CONTENTS

Series Editor's Preface	\mathbf{v}	
Preface	vii	
Table of Cases		
List of Abbreviations		
1. Introduction		
2. The Function of Compensation and Damages		
A. Distinct Functions of Compensation and Damages	2.03	
(1) Compensation	2.22	
(2) Damages	2.32	
B. The Functions in Detail	2.37	
(1) The Function of Compensation upon Expropriation	1	
under International Law	2.38	
(a) Reparation?	2.39	
(b) Restitution of Value	2.54	
(2) The Function of Damages	2.72	
(a) Reparation	2.72	
(i) Violations of International Law	2.75	
(ii) Breaches of Contract	2.81	
(b) Punishment?	2.92	
C. Consequences for the Calculation	2.96	
(1) Objective Valuation	2.97	
(2) Subjective Valuation	2.101	
(3) Selection of a Valuation Method	2.115	
3. Valuation Standards and Criteria		
A. Compensation upon Expropriation	3.02	
(1) The Standard of Compensation	3.06	
(a) Customary International Law	3.07	
(b) International Treaty Law	3.15	
(c) International Jurisprudence	3.24	
(2) The Role of Compensation for the Lawfulness of		
the Expropriation	3.32	

(3) Can Indir	ect Expropriations ever be Lawful?	3.51
(4) Violation	of Stabilization Clauses	3.57
(5) The Diffe	rence between Lawful and Unlawful Expropriations	3.75
(a) Lucru	um Cessans?	3.78
(b) Punit	ive Damages?	3.91
(c) Com	pensation versus Reparation	3.96
B. Reparation a	nd Damages	3.111
(1) Violations	of International Law	3.112
(a) Subje	ective and Concrete Valuation	3.124
(b) Object	ctive and Abstract Valuation	3.152
(i) A	Argumentum e maiore ad minus and Analogy	3.153
(ii) S	Submissions of the Parties	3.165
(2) Breaches of	of Contract	3.168
(a) Dami	num Emergens and Lucrum Cessans	3.174
(b) Relian	nce Interest and Compliance Interest	3.197
(c) Reject	tion of Lost Profits	3.203
(i) F	Profits too Speculative	3.204
(ii) I	mplicit Termination of Contract	3.211
(iii) }	Force Majeure	3.216
(d) Dama	ages for Lost Opportunities?	3.219
(3) Simultane	ous Violation of International and	
Contractu	al Obligations	3.226
(4) Reasons fo	or Reducing the Amount of Damages	3.234
	ributory Negligence	3.235
	ation of Damage	3.240
C. The Valuation	on Date	3.250
(1) The Valua	tion Date in Expropriation Cases	3.253
(a) Lawfi	al Expropriations	3.254
(b) Unlay	wful Expropriations	3.266
(c) Indire	ect Expropriations	3.278
(2) The Valua	tion Date in Other Cases	3.288
(a) Viola	tions of International Law	3.289
(b) Breac	hes of Contract	3.297
D. The Exercise	of Discretion and Equity Considerations	3.307
(1) Estimation	n and Equity	3.312
(2) Relevance	of the Respondent's Economic Situation	3.325
4. International Va	luation Standards and Bases of Value	
A. International	Valuation Standards	4.02
(1) Europe		4.03

		(2) United States	4.13
		(a) USPAP	4.14
		(b) AICPA Valuation Standard	4.18
		(3) International Standards	4.24
		(a) International Valuation Standards	4.25
		(b) World Bank Guidelines	4.32
		(c) MIGA	4.37
		(d) UN Compensation Commission	4.40
	В.	Basis of Value	4.48
		(a) Market Value Basis of Valuation	4.54
		(b) Bases Other Than Market Value	4.65
		(i) Investment Value or Worth	4.68
		(ii) Special Value, Synergistic Value, Price	4.76
		(iii) Contractual Value	4.83
	C.	Transparency	4.86
	D.	Experts in Arbitration Proceedings	4.89
5.	M	ethods of Valuation in International Practice	
	A.	Market or Sales Comparison Approach	5.08
		(1) Stock Prices	5.15
		(2) Prior Transactions	5.31
		(3) Offerings	5.42
		(4) Partial Sales	5.47
		(5) Comparable Sales	5.53
		(6) Multiples	5.59
	В.	The Income Approach	5.68
		(1) Basis of Income: Profits, Earnings, Cash Flow?	5.85
		(2) Going Concern	5.100
		(3) Forecasting	5.112
		(a) Analysis of Past Performance	5.116
		(b) Value Drivers	5.123
		(c) Business Plans	5.132
		(d) Economic Circumstances	5.138
		(e) Legitimate Expectations	5.152
		(i) Adaptation of Contractual Provisions	5.155
		(ii) Extension of Contracts	5.165
		(f) Comparison of Two Future Scenarios—'But for' Approach	5.172
		(g) Valuation Phases	5.186

		(4) Discounting	5.193
		(a) Basic Principles	5.194
		(b) International Practice	5.213
		(5) Inflation	5.238
		(6) Reasons for Rejecting the Income Approach in	
		International Practice	5.246
		(a) No Going Concern, No Record of Past Performance	5.247
		(b) Divergence of Amount of Investment and Expected Profits	5.258
		(c) Divergence of Submissions by the Parties	5.263
		(d) The Financial Situation of the Company	5.267
		(e) Valuation Procedure too Expensive	5.270
	C.	The Asset-Based or Cost Approach	5.274
		(1) Book Value	5.279
*		(a) Inappropriate for Valuation Purposes	5.282
		(b) Acceptance of Book Value for Particular Items	5.295
		(c) Adjustment of Book Value	5.297
		(d) 'Sunk Investment' and Wasted Costs	5.308
		(2) Replacement Value	5.325
		(3) Liquidation Value	5.340
		(a) Submissions of the Parties	5.346
		(b) Lack of Future Prospects	5.354
	D.	Other Approaches	5.360
		(1) Mixed Methods	5.360
		(2) Insurance Value	5.376
		(3) Tax Value	5.381
		(4) Contract-based Valuation	5.386
	E.	Consequential Damages	5.394
		(1) Loss of Reputation, Goodwill, Creditworthiness,	
		Business Opportunities	5.398
		(2) Liability to Subcontractors	5.404
		(3) Costs for Damage Limitation, Repair, and Maintenance	5.408
		(4) Costs and Expenses for Pursuing the Claim	5.412
6.	Int	terest	
	Α.	The Function of Interest	6.05
		(1) 'Prompt' Compensation	6.10
		(2) 'Full' Reparation	6.15
		(a) State Responsibility	6.15
		(b) Breach of Contract	6.21
		(3) Prevention of Enrichment	6.29
		(4) Improvement of Payment Practices	6.36

B.	Pre-av	vard Interest	6.41
	(1) In	terest Rate	6.44
	(a)	Legal Interest	6.52
	(b)	Agreed Interest	6.72
	(c)	Borrowing Rate	6.81
		(i) Prime Rate	6.86
		(ii) Borrowing Rate of the Investor	6.94
		(iii) Cost of Capital of the Investor	6.97
		(iv) Borrowing Rate of the State	6.100
		(v) Average Borrowing Rate	6.104
	(d	Interest on Investment	6.107
	(e)	Government Bonds	6.121
	(f	Interbank Interest	6.130
	(g)	'Fair' Interest in Practice	6.149
		(i) Compensation upon Expropriation	6.150
		(ii) Damages	6.155
	(2) Di	es a quo	6.162
		Expropriations	6.163
		State Responsibility	6.170
		(i) Date of the Unlawful Act	6.174
		(ii) Date of Occurrence of Damage	6.177
		(iii) Date of Initiation of Legal Proceedings	6.183
	(c)	Breaches of Contract	6.187
		(i) Date of Breach	6.190
		(ii) Relevance of Invoice Dates	6.192
		(iii) Relevance of Terms of Payment	6.194
		(iv) Date of Reminder	6.201
		(v) Termination of Contract	6.207
		(vi) Date of Initiation of Legal Proceedings	6.209
	(3) Co	ompound Interest	6.210
	, ,	Repudiation in Early Cases	6.213
		Increasing Acceptance in Recent Jurisprudence	6.225
	,	Exceptions	6.237
C.	Post-a	ward Interest	6.243
	(1) Dies a quo		6.247
		Continuation of Pre-award Interest	6.248
		Date of the Award	6.252
		Grace Period	6.262
		terest Rate	6.269
	130	ompound Interest	6.283
D		usions on Interest	6.288
	(1)11(1) / 00

7. Conclusions	
A. Interrelation between the Claim's Legal Basis and the Valuation Basis	7.03
B. The Choice of a Valuation Method	7.11
C. Interest	7.17
Bibliography	401
Index	419