

ICSID Rules of Procedure for Arbitration	
Proceedings	5.15–5.16, 6.93, 6.127, 6.211, 10.10, 10.31, 10.32
Rule 32(2)	5.15
Rule 34	9.13
Rule 37	5.15
Rule 41(5)	6.274
Rule 48(4)	5.15
Rule 73(2)	5.16
International Bar Association's Rules on	
the Taking of Evidence in	
International Arbitration	
Rule 9(5)–(6)	9.12