# Contents

Acknowledgements	$\mathbf{V}$
CHAPTER 1	
FOREIGN INVESTMENT DISPUTES	1
I. Introduction	1
II. A Brief History of Foreign Investment	2
III. The International Commitment to Encouraging and Protecting Foreign Investment	7
IV. What is a Foreign Investment Dispute?	9
V. Investment Treaties	10
VI. International Forums for Resolving Investment Disputes	11
VII. Political Risk Insurance	13
VIII. Applicable Law	13
IX. International Claims	14
X. Procedure and Proof	16
XI. Transparency and the Role of NGOs	16
XII. Sovereign Immunity and the Enforcement of State Awards	17
XIII. Format	17
CHAPTER 2	
TREATY SCHEMES FOR BILATERAL INVESTMENT DISPUTES	19
I. Introduction: Why Treaties have been Concluded with Respect to	
International Investment	19
A. Jeswald W. Salacuse, BIT by BIT: The Growth of Bilateral Investment  Treaties and Their Impact on Foreign Investment in Developing	
Treaties and Their Impact on Foreign Investment in Developing Countries, 24 Int'l Law 655, 659-60 (1990)	19
B. Comments and Questions	20
II. Precursors of Modern Investment Treaties	21
A. Kenneth J. Vandevelde, The Bilateral Investment Treaty Program of	
the United States, 21 Cornell Int'l L.J. 201, 203-08 (1988)	21
B. Comments and Questions	23
C. Treaty of Friendship, Commerce, and Consular Rights, June 15, 1931,	
U.SPol., 11 Bevans 237	23

D.	Comments and Questions	30
	<b>History of Attempts to Create Bilateral Investment Treaties</b> Jeswald W. Salacuse, <i>BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing</i>	31
	Countries, 24 Int'l Law 655, 655-59 (1990)	31
B.	Comments and Questions	33
C.	F.A. Mann, British Treaties for the Promotion and Protection of	
	Investments, 52 Br. Y.B. Int'l L. 241, 241-42 (1981)	33
IV.	What Should be Addressed in an Investment Treaty?	35
	Eli Lauterpacht, The Drafting of Treaties for the Protection of	
	Investment, 1962 Int'l & Comp. L.Q. (Supp. Publ. No. 3) 18, 24-34	35
B.	Comments and Questions	42
C.	W. Michael Reisman & Mark Wiedman, Contextual Imperatives	
	of Dispute Resolution Mechanisms: Some Hypotheses and Their	
	Applications in the Uruguay Round and NAFTA, Journal of World	
	Trade June 1995, at 5, 5-11	43
D.	Comments and Questions	46
V.	Modern Investment Treaties	47
A.	Bilateral Treaties	47
	1. Rudolf Dolzer & Margrete Stevens, Bilateral Investment Treaties	
	10-11 (1995)	47
	2. Kenneth J. Vandevelde, United States Investment Treaties: Policy	47
	and Practice 19-20 (1992)  3. Treaty Between the Government of the United States of America and	4/
	Government of [Country] Concerning the Encouragement and	
	Reciprocal Protection of Investment, 1-36 (2004), available at	
	http://www.state.gov/documents/organization/38710.pdf	48
	4. Agreement Between the Government of the United Kingdom of Great	
	Britain and Northern Ireland and the Government of [] for the	70
	Promotion and Protection of Investments  5. Chapter on Dispute Resolution in US Singapore ETA Agreement	73
	5. Chapter on Dispute Resolution in US Singapore FTA Agreement, available at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/	
	Singapore_FTA/Final_Texts/asset_upload_File708_4036.pdf	79
	6. Chapter on Dispute Resolution in US Chile FTA Agreement,	
	available at http://www.ustr.gov/assets/Trade_agreements/Bilateral/	
	Chile_FTA/Final_Texts/asset_upload/File1_4004.pdf	97
	7. Comments and Questions	119
В.		120
	1. North American Free Trade Agreement, Dec. 17, 1992, CanMexU.S., 32 I.L.M. 605	120
	2. Energy Charter Treaty, http://www.encharter.org/	127
	3. Free Trade Agreement of the Americas, http://www.ftaa-alca.org/	
	alca_e.asp	127

	4. Mercosur Agreement, http://www.sice.oas.org/trade/mrcsr/	
	mrcsr10.asp	127
VI.	Structure of the Treaties and Obligations Undertaken by States	127
A.	Definitions	127
•	1. "Investments" Defined	127
	2. "Investment Disputes" Defined	127
B.	General Obligations (e.g., Minimum International Law Standards)	128
C.	Expropriation Standards	128
D.	Currency Transfer Standards	128
E.	Dispute Resolution	128
	1. Jurisdictional or Procedural Prerequisites to Invoking International	
	Arbitration	128
	2. Forums to which Consent is Given	128
	3. Compañia de Aguas del Aconquija S.A. v. Argentina Republic (The Vivendi Case), ICSID Case No. ARB/97/3, Decision on Annulement	
	of 3 July 2002, 41 I.L.M. 1135, 1140 (2002)	129
	4. Compañia de Aguas del Aconquija S.A. v. Argentina, ICSID Case	14/
	No. ARB/97/3, Decision on Annulment of 3 July 2002, 41 I.L.M.	
	1135, 1144-45, 1157-58 (2002)	130
	5. Application to Subdivisions	132
F.	Convention on the Settlement of Investment Disputes Between States	
	and Nationals of Other States (Oct. 14, 1966)	204
G.	Comments and Questions	209
VII.	Interpretation of Treaties	209
A.	Vienna Convention on the Law of Treaties, opened for signature 23	
	May 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679	209
B.	Comments and Questions	211
<b>Ч</b> ШП А П		
	PTER 3	213
I.	Introduction	213
II.	Types of Investment Contracts	215
A.	Oil and Gas	215
	1. Concessions	215
	a. Ernest E. Smith, et al., Concessions, Production Sharing, and	
	Participation Agreements for Developing a Country's Resources, in International Petroleum Transactions (2d ed. 2000 Rocky Mountain	
	Mineral Law Foundation)	215
	b. M. Sornarajah, The Settlement of Foreign Investment Disputes	
	(Kluwer Law International 2000)	218
	2. Production Sharing Agreements	219
	a. E.E. Smith, et al., John S. Dzienkowski, Concessions, Production	
	Sharing, and Participation Agreements for Developing a Country's	
	Resources, Chapter 6, in International Petroleum Transactions (2d ed.	010
	2000 Rocky Mountain Mineral Law Foundation)	219

	b. M. Sornarajah, <i>The Settlement of Foreign Investment Disputes</i> (Kluwer Law International 2000)	219
		220
	a. Ernest E. Smith, et al., Concessions, Production Sharing, and Participation Agreements for Developing a Country's Resources,	
	Chapter 6 in International Petroleum Transactions (2d ed. 2000	220
	Rocky Mountain Mineral Law Foundation)	222
	1. INDIX DOI VICE CONTRACTO	<i>L</i> _ <i>L</i> _ <i>L</i>
	a. Daniel Johnston, International Petroleum Fiscal Systems and	222
	Production Sharing Contracts (PennWell 1994)	222
	D. OULIU VOLUME	222
	1. M. Sornarajah, The Settlement of Foreign Investment Disputes	
	(Kluwer Law International 2000)	222
	C. Build, Operate and Transfer Agreements	223
	1. M. Sornarajah, The Settlement of Foreign Investment Disputes	
	(Kluwer Law International 2000)	223
	III. Key Investment Contract Clauses	225
		225
	1. Arbitration and Expert Determination Clauses	225
	•	225
	a. Enforceability of an Arbitration Clause  i. Charles F. Stawart Commentum I.I. in 1 Transport Contracts	223
	i. Charles E. Stewart, Commentary I.1, in 1 Transnational Contracts,	225
		223
	ii. R. Doak Bishop, A Practical Guide For Drafting International	225
		225
	iii. Gary B. Born, International Arbitration and Forum Selection	227
	Agreements (Kluwer Law International 1999)	227
	b. Examples of Arbitration and Expert Determination Clauses	228
	i. ICSID Model Clauses	228
	ii. UNCITRAL Model Arbitration Clause	230
		230
	iv. Angola Model Production Sharing Agreement for Deep Water Block	S
	(February 1992), 156 Basic Oil Laws & Concession Contracts:	
	South & Central Africa 1 (Supplement 141) (2004)	230
	v. Trinidadian & Tobagon Model Production Sharing Contract for	
	Deep Water Areas, IHS Energy, Petroleum Economics and Policy	
	Solutions (PEPS) Database at http://www.ihsenergy.com	231
	vi. UMC Production Sharing Contract Dated 29 June 1992 Between	
	the Republic of Equatorial Guinea & United Meridian International	
	Corp., 135 Basic Oil Laws & Concession Contracts: South &	
	Central Africa 1(1998)	232
and the same of th	vii. AIPN Model Form International Operating Agreement art. 18.2 (D)	
	(2002)	234
	viii. AGIP/BP/ETAL Production Sharing Agreement Dated 18 November	•
	1997 in respect of the North Caspian Sea (Kashagan) Among Agip	
	Caspian Sea B.V., et al., 52 Basic Oil Laws & Concession Contracts:	
	NIS 2 (Supplement 39) (2003)	237

	ix. AIPN Model Form International Operating Agreement art. 18.3 (2002)	238
	c. Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.,	230
	473 U.S. 614, 626, 628-31, 636-39 (1985)	239
	d. National Iranian Oil Company v. Ashland, 817 F.2d 326 (5th Cir.	437
	1987)	241
	e. Comments and Questions	242
	2. Forum Selection Clauses	243
	a. AIPN Model Form International Operating Agreement, art. 18.2 (A),	243
	Alternative 1 (1995)	243
	b. M/S Bremen v. Zapata Off-Shore Company, 407 U.S. 1 (1972)	243
	c. Gary B. Born, International Arbitration and Forum Selection	
	Agreements (Kluwer Law International 1999)	246
	d. R. Doak Bishop & David B. Lee, Enforceability of Forum - Selection	
	Clauses in International Commercial Contracts, Currents: Int'l Trade	
	L.J., Fall 1995 at 20	251
	e. Comments and Questions	254
B.	Choice-of-Law	255
/	1. Examples of Choice-of-Law Clauses	255
	a. Trinidadian & Tobagon Model Production Sharing Contract for Deep	
	Water Areas, IHS Energy, Petroleum Economics and Policy Solutions	
	(PEPS) Database at http://www.ihsenergy.com	255
	b. UMC Production Sharing Contract Dated 29 June 1992 Between the	
	Republic of Equatorial Guinea & United Meridian International	
	Corp., 135 Basic Oil Laws & Concession Contracts: South &	
	Central Africa 1(1998)	255
	c. Oil Concession Agreement Dated 13 October 1980 Between the	
	Government of Abu Dhabi & Amerada Hess Petroleum Abu Dhabi	
	Ltd., 75 Basic Oil Laws & Concession Contracts: Middle East 2	
	(1982)	256
	d. Pennzoil/Lukoil Group Agreement Dated 10 November 1995 on	
	Production Sharing for the Karabakh and Area Adjacent in the	
	Azerbaijan Sector of the Caspian Sea Between the State Oil Co. of the	•
	Azerbaijan Republic (Socar) and Lukoil International, et al., 52	256
	e. Texaco Exploration Pakistan Petroleum Concession Agreement Dated	
	6 November 1990 Between the Islamic Republic of Pakistan, Oil &	
	Gas Development Corp., & Texaco Exploration Pakistan Inc., 116	
	Basic Oil & Concession Contracts: Asia & Australia 1 (1993)	256
	f. AIPN Model Form International Operating Agreement art. 18.1	
	(2002)	256
	2. M. Sornarajah, The Settlement of Foreign Investment Disputes	1
	(Kluwer Law International 2000)	257
	3. Charles E. Stewart, Commentary I.1, in 1 Transnational Contracts	
	(Charles E. Stewart et al. eds., Oceana Publications, Inc. 1997)	259
	4. R. Doak Bishop, A Practical Guide For Drafting International	
	Arbitration Clauses, 1 Int'l Energy L. & Tax'n Rev. 16 (2000)	261
	5. Case Law on Choice-of-Law Clauses	263

		Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID Case No ARB/98/4	4,
		Annulment Decision of 28 January 2002, 41 ILM 933 (2002) see	
		Chapter o	263
		Mobil Oil Iran, Inc. v. Government of the Islamic Republic of Iran,	
		The series of th	264
		AGIP Company v. Popular Republic of the Congo, ICSID Case No.	
		ARB/77/1, Award of 30 November 1979, 1 ICSID Rep. 306 (1993)	
		see Chapter 6	264
	d.	British Petroleum Co. (Libya) Ltd. v. Government of the Libyan Arab	
		Republic, Award of 10 October 1973, 5 Y.B. Comm. Arb. 143 (1980)	
		see Chapter 6	264
	e.	Texaco Overseas Petroleum Company/California Asiatic Oil Company	,
		v. Government of the Libyan Arab Republic, Award on Merits of 19	
		January 1977, 17 I.L.M. 1 (1978) see Chapter 6	265
	f.	Libyan American Oil Company v. Government of the Libyan Arab	
	1.0	Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981) see Chapter 6	265
	g.	Sapphire International Petroleums Ltd. v. National Iranian Oil Co.,	
		Award of 15 March 1963, 35 I.L.R. 136 (1967) see Chapter 6	265
	h.	Case No. 3380 (ICC November 29, 1980) 108 J. du droit Int'l 928	
		(Clunet, No. 4, 1981) see Chapter 6	266
	6.	Comments and Questions	266
C.	Fc	orce Majeure	267
			267
		Angola Model Production Sharing Agreement For Deep Water	
		Blocks (February 1992), 156 Basic Oil Laws & Concession Contracts:	
		South & Central Africa 1 (Supplement 141) (2004)	267
	<b>b</b> .	Trinidadian & Tobagon Model Production Sharing Contract for Deep	
		Water Areas, IHS Energy, Petroleum Economics and Policy Solutions	
		(PEPS) Database at http://www.ihsenergy.com	267
	c.	UMC Production Sharing Contract Dated 29 June 1992 Between the	
		Republic of Equatorial Guinea & United Meridian International	
		Corp., 135 Basic Oil Laws & Concession Contracts: South &	
			268
	d.	Agip/BP/Etal Production Sharing Agreement Dated 18 November	
		1997 in respect of the North Caspian Sea (Kashagan) Among Agip	
		Caspian Sea V.B., et al., 52 Basic Oil Laws & Concession Contracts:	
		Russia & NIS 1(Supplement 39) (2003)	269
	e.	Restated LNG Development & Production Sharing Agreement for	
		the North Field Gas Dated 31 January 1993 Between the Government	
		of the State of Qatar and (as Contractor) Qatar General Petroleum	
		Corporation, et al., 58 World LNG Contracts: Qatar 1 (2003)	271
	f.	Concession Contract of 31 May 2001 Between the Republic of	
		Cameroon & RSM Production Corp., 157 Basic Oil Laws &	
		Concession Contracts: South & Central Africa 1 (2004)	271
	g.		272
		National Oil Corp. v. Libyan Sun Oil, Award of 31 May 1985, 29	
			273

	3. Charles E. Stewart (ed.), Commentary I.1 in Transnational Contracts,	
	(Oceana Publications, Inc. 1997)	279
	4. Karl Heinz Böckstiegel, Arbitration and State Enterprises (Kluwer	
	Law International 1984)	280
	5. Comments and Questions	285
D.	Stabilization	286
	1. General Considerations	286
	a. Thomas W. Waelde & George Ndi, Stabilizing International	
	Investment Commitments: International Law Versus Contract	
	Interpretation, 31 Tex. Int'l L.J. 215 (1996)	286
	b. M. Sornarajah, The Settlement of Foreign Investment Disputes	
	(Kluwer Law International 2000)	289
	2. Examples of Stabilization Clauses	290
	a. Offshore (oil Winning License) Agreement Date 10 January 1978	
	between Government of Ghana & Offshore Hydrocarbons Corporation	1
	(Later Transferred to Agri-Petco), 58 Basic Oil Laws & Concession	
	Contracts: South & Central Africa 22 (1980)	290
	b. Amoco Group Agreement Dated 14 December 1996 on the	
	Exploration, Development & Production Sharing for Prospective	
	Structures Ashrafi, Dan Ulduzu & Area Adjacent in the Azerbaijan	
	Sector of the Caspian Sea, 52 Basic Oil Laws & Concession Contracts	S:
	Russia & NIS 1 (Supplement 24) (2003)	291
	c. Oman Model Exploration & Production Sharing Agreement of 2002,	
	(2003), www.barrowscompany.com, Basic Oil Laws & Concession	
	Contracts: Middle East	291
	d. Concession Contract of 31 May 2001 Between the Republic of	
	Cameroon & RSM Production Corp., 157 Basic Oil Laws &	
	Concession Contracts: South & Central Africa 1 (2004)	292
	e. Charles E. Stewart (ed.), Commentary I.1 in Transnational Contracts	
	(Oceana Publications, Inc. 1997)	293
	3. Types of Stabilization Provisions	295
	a. Christopher T. Curtis, The Legal Security Of Economic Development	
	Agreements, 29 Harv. Int'l L.J. 317 (1988)	295
	b. Thomas W. Waelde & George Ndi, Stabilizing International	
	Investment Commitments: International Law Versus Contract	
	Interpretation, 31 Tex. Int'l L.J. 215 (1996)	295
	c. Bertrand Montembault-Heveline & Rebecca Major, Stabilisation, in	
	2 AIPN Host Government Contract Handbook (AIPN July 2002)	298
	d. Amoco International Finance Corp. v. Government of the Islamic	
	Republic of Iran, Award No. 310-56-3 of 14 July 1987, 15 Iran–U.S.	000
	Cl. Trib. Rep. 189	299
	e. Libyan American Oil Company v. Government of the Libyan Arab	201
	Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	301
	4. Comments and Questions	302
E.	Adaptation and Renegotiation	303
	1. Examples of Adaptation and Renegotiation Clauses	303

	a. Restated LNG Development & Production Sharing Agreement for the North Field Gas Dated 31 January 1993 Between the Government of the State of Qatar and (as Contractor) Qatar General Petroleum	
	Corporation, et al., 58 World LNG Contracts: Qatar 1 (2003)	303
	b. Agip/BP/Etal Production Sharing Agreement Dated 18 November	303
	1997 in respect of the North Caspian Sea (Kashagan) Among Agip	
	Caspian Sea B.V., et al., 52 Basic Oil Laws & Concession Contracts:	202
	Russia & NIS 1 (Supplement 39) (2003)	303
	2. Thomas W. Waelde & George Ndi, Stabilizing International	
	Investment Commitments: International Law Versus Contract	20.4
	Interpretation, 31 Tex. Int'l L.J. 215 (1996)	304
	3. Bertrand Montembault-Heveline & Rebecca Major, Stabilisation,	20.4
	in 2 AIPN Host Government Contract Handbook (AIPN July 2002)	304
	4. M. Sornarajeh, The Settlement of Foreign Investment Disputes	200
	(Kluwer Law International 2000)	306
	5. Comments and Questions	307
F.	Waiver of Sovereign Immunity Clauses	308
	1. Examples of Sovereign Immunity Waiver Clauses	308
	a. Agip/BP/Etal Production Sharing Agreement Dated 18 November	
	1997 in respect of the North Caspian Sea (Kashagan) Among Agip	
	Caspian Sea B.V., et al., 52 Basic Oil Laws & Concession Contracts:	
	Russia & NIS 1 (Supplement 39) (2003)	308
	b. 1997 Model Production Sharing Agreement between Sociedade	
	Nacional de Combustiveis de Angola – Unidade Economica Estatal	
	(Sonangol, U.E.E.) and Contractor, 137 Basic Oil Laws & Concession	1
	Contracts: South & Central 1 (1999)	308
	c. Oman Model Exploration & Production Sharing Agreement of 2002,	
	(2003), www.barrowscompany.com, Basic Oil Laws & Concession	
	Contracts: Middle East	309
	d. Production Sharing Contract for the Petroleum Exploration,	
	Development and Production of Suriname, Block []	
	between Staatsolie Maatschappij Suriname N.V. and Contractor,	
	153 Basic Oil Laws & Concession Contracts: South America 18	
	(2003)	309
	e. Concession Contract of 31 May 2001 Between the Republic of	
	Cameroon & RSM Production Corp., 157 Basic Oil Laws &	
	Concession Contracts: South & Central Africa 1 (2004)	309
	f. AIPN Model Form International Operating Agreement art. 18.4	
	(2002)	310
	2. Charles E. Stewart (ed.), Comentary I.1 in Transnational Contracts	
	(Oceana Publications Inc. 1997)	310
	3. Comments and Questions	311
G.	Other Clauses	311
	1. Charles E. Stewart (ed.), Comentary I.1 in Transnational Contracts	
	(Oceana Publications Inc. 1997)	311
V	Implied Clauses from Civil Law Codes	314
	Good Faith	314
LLO		JIT

1. UNIDROIT Principles of International Commercial Contracts,	
art. 1.7 (2004)	314
2. El Salvadoran Civil Code, art. 1417	315
B. Doctrine of Imprevision or Changed Circumstances	315
1. Italian Civil Code, art. 1467	315
2. Argentina Code of Civil Procedure, art. 1198	315
3. El Salvadoran Commerical Code, art. 994	315
4. UNIDROIT Principles of International Commercial Contracts,	
art. 6.2 (2004)	316
C. Comments and Questions	316
CHAPTER 4	
FORUMS FOR RESOLVING FOREIGN INVESTMENT DISPUTES	317
I. Introduction	317
II. Permanent Mixed Arbitration Tribunals	317
A. ICSID	318
1. Advantages	318
a. W. Michael Reisman, Systems of Control in International	
Adjudication and Arbitration: Breakdown and Repair 46-47 (1992)	318
2. Jurisdiction	319
a. ICSID Convention Article 25(1)	319
3. Legal Dispute	319
a. Christoph H. Schreuer, <i>The ICSID Convention: A Commentary</i> 103-06 (2001)	319
b. Kaiser Bauxite Co. v. Jamaica, ICSID Case No. 74/3, Decision on	
Jurisdiction of 6 July 1975, 1 ICSID Repts. 296, 303 (1999)	321
c. Comments and Questions	322
d. CSOB v. Slovakia, ICSID Case No. ARB/97/4, Decision on	
Jurisdiction, 24 May 1999, 14 ICSID Rev Foreign Inv. L.J. 251,	
~ 272 (1999)	323
4. "Arising directly out of an investment"	324
a. Treatises	324
i. Christoph H. Schreuer, The ICSID Convention: A Commentary	
121-25 (2001)	324
ii. C.F. Amerasinghe, The Jurisdiction of the International Centre	
for the Settlement of Investment Disputes, 19 Indian J. Int'l L.	
166, 177-81 (1979)	327
iii. Paul C. Szasz, A Practical Guide to the Convention on Settlement	
of Investment Disputes, 1 Cornell Int'l L.J. 1, 14-15 (1968)	330
iv. Comments and Questions	331
b. Definitions in U.S. Model BIT, ECT, NAFTA	331
c. Definitions in Local Foreign Investment Law	331
i. Tradex Hellas S.A. v. Albania, Case No. ARB/94/2, Decision on	
Jurisdiction of 24 December 1996, 14 ICSID Rev. – Foreign Inv.	221
L.J. 197, 216-18 (1999)	331
d. Definitions in Parties' Contract	333

i.	Christoph H. Schreuer, The ICSID Convention: A Commentary	
		333
e. C		335
i.	Olguin v. Paraguay, ICSID Case No. ARB/98/5, Decision on	
	Jurisdiction of 8 August 2000, available at http://www.worldbank.	
		335
	Fedax N.V. v. Venezuela, ICSID Case No. ARB96/3, Decision on	
		335
	Tradex v. Albania Hellas S.A., Case No. ARB/94/2, Decision on	
	Jurisdiction of 24 December 1996, 14 ICSID Rev. – Foreign Inv.	
		337
	American Mfg. & Trading, Inc. v. Zaire, ICSID Case No. ARB/93/1,	
	Award of 21 February 1997, 36 I.L.M. 1531, 1538-39, 1543-44,	
		338
	CSOB v. Slovakia, ICSID Case No. ARB/97/4, Award of 24 May	
	1999, Decision on Jurisdiction, 24 May 1999, 14 ICSID Rev. –	
		340
	Amco Asia Corp. v. Indonesia, ICSID Case No. ARB/81/1, Decision	5 10
	on Jurisdiction of 25 September 1983, 1 ICSID Reports 377, 405,	
	565 (1993) (tax claim excluded)	341
		344
	Christoph H. Schreuer, The ICSID Convention: A Commentary	<i>3</i>
		344
		346
		346
		346
		346
	Cable Television of Nevis Ltd. v. Federation of St. Kitts and Nevis,	570
	Award of 13 January 1997, ICSID Case No. ARB/95/2, Award of	
	13 January 1997, 13 ICSID Review – Foreign Inv. L. J. 328, 334-52	
	(1998) (government agency not designated to ICSID)	346
	Compañia de Aguas del Aconquija S.A. v. Argentine Republic (The	J40
	Vivendi Case), ICSID Case No. ARB/97/3, Decision on Annulment	
		352
	or e corr,,,,,	352 352
/	actioned of anti-order of the party of the p	332
	Amco Asia Corp. v. Indonesia, ICSID Case No. ARB/81/1,	
	Decision on Jurisdiction of 25 September 1983, 1 ICSID Reports	250
	389, 395-97	352
	American Mfg. & Trading, Inc. v. Zaire, ICSID Case No. ARB93/1,	
	Award of 21 February 1997, 36 I.L.M. 1531 (ICSID 1999) (case	255
	0 1	355
	Société Ouest Africaine des Bétons Industriels [SOABI] v. Senegal,	
	ICSID Case No. ARB82/1, Decision on Jurisdiction of 1 August	255
	1984, 2 ICSID Rep. 175, 179-83	333
	Vacuum Salt Prod., Ltd. v. Ghana, ICSID Case No. ARB/92/1,	
	Award of 16 February 1994, 4 ICSID Reports 329, 331-40, 344-51	
	(1997) (lack of jurisdiction because of lack of foreign control,	0.00
	in fact, over locally-incorporated company)	360

,	v. Christoph H. Schreuer, The ICSID Convention: A Commentary	
	310-11 (2001) (quoting and summarizing LETCO v. Liberia case)	
	(causation for treating local company as foreign implied)	366
V	i. Comments and Questions	366
6.	Consent	367
a.	Société Ouest Africaine des Bétons Industriels [SOABI] v. Senegal,	
	ICSID Case No. ARB82/1, Decision on Jurisdiction of 1 August	
	1984, 2 ICSID Reports 165, 166, 179, 204-05, 219-20, 272	367
h.	American Mfg. & Trading, Inc. v. Zaire, ICSID Case No. ARB/93/1,	
	Award of 21 February 1997, 36 I.L.M. 1531, 1544-46, 1548 (1997)	
	(ICSID consent based on BIT)	370
	CSOB v. Slovakia, ICSID Case No. ARB94/7, Decision on Jurisdiction	0,0
	of 24 May 1999, 14 ICSID Rev. – Foreign Inv. L.J. 251, 263-72	
	(1999)	371
4	Southern Pacific Prop., Ltd. v. Egypt, ICSID Case No. ARB84/3,	3/1
	Decision on Jurisdiction of 27 November 1985, 3 ICSID Reports 112,	
	137-45, 149-162 (1995), (ICSID consent based on foreign investment	and the same
	law)	377
	Comments and Questions	384
	Provisional measures	385
	ICSID Convention Article 47	385
	ICSID Arbitration Rules, Rule 39	385
c.	Charles N. Brower & Ronald E.M. Goodman, Provisional Measures	
	and the Protection of ICSID Jurisdictional Exclusivity Against	
	Municipal Proceedings, 6 ICSID Rev Foreign Inv. L.J. 431, 440-46	,
	460-61 (1991)	386
d.	Christoph H. Schreuer, The ICSID Convention: A Commentary	
	745-46 (2001)	391
e.	Comments and Questions	391
8.	Applicable Law	392
a.	ICSID Convention Article 42(1)	392
	Comments and Questions	392
9.	Annulment Proceedings	392
	Annulment Panel is Not an Appellate Court	392
	i. W. Michael Reisman, Systems of Control in International	
	Adjudication and Arbitration: Breakdown and Repair 48-50 (1992)	392
i	i. Mark B. Feldman, The Annulment Proceedings and the Finality	
•	of ICSID Arbitral Awards, 2 ICSID Rev. – Foreign Inv. L.J. 85,	
	103-09 (1987)	393
h	Cases	397
	i. Klöckner Industrie – Anlagen GmbH v. Republic of Cameroon,	
	ICSID Case No. ARB81/2, Award of 21 October 1983, 2 ICSID	
	Reports 3, 140-41 (1994)	397
;	i. Amco Asia v. Indonesia, ICSID Case No. ARB81/1, Decision on	571
1	Jurisdiction of 25 September 1983, 1 ICSID Reports 389, 524-40	
	(1993)	399
		177

	iii. Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID Case No.	
	ARB98/4, Decision on Application for Annulment of 8 December	
	2000, 41 I.L.M. 933, 938 (2002)	408
	c. W. Michael Reisman, Systems of Control in International Adjudication	n
	and Arbitration: Breakdown and Repair 57-61, 69-71 (1992)	409
	d. Comments and Questions	414
B.	ICSID Additional Facility: ICSID, Additional Facility Rules, 5	
	(2003)	414
	1. Review Permitted in Local Court	415
	a. United Mexican States v. Metalclad Corp., Case No. ARB(AF)/97/1,	
	Reasons for Judgment of 2 May 2001, (2001) B.C.T.C. 664, available	2
	at http://www.economia-snci.gov/sphp_pages/importa/sol_contro/	
	consultoria/Casos_Mexico/Metalclad/BC-SCJ/Sentencia-BC.pdf	415
	2. Enforcement under New York or Panama Conventions	417
	a. Convention on the Recognition and Enforcement of Foreign Arbitral	
	Awards, signed 10 June 1958, entered into force 29 December 1970,	
	330 UNTS 3	417
	b. The Inter-American Convention on International Commercial	
	Arbitration, 30 January 1975, O.A.S.T.S. No. 42, O.A.S. Doc.	110
~	OEA/Ser.A/20 (SEPF), reprinted in 14 I.L.M. 336 (1975)	418
C.	Permanent Court of Arbitration	419
	1. Manley O. Hudson, The Permanent Court of International Justice	110
-	1920-1942: A Treatise 4-6 (1943)	419
D.	Iran-U.S. Claims Tribunal (Algiers Accords)	421
	1. Conception	421
	a. Charles N. Brower & Jason D. Brueschke, The Iran-United States	101
	Claims Tribunal 3-16 (1998)  2. Procedures – UNCITRAL Arbitration Rules	421 427
	a. Charles N. Brower & Jason D. Brueschke, <i>The Iran-United States</i>	421
	Claims Tribunal 16-20 (1998)	427
	3. Applicable Law – Claims Settlement Declaration, available at	721
	http://www.iusct.org/claims-settlement.pdf	428
	4. Decisions – Iran-U.S. Claims Tribunal Reporter	428
TTT		428
	Other Arbitral Regimes	
A.	ICC Arbitration Rules  1. D. Deels Bishen, Seeha D. Dimitroff, & Croix S. Miles, Strategie	428
	1. R. Doak Bishop, Sashe D. Dimitroff, & Craig S. Miles, Strategic Options Available When Catastrophe Strikes the Major International	
	Energy Project, 36 Tex. Int'l L. J. 635, 658 (2001)	430
	2. Nat'l Oil Corp. v. Libyan Sun Oil Co., ICC Case No. 4462/AS,	730
	Decision on Force Majeure of 31 May 1985, 29 I.L.M. 565 (1990)	430
	3. Deutsche Schachtbau- und Tiefbohrgesellschaft mbH (FR Germ.) v.	150
	State of R'as Al Khaimah (UAE), ICC Case No. 3572 of 1982,	
	1989 Y.B. Com. Arb. (Int'l Council for Com. Arb.) 111	431
B	London Court of International Arbitration	431
	Stockholm Chamber of Commerce	433
	American Arbitration Association	434
100		

E.	UNCITRAL Arbitration Rules (option provided in BIT's, ECT &	
	NAFTA)	435
IV.	Ad hoc (non-UNCITRAL Arbitration Rules)	435
A.	Lena Goldfields, Ltd. v. U.S.S.R., Award of 3 September 1930,	
	reprinted in Arthur Nussbaum, The Arbitration Between the Lena	
	Goldfields, Ltd. and the Soviet Government, 36 Cornell L.Q. 43	
	(1950-51)	435
B.	Petroleum Development, Ltd. v. Sheik of Abu Dhabi, 18 I.L.R. 144,	
	144-46 (1951)	436
C.	Saudi Arabia v. Arabian Am. Oil Co. (ARAMCO), 27 I.L.R. 117, 130	
	(1958)	437
D.	Sapphire Int'l Petroleum v. Nat'l Iranian Oil Co., 35 I.L.R. 136	7 12 121
	(1963)	438
E.	Kuwait v. American Independent Oil Co. (AMINOIL), Award of	
	24 March 1982, 21 I.L.M. 976, 998 (1982)	440
F.	Wintershall A.G. v. Qatar, Partial Award of 5 February 1988 and	
~	Final Award of 31 May 1988, 28 I.L.M. 795 (1989)	442
G.	Comments and Questions	442
V.	International Tribunals	443
A.	Permanent Court of International Justice	443
	1. Oscar Chinn Case, 1934 P.C.I.J. (Ser. A/B) No. 63 (12 Dec.)	443
	2. Chorzów Factory Case, (Ger. v. Pol.), 1928 P.C.I.J. (Ser. A) No. 17 (26 Jul.)	443
	3. Mavrommattis Palestine Concessions Case, 1925 P.C.I.J. (Ser. A)	443
	No. 5 (26 March)	444
В.	International Court of Justice (ICJ)	452
	1. Espousal of Corporate Claims by Governments	452
	a. Anglo-Iranian Oil Co. Case, 1952 I.C.J. 103, 103-14 (July 22)	
	(jurisdiction denied)	452
	b. Barcelona Traction, Light & Power Co. Ltd. (Belg. v. Spain), 1970	461
	I.C.J. 3, 42, 42-50 (Feb. 5) c. <i>Elettronica Sicula S.A.</i> ( <i>ELSI</i> ) ( <i>U.S.</i> v. <i>Italy</i> ), Case of 20 July 1989,	401
	1989 I.C.J. 15, available at http://www.icj-cij.org/icjwww/icases/	
	ielsi/ielsi.ijudgments/icsli.ijudgment19890720.pdf (last visited	
	26 May 2005) (U.S. espoused claim of U.S. corporation	469
	i. F.A. Mann, Foreign Investment in the International Court of	
	Justice: The ELSI Case, 86 Am. J. Int'l L. 92, 99-101 (1992)	470
	ii. Sean D. Murphy, The ELSI Case: An Investment Dispute at the	
	International Court of Justice, 16 Yale J. Int'l L. 391, 444-48 (1991)	471
	European Court of Human Rights	473
·.	1. European Convention for the Protection of Human Rights and	TIJ
	Fundamental Freedoms, available at http://www.echr.coe.int/	
	Convention/webConvenENG.pdf	478
	2. First Protocol to the European Convention	478

	3. Expropriation Cases	478
	a. Wasa Liv Omsesidigt v. Sweden, 58 Eur. Ct. H.R. 163 (1988)	478
	b. Agrotexim v. Greece, 21 Eur. Ct. H.R. 250 (1995)	479
D.	Inter-American Commission and Court on Human Rights	480
	1. Introduction	480
	a. W. Michael Reisman, Practical Matters for Consideration in the Establishment of a Regional Human Rights Mechanism: Lessons from the Inter-American Experience, 1995 St. Louis Warsaw Trans'l 89, 90-92 (1995)	480
	2. American Convention on Human Rights, available at http://iachr.org/	
	Basicos/basic3.htm	481
	3. Expropriation claims are limited to claims of individuals; corporate claims are prohibited	482
	a. Mevopal, S.A. v. Argentina, Report No. 39/99, Inter-Am. C.H.R.	100
	OEA/Ser.L./V./II.95 doc. 7 rev. 297 (1998)	482
	b. Comments and Questions	485
L.	European Court of Justice  1. L. Neville Brown & Tom Kennedy, <i>The Court of Justice of the</i>	485
	E. Nevine Brown & Tom Remiedy, The Court of Justice of the European Communities 19-21 (2000)  2. Francovich v. Italy, Case C-6 & 9/90, 1993 E.C.R. I-5357 (1993)	485
	(government liable for damages)	486
VI.	National Claims Settlement Commissions and Tribunals	487
A.	U.S. Foreign Claims Settlement Commission	487
	1. Richard B. Lillich, International Claims: Their Adjudication by National Commissions 5-15 (1962)	487
В.	National Courts	490
C.	Comments and Questions	490
CHAI	PTER 5	
POLI	TICAL RISK INSURANCE	491
I.	Introduction	491
	Multilateral Investment Guarantee Agency (MIGA)	492
	Convention Establishing the Multilateral Investment Guarantee	
1 1.	Agency, published in I International Investment Instruments: A	
	Compendium 213 (UNCTAD 1996)	492
B.	Commentary on the Convention Establishing the Multilateral	. , _
	Investment Guarantee Agency, 1 ICSID Rev. – FILJ 193 (1986)	496
C.	Ibrahim F.I. Shihata, MIGA and the Standards Applicable to Foreign	
	Investments, 1 ICSID Rev. – FILJ 327, 332 n. 26 (1986)	501
D.	Multilateral Investment Guarantee Agency (Standard) Contract of	
	Guarantee, 4 ICSID Rev. – FILJ 107 (Spring 1989)	502
E.	MIGA General Conditions of Guarantee for Equity Investments	
	(January 25, 1989), 4 ICSID Rev FILJ 112 (Spring 1989)	504
F.	Comments and Questions	509

III.	National Programs – U.S. Overseas Private Investment	
	Corporation (OPIC)	<b>510</b>
A.	OPIC Program Handbook (2001)	510
В.	OPIC Enabling Statute – 22 U.S.C. § 2191	514
C.	OPIC Contract of Insurance Against Inconvertibility, Expropriation,	
	Political Violence (Form 234 KGT 12-85, Second Revised)	517
D.	OPIC Contract of Insurance Against Business Income Loss (Form	1
	234 KGT 5-87)	522
E.	OPIC Contract of Institutional Lenders Insurance	523
F.	OPIC Policy of Bid Guaranty Insurance	525
G.	Merlin Liu, Mitigating the Political Risk of Infrastructure Projects	
	with OPIC Political Risk Insurance, 822 PLI/Comm. 441 (2001)	526
H.	OPIC Claims Procedures	530
	1. Expropriation	530
	2. Inconvertibility	531
	3. Political Violence	533
I.	OPIC Agreements with Foreign Governments	534
	1. Model OPIC Investment Incentive Agreement, 1 B.D.I.E.L. 669	<b>524</b>
	(1994)  2. Debert C. O'Sulliven, Medel ODIC Investment Incentive Agreement	534
	2. Robert C. O'Sullivan, Model OPIC Investment Incentive Agreement, 1 B.D.I.E.L. 665 (1994)	536
	3. OPIC Agreement with the Republic of Palau (15 March 2002)	538
J.	Comments and Questions	539
IV.	OPIC Claims	540
	Expropriation Claims	540
	1. Governmental Nexus	540
	a. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of	
	Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	~ 10
	Int'l Bus. 359 (1993)	540
	<ul><li>b. Otis Elevator Co.</li><li>c. Indian Head Mills, Inc.</li></ul>	540 545
	2. Causation	546
	a. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of	510
	Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	
	Int'l Bus. 359 (1993)	546
	3. Creeping Expropriation	546
	a. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of	
	Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	-10
	Int'l Bus. 359 (1993)	546
	b. Fearn International, Inc.  Northern Indiana Prace Co	547 550
	<ul><li>c. Northern Indiana Brass Co.</li><li>d. Webster Publishing Co.</li></ul>	552
	e. International Bank v. OPIC, 11 I.L.M. 1216 (1972)	552 552
	f. Revere Copper & Brass, Inc. v. OPIC, AAA Award of August 24,	
	1978, 17 I.L.M. 1321 (1978)	555

* ,	g. Reynolds-Guyana Mines, Ltd.	562
	h. MidAmerican Energy Holdings Company (formerly CalEnergy	
	Company, Inc.)	563
	4. Defenses	571
	a. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	
	Int'l Bus. 359 (1993)	571
	b. Otis Elevator Co.	571
	c. W.E. Belcher Lumber Co., Inc.	572
	d. Central Soya Company, Inc.	573
	e. The Anaconda Company & Chile Copper Company v. Overseas	313
	Private Investment Corporation, AAA Award of 17 July 1975, 14	
	I.L.M. 1210 (1975)	574
	f. International Telephone & Telegraph Corp. Sud America v. OPIC,	377
	13 I.L.M. 1307 (1974)	580
	5. Comments and Questions	587
P	Currency Inconvertibility Claims	588
D.	1. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of	500
	Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	
	Int'l Bus. 359 (1993)	588
	2. Reasonable Steps to Convert Local Currency	589
	a. Philippine Geothermal, Inc.	589
	3. Lack of Pre-existing Law or Regulation	592
	a. Active Inconvertibility	592
	i. Kimberly Clark Corp.	592
	b. Passive Inconvertibility	595
	i. Phelps Dodge Corp.	595
	4. Comments and Questions	597
C	Political Violence Claims	597
·.	1. Pablo M. Zylberglait, OPIC's Investment Insurance: The Platypus of	
	Governmental Programs and its Jurisprudence, 25 Law & Pol'y in	
	Int'l Bus. 359 (1993)	597
	2. Direct Causation	599
	a. Nord Resources Corporation	599
	b. Philippine Geothermal, Inc.	603
	c. Haitian Tropical Management, S.A	605
	d. F.C. Schaffer & Associates	605
	e. Isaac Schwartz, Murray Jacobowitz, Good Fortune Gold, Inc., and	
	Eldeen Import and Export, Inc.	607
	f. Agronom International, Inc.	608
	3. Political Motivation	609
	a. Freeport Minerals Corp.	609
	b. Beckman Instruments, Inc.	612
	4. Notice	614
	a. Kimberly Clark Corp.	614
	5. Comments and Questions	615
V.	Private Political Risk Insurance	616

A.	Elizabeth A. Kessler, Political Risk Insurance and the Overseas Private Investment Corporation: What Happened to the Private	
	Sector, 13 N.Y.L Sch. J. Int'l & Comp. L. 203 (1992)	616
B.	Paul E. Comeaux & Stephen Kinsella, Reducing Political Risk in	
	Developing Countries: Bilateral Investment Treaties, Stabilization	
	Clauses, and MIGA & OPIC Investment Insurance, 15 N.Y.L. Sch.	
	J. Int'l & Comp. L. 1 (1994)	621
C.	Comments and Questions	622
CHAI	PTER 6	
APPL	ICABLE SUBSTANTIVE LAW	623
I.	Introduction	623
A.	J.G. Collier, Conflict of Laws, Chapter 11, Arbitration (3d. ed.,	
	Cambridge 2001)	623
В.	Comments and Questions	624
C.	Convention on the Recognition and Enforcement of Foreign Arbitral	
	Awards, signed 10 June 1958), entered into force 29 December	
	1970, 330 U.N.T.S. 3 (1959)	625
D.	Comments and Questions	626
II.	The Choice of Law Process in International Commercial	
	Arbitration	626
A.	Rules of Arbitration of the International Chamber of Commerce (as	
	in force from 1 January 1998)	626
В.	Convention on the Settlement of Investment Disputes Between	
	States and Nationals of Other States (1965)	627
C.	UNCITRAL Model Law on International Commercial Arbitration	
	(1985) (as adopted by the United Nations Commission on Internation	al
	Trade Law on 21 June 1985)	627
D.	UNCITRAL Arbitration Rules (1976) (Adopted by the General	
	Assembly on December 15, 1976)	627
E.	EC Convention on the Law Applicable to Contractual Obligations	
	(Rome 1980)	628
F.	Comments and Questions	629
III.	Options for the Applicable Law	630
A.	National Law	630
	1. F.V. García Amador, State Responsibility: Fourth Report by the	
	Special Rapporteur in International Responsibility, [1959] 2 Y.B.	(00
	Int'l L. Comm'n, U.N. Doc. A/CN.4/119	630
D	2. Comments and Questions  Notional Law with International Guarantees	632
В.	National Law with International Guarantees 1. AGIP Spa v. The Government of the Popular Republic of the Congo,	632
	ICSID Case No. ARB/77/1, Award of 30 November 1979, 1 ICSID	
	Rep. 306, 67 I.L.R. 318 (1979)	632

	2.	Benvenuti and Bonfant Srl v. The Government of the People's Republic	of
		the Congo, ICSID Case No. ARB/77/2, Award of 15 August 1980, 1 ICSID Rep. 330	634
		Southern Pacific Properties (Middle East) Limited v. Arab Republic	
		of Egypt, ICSID Case No. ARB/84/3, Award of 20 May 1992, 3 ICSID	CO 1
		Rep. 189, 249 (Dissenting Opinion of Dr El Mahdi)  Klöckner Industrie-Anlagen GmbH v. Republic of Cameroon, ICSID	634
		Case No. ARB/81/2, Decision on Annulment of 3 May 1985, 2 ICSID	
			641
	5.	Amco Asia v. Indonesia, ICSID Case No. ARB/81/1, Decision on the	
		Application for Annulment of 16 May 1986, 1 ICSID Reports 509	
	_	(1993)	642
		W. Michael Reisman, The Regime for Lacunae in the ICSID Choice	
		of Law Provision and the Question of Its Threshold, 15 ICSID Rev. – Foreign Inv. L.J. 362 (2000)	645
		Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa	015
		Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 15	
		ICSID Rev. – Foreign Inv. L.J. 167 (2000)	650
	8.	Wena Hotels Limited v. Arab Republic of Egypt, ICSID Case No.	
		ARB/98/4, Decision on Annulment of 5 February 2002, 41 I.L.M.	650
		933 (2002) Prosper Weil, The State, the Foreign Investor, and International Law:	652
	٦.	The No Longer Stormy Relationship of a Ménage À Trois, 15 ICSID	
			655
1	0.		661
	In	ternationalization	662
	1.	Petroleum Development Ltd. v. Sheikh of Abu Dhabi, 18 I.L.R. 144	
	0		662
		Comments and Questions F.V. García Amador, <i>State Responsibility: Fourth Report by the</i>	663
	J.	Special Rapporteur in International Responsibility, [1959] 2 Y.B. Int'l	L.
			664
		$rac{1}{2}$	666
			670
	6.	Texaco Overseas Petroleum Company & Californian Asiatic Oil Company W. The Conservation of the Library Analy Benyalic Assort	
		Company v. The Government of the Libyan Arab Republic, Award on the Merits, 53 I.L.R. 420 (1977)	670
			674
		International Chamber of Commerce, Case No. 3380, Award of 29	
		November 1980 (also reported in 108 Journal du droit int'l 928	
	_	(	674
		COLLEGE COLLEGE COLLEGE	675
1	U.	Government of Kuwait v. American Independent Oil Co. (AMINOIL), 66 I.L.R. 518 (1982)	675
1	1.		678
		Mobil Oil Iran Inc., et al v. Government of the Islamic Republic of	
		Iran and National Iranian Co., Case No. 74, Award No. 311-74/	
		76/81/150-3, 14 July 1987, 16 Iran-US Cl. Trib. Rep. 3 (1987)	678

9	13.	Comments and Questions	681
	14.	United States v. Iran (Case No. B36), Case No. B 36, Award of 23	
		March 1997, 32 Iran-U.S. Cl. Trib. Rep. 162 (1996)	681
	15.	Georges R. Delaume, The Proper Law of State Contracts Revisited,	
		12(1) ICSID Rev. – Foreign Inv. L.J. 1 (1997)	682
5	16.	Wintershall A.G., et al. v. Government of Qatar, Partial Award on	
		Liability of 5 February 1988, 28 ILM 795 (1989)	689
	17.	Comments and Questions	689
D.	Di	irect Investor Claims Under Treaties	689
	1.	Jan Paulsson, Arbitration Without Privity, 10(2) ICSID Rev. –	
		Foreign Inv. L.J. 232 (1995)	690
	2.	Comments and Questions	694
	3.	Antonio R. Parra, Applicable Substantive Law in ICSID Arbitrations	
		Initiated Under Investment Treaties, 16(1) ICSID Rev. – Foreign	
		Inv. L.J. 20 (2001)	694
		Comments and Questions	697
	5.	Asian Agricultural Products Ltd. v. Republic of Sri Lanka, Case No.	
		ARB/87/3, Award of 27 June 1990, 4 ICSID Rep. 245 (1997)	697
		Comments and Questions	699
	7.	Compañia de Aguas del Aconquija S.A. & Vivendi Universal v.	
		Argentine Republic, Case No. ARB/97/3, Decision on Annulment	
	0	of 3 July 2002, 17 ICSID Rev. – Foreign Inv. L.J. (2004)	699
.0.	8.	Comments and Questions	703
IV.	A	pplicable International Law	704
A.	Th	ne Sources of International Law	704
	1.	Article 38 of the Statute of the International Court of Justice (1945)	704
	2.	Comments and Questions	704
B.	St	andards Under Bilateral and Multilateral Investment Treaties	705
	1.	North American Free Trade Agreement, Chapter 11, Investment	
		(1994)	705
	2.	Treaty Concerning the Treatment and Protection of Investment, 15	
		December 1987, Brunei – Indon. – Malay. – Phil. – Sing. – Thail.,	
		available at http://aseansec.org/6464.htm (last visited 26 May 2005)	708
	3.	Treaty Concerning the Treatment and Protection of Investments,	
		3 July 1991, FR. – AR., 1728 U.N.T.S. 298	712
C.	Ot	ther Sources of International Law	717
	1.	Texaco Overseas Petroleum Company & Californian Asiatic Oil	
		Co. v. Government of the Libyan Arab Republic, Award on the Merits	
		of 19 January 1977, 53 I.L.R. 420 (1977)	718
	2.	Comments and Questions	722
	3.	Libyan American Oil Company (LIAMCO) v. Government of the	
		Libyan Arab Republic, Award of 12 April 1977, 62 I.L.R. 140 (1977)	722
	1	SEDCO Inc v. National Iranian Oil Co. & Islamic Republic of Iran,	
	т.		
	т.	Case No. 129, Award No. ITL 59-129-3 of 27 March 1986, 84 I.L.R.	
	Τ.	Case No. 129, Award No. ITL 59-129-3 of 27 March 1986, 84 I.L.R. 521 (1986)	724

D.	Projected Codification and Progressive Development of International	
	Law	727
	1. UN International Law Commission Articles on State Responsibility	727
	<ul><li>(2001)</li><li>2. Comments and Questions</li></ul>	72.7
	3. Louis B. Sohn and R. R. Baxter, Responsibility of States for Injuries	121
	to the Economic Interests of Aliens, 55 Am. J. Int'l L. 545 (1961)	728
	4. Draft Convention on the International Responsibility of States for	
	Injuries to Aliens	728
	5. Restatement (Third) of Foreign Relations Law of the United States	729
	6. Multilateral Agreement on Investment (MAI), Draft Consolidated	700
	Text of 22 April 1998, OECD Doc. No. DAFFE/MAI(98)7/REV1	730 733
	7. Comments and Questions	,
	Sources of "Non-National" Law: The Lex Mercatoria	733
A.	M. Mustill, The New Lex Mercatoria: The First Twenty-five Years,	
	in M. Bos & I. Brownlie, Liber Amicorum for the Rt. Hon. Lord	
	Wilberforce 149 (Oxford, Clarendon Press, 1987)	734
В.	Georges R. Delaume, Comparative Analysis as a Basis of Law in	
	State Contracts: The Myth of the Lex Mercatoria, 63 Tul. L. Rev.	
	575-611 (1989)	737
C.	Keith Highet, The Enigma of the Lex Mercatoria, 63 Tul. L. Rev.	
	613-628 (1989)	741
D.	Emmanuel Gaillard, Thirty Years of Lex Mercatoria: Towards the	
	Selective Application of Transnational Rules, 10(2) ICSID Rev. –	
	Foreign Inv. L.J. 208 (1995)	744
	Comments and Questions	748
F.	L. Yves Fortier, New Trends in Governing Law: The New, New Lex	
	Mercatoria, or, Back to the Future, 16(1) ICSID Rev. – Foreign Inv.	
	L.J. 10 (2001)	748
G.	ICC Case No. 7110, First Partial Award of June 1995, 10(2) ICC	
	Bulletin 39 (1999)	750
H.	Watkins-Johnson Company and Watkins-Johnson Limited v. Islamic	
	Republic of Iran and Bank Saderat Iran, Case No. 370, Award of	
	28 July 1989, 22 Iran-US Cl. Trib. Rep. 218 (1989)	751
I.	ICC Case No. 5713, Final Award of 1989, 15 Y.B. Comm'l Arb.	
	206 (1990)	753
	Comments and Questions	754
K.	James Crawford & Anthony Sinclair, The Unidroit Principles of	
	International Commercial Contracts and their Application to State	
- Marie	Contracts, I.C.C. Bulletin – Supplement 57-75 (2002)	754
L.	Comments and Questions	757

CHAPTER 7	
INTERNATIONAL RESPONSIBILITY: GENERAL PRINCIPLES	<b>759</b>
I. Development of the Law of State Responsibility	759
A. The Concept of Diplomatic Protection	759
1. Case of the Mavrommatis Palestine Concessions (Greece v. United	
Kingdom), Decision on Jurisdiction of 30 August 1924, P.C.I.J.,	
Series A, No. 2 (1924)	759
2. Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania),	
Judgment of 28 February 1939, P.C.I.J., Series A/B, No. 76 (1939)	760
3. Nottebohm Case (Liechtenstein v. Guatemala), Second Phase,	
Judgment of 6 April 1955, 1955 I.C.J. p. 4.	761
4. Comments and Questions	765
5. Barcelona Traction, Light and Power Company, Limited, (Belgium v.	
Spain) Judgment of 5 February 1970, 1970 I.C.J. 3	165
6. Case Concerning Elettronica Sicula SpA (ELSI) (United States of	772
America v. Italy), Judgment of 20 July 1989, 1989 I.C.J. p. 15	773
7. LaGrand Case (Germany v. United States of America), Judgment of 27 June 2001, 2001 I.C.J. 466	776
8. Comments and Questions	780
9. The Loewen Group Inc. and Raymond L. Loewen v. United States of	700
America, ICSID Case No. ARB(AF)/98/3, Award of 26 June 2003, 7	
ICSID Reports	780
10. Comments and Questions	786
B. Framework Principles of State Responsibility: The Work of the ILC	786
1. James Crawford, The International Law Commission's Articles on	
State Responsibility: Introduction, Text and Commentaries	
(Cambridge, 2002), Introduction	787
2. Responsibility of States for Internationally Wrongful Acts, General	
Assembly Resolution A/RES/56/83 of 12 December 2001	789
C. The General Character of State Responsibility Principles	790
1. International Law Commission, Commentaries on Articles on	700
Responsibility of States for Internationally Wrongful Acts	790
D. Delictual and Treaty Responsibility	793
1. Rainbow Warrior (New Zealand v. France), Award of 30 April 1990,	702
20 R.I.A.A. 217 (1990)	793 794
<ol> <li>Comments and Questions</li> <li>Articles on Responsibility of States for Internationally Wrongful</li> </ol>	194
Acts	794
4. International Law Commission, Commentaries on Articles on	177
Responsibility of States for Internationally Wrongful Acts	794
E. Responsibility under International and Internal Law	796
1. Case Concerning Elettronica Sicula SpA (ELSI) (United States of	,,,
America v. Italy), Judgment of 20 July 1989, 1989 I.C.J. 15	796
F. The Lex Specialis Issue	797
1. Articles on Responsibility of States for Internationally Wrongful	
Acts	797

	2. International Law Commission, Commentaries on Articles on	
	Responsibility of States for Internationally Wrongful Acts	797
II.	Attribution of Conduct to the State	<b>799</b>
A.	Organs of the State or of Political Subdivisions	799
	1. Articles on Responsibility of States for Internationally Wrongful	
	Acts	799
	2. International Law Commission, Commentaries on Articles on	
	Responsibility of States for Internationally Wrongful Acts	800
	3. American Law Institute, Restatement of the Law (Third): The Foreign	West Control
	Relations Law of the United States (St. Paul, American Law Institute	
	Publishers, 1987)	806
	4. Metalclad Corporation v. The United Mexican States (2000), ICSID	
	Case No. ARB(AF)/97/1, Award of 30 August 2000, 40 ILM 36	807
	5. Texaco Overseas Petroleum Company and Californian Asiatic Oil	
	Company v. The Government of the Libyan Arab Republic (1977),	
	Preliminary Award of 27 November 1975, 53 I.L.R. 392 (1977)	808
	6. Compañia de Aguas del Aconquija, S.A. and Compagnie Générale	
	des Eaux v. Argentine Republic (2000) ICSID Case No. ARB/97/3,	
	Award of 21 November 2000	809
	7. Comments and Questions	811
R	State Enterprises	811
	1. Wintershall A.G., et al. v. Government of Qatar (1989), Partial Award	OII
	on Liability of 5 February 1988, 28 ILM 795 (1989)	811
	2. Articles on Responsibility of States for Internationally Wrongful	
	Acts	812
	3. International Law Commission, Commentaries on Articles on	012
	Responsibility of States for Internationally Wrongful Acts	812
	Conduct of Private Parties	814
<b>C</b> .	1. Amco Asia Corporation and Others v. The Republic of Indonesia,	OIT
	ICSID Case No. ARB/81/1, Award on the Merits of 20 November	
	1984, 1 ICSID Reports 413	814
	2. Tradex Hellas S.A. (Greece) v. Republic of Albania, ICSID Case	017
	No. ARB 94/2, Award of 29 April 1999, 14 (1) ICSID Rev. – FILJ 197	
	(1999)	817
	3. Articles on Responsibility of States for Internationally Wrongful	017
	Acts	821
	4. International Law Commission, Commentaries on Articles on	021
	Responsibility of States for Internationally Wrongful Acts	821
	5. Articles on Responsibility of States for Internationally Wrongful	021
	Acts	823
	6. International Law Commission, Commentaries on Articles on	020
	Responsibility of States for Internationally Wrongful Acts	823
	7. Comments and Questions	824
D	Succession to Responsibility	824
٠ اسد	1. Tinoco Case (Great Britain v. Costa Rica), Award of 18 October	UZT
	1923, I R.I.A.A. 375 (1923)	824

	2. Lighthouses Arbitration Between France and Greece, Claims No. II and 4 (1956), Permanent Court of Arbitration, 24 July 1956, 23	
	I.L.R. 81 (1956)	827
	3. Comments and Questions	831
III.	Breach of an International Obligation	831
A.	The Concept of Due Diligence and the Role of Fault	832
	1. Alabama Arbitration, Award of 14 September 1872; J.B. Moore,	
	History and Digest of the International Arbitrations to which the	
	United States has been a Party (Washington, US Government	
	Printing Office, 1898), vol. I, p. 495	832
	2. James Crawford, The International Law Commission's Articles on	
	State Responsibility: Introduction, Text and Commentaries	022
	(Cambridge, 2002), Introduction	833
В.	Obligations of Conduct and Result	833
	1. International Law Commission, Commentaries on Articles on	834
	Responsibility of States for Internationally Wrongful Acts	834
C.	Irrelevance of Sovereign/Commercial Act Distinction  1. Swedish Engine Drivers' Union Case (1076), E.C. H.D., Sories A.	034
	1. Swedish Engine Drivers' Union Case (1976), E.C.H.R., Series A, No. 20 (1976)	835
	2. Comments and Questions	836
	2. Commond and Questions	
CHAI	PTER 8	
VIOL	ATIONS OF INVESTOR RIGHTS UNDER CUSTOMARY	
INTE	RNATIONAL LAW	837
I.	Expropriation	837
A.	Introduction	837
	1. F.V. Garcia Amador, Special Rapporteur's Report, International Law	
	Commission (1959)	837
B.	General Distinction	842
	1. Direct – De Jure	842
	a. Compania del Desarrollo de Santa Elena, S.A. v. Republic of Costa	
	Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 39	0.40
	I.L.M. 1317, 1329 (2000)	842
	b. Martin Domke, Foreign Nationalizations: Some Aspects of	0.42
	Contemporary International Law, 55 Am. J. Int'l L. 585 (1961)	843 844
	2. Indirect – De Facto – Creeping a. Errol P. Mendes, The Canadian National Energy Program: An	044
	Example of Assertion of Economic Sovereignty or Creeping	
	Example of Assertion of Economic Sovereignly of Creeping  Expropriation in International Law, 14 Vand. J. Transnat'l L. 475,	
	498-501 (1981)	844
	b. Waste Mgmt. Inc. v. United Mexican States, ICSID Case No.	
	ARB(AF)/98/2, Award of 2 June 2000, 40 I.L.M. 56, 73 (2001)	847
	c. UNCTAD, Bilateral Investments Treaties in the Mid-1990s, 65-66,	
	U.N. Doc. No. UNCTAD/ITE/IIT/7, U.N. Sales No. E.98.II.D.8	
	(1998)	847
	d. Comments and Questions	848

C.	Initial Precepts – Government is not a Guarantor or Insurer of the	
	Investment	849
	1. Oscar Chinn Case, 1934 P.C.I.J. (Ser. A./B.) No. 63, 416, 436, 439	
	(12th December)	849
D.	Objective of Expropriation (Property, Rights and Interests)	849
	1. Tangible Property	849
	a. SEDCO, Inc. v. National Iranian Oil Co., Award No. 309-129-3 of	017
	2 July 1987, 15 Iran-U.S. Cl. Trib. Rep. 23 (equipment)	849
	b. Oil Field of Texas, Inc. v. Iran, Award No. 258-43-1 of 8 October	
	1986, 12 Iran-U.S. Cl. Trib. Rep. 308, 318-19 (1986)	850
	2. Real Property	851
	a. Metalclad Corp. v. Mexico, ICSID Case No. ARB(AF)/97/1, Award	001
	of 30 August 2000, 16 ICSID Rev. – Foreign Investment L. J. 168,	
	179-87, 195-97 (2001)	851
	b. Compania del Desarrollo de Santa Elena, S.A. v. Republic of Costa	0.51
	Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 39	
	I.L.M. 1317 (2000)	853
	3. Stocks and Shares	854
	a. Reineccius v. Bank of International Settlements, Arbitral Tribunal	
	of the Bank of International Settlements (January 8, 2001)	854
	4. Bank Accounts	858
	a. American Bell Int'l, Inc. v. Iran, Award No. 255-48-3 of 19	020
	September 1986, 12 Iran-U.S. Cl. Trib. Rep. 170, 213-15 (1987)	858
	5. Dividends	859
	a. Foremost Tehran, Inc. v. Iran, Award No. 220-37/231-1 of 11 April	
	1986, 10 Iran-U.S. Cl. Trib. Rep. 228, 246, 250-53 (1987)	859
	6. Bonds	862
	a. Edwin Borchard, State Insolvency and Foreign Bondholders, Vol. I,	002
	General Principles, 193, 197-98, 200-02 (1951)	862
	7. Management of business	863
	a. SEDCO, Inc. v. National Iranian Oil Co., Award No. 55-129-3 of 28	000
	October 1985, 15 Iran-U.S. Cl. Trib. Rep. 248	863
	b. Tippetts, Abbett, McCarthy, Stratton v. Iran, Award No. 141-7-2 of	
	19 June 1984, 6 Iran-U.S. Cl. Trib. Rep. 219 (1985)	863
	c. Starrett Housing Corp v. Iran, Award No. 314-24-1 of 14 August	000
	1987, 6 Iran-U.S. Cl. Trib. Rep. 122, 154-57	864
	8. Contractual rights	866
	a. Phillips Petroleum Co. Iran v. Iran, Award No. 425-39-2 of 29 June	000
	1989, 21 Iran-U.S. Cl. Trib. Rep. 106-07, 118-19	866
	b. Amoco Int'l Finance Corp. v. Iran, Award No. 310-56-3 of 14 July	000
	1987, 15 Iran-U.S. Cl. Trib. Rep. 189, 205, 241-44	867
	c. <i>Mobil Oil</i> v. <i>Iran</i> , Award No. 492-74-3 of 8 November 1980, 16	
	Iran-U.S. Cl. Trib. Rep. 3, 37, 42-43, 60, 62-63	870
	d. Waste Mgmt. Inc. v. United Mexican States, Case No. ARB(AF)00/3,	
	Award of 30 April 2004, 43 I.L.M. 967 (2004)	872
	e. Comments and Questions	874
	9. Intangible Property (e.g. intellectual property, goodwill)	875
		Control of the Contro

	a.	Case Concerning the Factory at Chorzów (Claim for Indemnity) (The	
		Merits), Judgment No. 13, 1928 P.C.I.J. (Ser. A) No. 17	875
	b.	Amoco Int'l Finance Corp. v. Iran, Award No. 310-56-3 of 14 July	
		1987, 15 Iran-U.S. Cl. Trib. Rep. 189, 249, 258, 267	876
	c.	Comments and Questions	877
1		Shares	877
	a.	Reineccius v. Bank of International Settlements, Arbitral Tribunal of	
		the Bank of International Settlements (January 8, 2001)	877
1	11.	Use of Property	877
		Thomas Waelde & Abba Kolo, Environmental Regulation, Investment	
		Protection and "Regulatory Taking" in International Law, 50 Int'1 &	
		Comp. L.Q. 811, 839-40, 846- 47 (2001)	877
		Pine Valley Developments Ltd. Ors v. Ireland, 14 Eur. H.R. Rep. 319	0,,
	υ.	(1992)	878
	C	(1992) Katte v. Italy, 19 Eur. H.R. Rep. 368 (1995)	881
		Trustees of the Late Duke of Westminister's Estate v. U.K., 5 Eur.	001
	u.	H.R. Rep. 440, 456, 546 (1983)	881
_			Augus
E.		propriatory Intent	883
		Question of the Necessity of Expropriatory Intent	883
	a.	Tippetts, Abbet, McCarthy, Stratton (TAMS) v. Iran, 6 Iran-U.S. Cl.	000
		Trib. Rep. 219, 225-26	883
		Phillips Petroleum Company Iran v. Iran, Award No. 425-39-2 of	
		29 June 1989) 21 Iran-U.S. Cl. Trib. Rep. 79, 115	883
	c.	Comments and Questions	884
	2.	Effect of Act on Interests	884
	a.	TAMS v. Iran, Award No. 141-7-2 of 29 June 1984, 6 Iran-U.S. Cl.	
		Trib. Rep. 219, 225	884
F.	St	andard	884
	1.	Direct Expropriation: The Government Acquires Title and Benefits	
		From It	884
	a.	Olguin v. Paraguay, ICSID Case No. ARB/98/5, Award of 8 August	
	200	2000, available at available at http://www.worldbank.org/icsid/cases/	
		paraguay-decision.pdf (last visited 25 May 2005)	884
	h	CME Czech Republic B.V. (The Netherlands) v. The Czech Republic	
	υ.	(2001)	885
	2	Indirect Expropriation	888
		G.C. Christie, What Constitutes a Taking of Property Under	000
	a.		888
	h	Biloune v. Ghana Investments Centre, Award on Jurisdiction and	000
	υ.		895
	0	Liability of 27 October 1989, 95 I.L.R. 183, 209-10	093
	C.	Wena Hotels Limited v. Arab Republic of Egypt, ICSID Case No.	
		ARB/98/4, Award of 8 December 2000, 41 I.L.M. 881, 884, 896,	006
	1	911, 914-15 (2002)	896
		Comments and Questions	898
		Legitimate Expectations of Investor	899
	a.	Opel Austria GmbH v. Council of the European Union, T-115/94	000
		(1997)	899

G.	Governmental Acts	900
	1. Laws and Decrees Explicitly Expropriating	900
	2. Appointment of Managers	900
	3. Seizure of Premises and Impoundment of Property	900
	4. Announcement of Intended Expropriation Without Further Acts	901
	a. Sola Tiles, Inc. v. Iran, Award No. 298-317-1, reprinted in 14 Iran-	
	U.S. Cl. Trib. Rep. 223, 230-34	901
	b. Comments and Questions	903
	c. Agrotexim v. Greece, 21 Eur. H.R. Rep. 250 (1995)	903
	d. Compania del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 39	
	I.L.M. 1317 (2000)	903
	5. Unilateral Reduction of Concession Area	903
		903
	a. LETCO v. Liberia, Award of 31 March 1986, 26 I.L.M. 647, 664-67	000
	(1986)	903
	6. Use Restrictions	906
	7. Forced Sales	907
	a. G.C. Christie, What Constitutes a Taking of Property Under	
	International Law?, 38 Brit. Y.B. Int'l L. 307, 324-26, 328-29 (1962)	907
	b. Comments and Questions	909
	8. Cessation of Project Work due to Governmental Interference	910
	a. Biloune v. Ghana Investments Centre, 95 I.L.R. 183, 209-210 (1990)	910
	9. Setting Product Price at Loss by Governmental Decree	911
	a. Benvenuti et Bonfant v. Congo, ICSID Case No. ARB/77/2, Award	
	of 8 August 1980, 21 I.L.M. 740, 757-58 (1980)	911
	b. Pope & Talbott v. Canada, Award on the Merits of Phase 2 by	
	Arbitral Tribunal (April 10, 2001)	911
H.	Legality	911
	1. Form of expropriation (e.g., due process)	911
	a. F.V. Garcia Amador, Special Rapporteur Report, International Law	, , ,
	Commission (1959)	911
	b. SEDCO, Inc. v. Iran, Award No. 59-123-3 of 27 March 1986,	711
	reprinted in 10 Iran-U.S. Cl. Trib. Rep. 180	911
	2. Purpose	912
	a. Not for a Public Purpose	912
	i. Amoco Int'l Finance Corp. v. Iran, Award No. 310-56-3 of 14 July	114
	1987, 15 Iran-U.S. Cl. Trib. Rep. 189	912
	b. Discrimination	912
		, 10
	i. Sociedad Minera el Teniente S.A. v. Aktiengesellschaft Norddeutsche	
	Attinerie (Chilean Copper Case), 12 I.L.M. 251, 276-81 (Hamburg	012
	Superior Court 1973)	913
	ii. <i>LETCO</i> v. <i>Liberia</i> , Award of 31 March 1986, 26 I.L.M. 647, 665	014
	(1986)	914
	c. Violation of Stabilization Clause	914
	i. TOPCO v. Libya, Award of 19 January 1977, 17 I.L.M. 3, 24-27	
	(1978)	914
	ii. AGIP SPA v. Congo, Award of November 30, 1979, 67 I.L.R. 318	0 1 5
	(1984)	918

	ii	i. Kuwait v. AMINOIL, 66 I.L.R. 518, 585-91 (1982)	918
	i	v. Mobil Oil v. Iran, 16 Iran-U.S. Cl. Trib. Rep. 3	923
I.	Da	ate of Expropriation	923
		Vance R. Koven, Expropriation and the "Jurisprudence" of OPIC,	
		22 Harv. Int'l L.J. 269, 277, 311-20 (1981)	923
		Cases	928
		Amoco Int'l Finance Corp. v. Iran, Award No. 310-56-3 of 14 July	
		1987, 15 Iran-U.S. Cl. Trib. Rep. 189, 226-29	928
	b.	Phillips Petroleum Co. v. Iran, Award No. 425-9-2 of 29 June 1989,	
		21 Iran-U.S. Cl. Trib. Rep. 79	930
		Compania del Desarrollo de Santa Elena, S.A. v. Republic of Costa	
		Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 39	
		I.L.M. 1317 (2000)	930
		W. Michael Reisman & Robert D. Sloane, Indirect Expropriation	
		and Its Valuation in the BIT Generation, 74 Brit. Y.B. Int'l L. 115	
		(2004)	930
	e.	Comments and Questions	931
T			931
J .		U.N. Resolutions	931
		"Permanent Sovereignty over Natural Resources", General Assembly	,,,
	u.	Resolution 1803 (XVII) of 14 December 1962	931
	b	Declaration on the Establishment of a New International Economic	
		Order (1 May 1974), A/RES/3201 (S-VI)	932
		Charter of Economic Rights and Duties of States (12 Dec. 1974), A/	, , ,
		RES/3281 (XXIX)	932
		Cases	933
	1000	TOPCO v. Libya, Award of 19 January 1977, 17 I.L.M. 3, 27-31	,
	α.	(1978)	933
	h	Comments and Questions	940
		Libyan American Oil Co. (LIAMCO) v. Libyan Arab Republic, Award	710
		of the Tribunal of 12 April 1977, 6 Y.B. Com. Arb. 89, 99-101 (1981)	940
		Kuwait v. Aminoil, Award of 24 March 1982, 21 I.L.M. 976, para.	,
	u.	90(2) (1982)	942
	3	Administrative Contracts	943
		Kuwait v. AMINOIL, Award of 24 March 1982, 21 I.L.M. 976, 1022	,
	cc.	(1982)	943
	4	Force Majeure/Impossibility/Frustration	944
		Mobil Oil v. Iran, Award No. 492-74-3 of 8 November 1980, 16 Iran-	
	и.	U.S. Cl. Trib. Rep. 3, 38-39	944
	5	Implied Termination or Waiver	945
		Mobil Oil v. Iran, Award No. 492-74-3 of 8 November 1980, 16 Iran-	,
	u.	U.S. Cl. Trib. Rep. 3	945
	6	Changed Circumstances	945
		Mobil Oil v. Iran, Award No. 492-74-3 of 8 November 1980, 16 Iran-	, 10
	u.	U.S. Cl. Trib. Rep. 3, 39-40	946
	h	Phillips Petroleum Co v. Iran, Award No. 425-39-2 of 29 June 1989,	,
	٠.	21 Iran-U.S. Cl. Trib. Rep. 79	946

II.	Discriminatory Conduct	946
A.	What is the Customary International Law Standard?	946
	1. British Petroleum v. Libyan Arab Republic, 53 I.L.R. 297, 329, 346-	
1	48, 353 (1973)	946
В.	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 57-59, 67-70	0.40
	(1998)	948
III.	Arbitrary Conduct	951
A.	F.V. Garcia Amador, Special Rapporteur Report, International Law	
	Commission (1959)	951
IV.	Denial of Justice	953
A.	Loewen v. United States, ICSID Case No. ARB(AF)/98/3, Award of	
	26 June 2003, 33-39, 70-71, available at <a href="http://www.state.gov/">http://www.state.gov/</a>	
	documents/organization/22094.pdf>	953
B.	Mondev Int'l Ltd. v. United States, ICSID Case No. ARB(AF)/99/2,	Say.
	Award of 11 October 1999, 1-2, 44-45, 49-52, 54-56, available at	
	<a href="http://www.state.gov/documents/organization/14442.pdf">http://www.state.gov/documents/organization/14442.pdf</a>	958
C.	Francisco Orrego Vicuña, Some International Law Problems Posed	
	by the Nationalization of the Copper Industry by Chile, 67 Am. J.	
	Int'l L. 711, 711-12, 715-717 (1973)	963
D.	Amco Asia Corp. v. Republic of Indonesia, ICSID Case No. ARB/	
	81/1, Award of 5 June 1990, 1 ICSID Rep. 569, 599-605	966
	Athanassoglu v. Switzerland (Eur. Ct. Human Rts. 1999)	969
F.	Azinian v. United Mexican States, ICSID Case No. ARB(AF)/97/2,	
	Award of 1 November 1999, 39 I.L.M. 537, 552-55 (2000)	972
G.	Comments and Questions	976
$\mathbb{V}_{\bullet}$	Abuse of Rights	977
A.	F.V. Garcia Amador, Special Rapporteur Report, International Law	
	Commission (1959)	977
B.	Karl-Heinz Böckstiegel, Arbitration and State Enterprises, 45-46	
	(Kluwer 1984)	977
$\mathbb{C}$ .	International Law Commission, Draft Articles on State Responsibility	
	(2001)	978
VI.	Unjust Enrichment	978
A.	Christoph H. Schreuer, Unjustified Enrichment in International Law,	
	22 Am. J. Comp. L. 281, 281, 284-84, 289, 300-01 (1974)	978
B.	International Law Commission, Draft Articles on State Responsibility	
	(2001)	980
C.	Factory at Chorzów Case, 1928 P.C.I.J. No. 13	980
D.	Arthur Nussbaum, The Arbitration Between the Lena Goldfields, Ltd.	
	and the Soviet Government, 36 Cornell L.Q. 31, 50-51 (1950)	980

E.	Sea-Land Services Case, Award No. 135-33-1 of 22 June 1984, 6	
	Iran-U.S. Cl. Trib. Rep. 149, 164-72	981
F.	Isaiah v. Bank Mellat, Award No. 35-219-2 of 30 March 1983 2 Iran-	
	U.S. Cl. Trib. Rep. 232, 236-39	983
G.	Flexi-Van Leasing, Inc. v. Iran, 12 Iran-U.S. Cl. Trib. Rep. 335,	
	352-56 (1986)	986
H.	Schlegel Corp. v. National Copper Industries Co., Award No.	
	295-834-2 of 27 March 1987, 14 Iran-U.S. Cl. Trib. Rep. 176, 177-83	988
I.	T.C.S.B., Inc. v. Iran, Award No. 114-140-2 of 16 March 1984, 5	
	Iran-U.S. Cl. Trib. Rep. 160, 161, 171-72, 174 (1984)	991
	Lockheed Corp. v. Iran, Award No. 367-829-2 of 9 June 1998, 18	
	Iran-U.S. Cl. Trib. Rep. 292, 293-295, 308-10	993
K.	Beyeler v. Italy, Eur. Ct. H.R. (application no. 33202/96) (2000)	994
	Mobil Oil Iran, Inc. v. Iran, Partial Award No. 311-74/76/81/150-3	
	of 14 July 1987, 16 Iran-U.S. Cl. Trib. Rep. 3	999
M.	Amco Asia v. Republic of Indonesia, ICSID Case No. ARB/81/1,	
	Award of 5 June 1990, 1 ICSID Reports, 569, 607-08 (1993)	999
N.	Charles N. Brower & Jason D. Brueschke, The Iran-U.S. Claims	
		000
		001
	Eastman Kodak Co. v. Iran, Award No. 329-227-3 of 11 November	LUUI
1 1.		001
B		005
٠. لــــــــــــــــــــــــــــــــــــ	Comments and Questions	
CHAI	PTER 9	
IOL	ATION OF INVESTOR RIGHTS UNDER INVESTMENT	
TREA	ATIES 1	007
T.	Introduction	1007
		1010
		1010
A.	a direction and an arrest and a second and a	1010
		1010
	3. Energy Charter Treaty Art. 10(1)	1011
	4. UNCTAD [United Nations Conference on Trade and Development],	
	Fair and Equitable Treatment (1999)	1011
	5. Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
	\	1013
	6. F.A. Mann, British Treaties for the Promotion and Protection of Investments, 52 Brit. V.B. Int'l L. 241 (1081)(1085)	1014
	Investments, 52 Brit. Y.B. Int'l L. 241 (1981)(1985) 7. Stephen Vascianne, Fair and Equitable Treatment, 70 Brit. Y.B.	1014
	<b>A</b>	1015
		1015

	a.	Tecnicas Medioambientales Tecmed S.A. v. Estados Unidos	
		Mexicanos, ICSID Case No. ARB (AF)/00/2 (2003), Award dated	
		May 29, 2003, available at www.worldbank.org/icsid/cases/	
		tecmed-award.pdf	1015
	b.	CME Czech Republic B.V. (The Netherlands) v. The Czech Republic,	
		UNCITRAL Partial Award of 13 September 2001	1024
	c.	Occidental Exploration and Production Company v. Republic of	
		Ecuador; Final Award of July 1, 2004, in Case No. UN 3467	1025
	9.	NAFTA Cases	1027
	a.	S.D. Myers, Inc. v. Government of Canada, UNCITRAL Partial	
		Award of 13 November 2000	1027
	b.	Pope & Talbot, Inc. v. The Government of Canada, UNCITRAL	
		(NAFTA) Award on the Merits of Phase 2 of 10 April 2001	1029
	c.	NAFTA Free Trade Commission Notes of Interpretation of Certain	
		Chapter 11 Provisions (July 31, 2001)	1035
	d.	Pope & Talbot Inc. v. Government of Canada, UNCITRAL	
		(NAFTA) Award in Respect of Damages (31 May 2002)	1035
	e.	Loewen Group, Inc. and Raymond L. Loewen v. United States of	
		America, ICSID Case No. AR.B(AF)/98/3, Award of 26 June 2003,	
		7 ICSID Rep.	1037
	f.	Waste Management, Inc. v. United Mexican States, ICSID Case No.	
		ARB(AF) 00/00/3; (NAFTA) Award of 25 June 2003	1041
		Gami Investments, Inc. v. The Government of the United Mexican	
		States, UNCITRAL, Final Award 12 November 2004	1044
1	0.	Comments and Questions	1046
В.	Fu	all Protection and Security	1049
		Case Concerning Elettronica Sicula, SpA (ELSI) case (U.S. v. Italy),	
		Judgment of 20 July 1989), 1989 I.C.J. 15	1049
		Asian Agricultural Products Ltd. v. Republic of Sri Lanka, Award	
		of 27 June 1990, 4 ICSID Reports 246	1050
		American Manufacturing & Trading, Inc. v. Republic of Zaire,	100 500 1000 1000
		ICSID Case No. ARB/93/1 Award of 21 February 1997, 36 I.L.M.	
		1531(1997)	1057
	4.	Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID Case No.	
		ARB/98/4, Decision of 2000, 41 I.L.M. 896 (2002)	1060
		Ronald S. Lauder v. The Czech Republic, UNCITRAL Final Award	
7.		of 3 September 2001	1060
		CME Czech Republic B. V. (The Netherlands) v. The Czech Republic,	
		UNCITRAL Partial Award of 13 September 2001	1061
		Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
		(Kluwer Law International 1995)	1061
	8.	United Nations Conference on Trade and Development (UNCTAD),	
		Bilateral Investment Treaties in the Mid-1990s (1998)	1062
		Comments and Questions	1062
		eatment No Less Favorable Than That Required by International	
	La		1063

	1. L.F.H. Neer and Pauline E. Neer v. Mexico (General Claims	
	Commission – United States and Mexico 1926), 21 Am. J. Int'l L.	
	555 (1927)	1063
	2. Mondev International Ltd. v. United States of America, ICSID Case	
	No. ARB (AF)/99/2, Award of October 11, 2002	1064
	3. CME Czech Republic B.V. (The Netherlands) v. The Czech Republic,	
	UNCITRAL Partial Award of 13 September 2001	1069
	4. Ronald S. Lauder v. The Czech Republic, UNCITRAL Final Award	
	of 3 September 2001	1069
	5. American Manufacturing & Trading, Inc. v. Zaire, ICSID Case No.	
	ARB/93/1 Final Award of 21 February 1997, 36 I.L.M. 1531 (1997)	1070
	6. Kenneth J. Vandevelde, United States Investment Treaties: Policy	
	and Practice at 77-78 (Kluwer 1992)	1070
	7. UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1071
	8. Comments and Questions	1071
D.	Arbitrary Treatment	1071
	1. U.S. Model BIT Art. II (2)(b) (1992)	1071
	2. Elettronica Sicula, SA (ELSI) Case (U.S. v. Italy) (ICJ), Judgement	
	of 20 July 1989	1071
	3. Sean D. Murphy, The ELSI Case: An Investment Dispute at the	
	International Court of Justice, 16 Yale J. Int'l L. 391 (1991)	1078
	4. Ronald S. Lauder v. The Czech Republic, UNCITRAL Final Award	
	of 3 September 2001	1080
	5. UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1084
	6. Kurt Hamrock, The ELSI Case: Toward an International Definition	
	of "Arbitrary" Conduct, 27 Tex. Int'l L.J. 837 (1992)	1084
	7. Comments and Questions	1086
E.	Discrimination	1087
	1. NAFTA Art. 1104	1087
	2. Amoco International Finance Corp. v. Islamic Republic of Iran,	
	Award No. 310-56-3 (Chamber 3) of 14 July 1987	1087
	3. Ronald S. Lauder v. The Czech Republic, UNCITRAL Final Award	
	of 3 September 2001	1088
	4. 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)	1089
	5. Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
	(Kluwer Law International 1995)	1094
	6. Comments and Questions	1094
F.	Comply with All Obligations Undertaken Towards Investments	1095
	1. U.S. Model BIT Art. II (2)(c) (1992)	1095
	2. F.A. Mann, British Treaties for the Promotion and Protection of	)
	Investments, 52 Brit. Y.B. Int'l L. 241 (1981)(1985)	1095
	3. Kenneth J. Vandevelde, United States Investment Treaties: Policy	
	and Practice at 78 (Kluwer Law International 1992)	1096
	4. United Nations Conference on Trade and Development (UNCTAD),	
	Bilateral Investment Treaties in the Mid-1990s (1998)	1096

	5. SGS Société Générale de Surveillance v. Republic of the Philippines,	
	ICSID Case No. ARB/02/6, Award of 29 September 2004	1096
	6. Comments and Questions	1103
G.	Currency Transfer	1104
	1. U.S. Model BIT Art. IV (1992)	1104
	2. NAFTA Art. 1109	1105
	3. ECT Art. 14	1106
	4. Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
	(Kluwer 1995)	1107
	5. UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1109
	6. Comments and Questions	1109
H.	Expropriation	1109
	1. U.S. Model BIT Art. III	1109
	2. NAFTA Art. 1110	1110
	3. ECT Art. 13	1111
	4. Metalclad Corp. v. United Mexican States, ICSID Case No.	
	ARB(AF)/97/1 NAFTA Award of 30 August 2000 16 ICISD Rev. –	
	FILJ 168 (2001)	1111
	5. Azinian, Davitian & Baca v. United Mexican States, ICSID Case No.	1111
	ARB(AF)/97/2, NAFTA Award of 1 November 1999, 39 I.L.M. 537	
	(2000)	1114
	6. S.D. Myers v. Government of Canada, UNCITRAL Partial Award of	1117
	13 November 2000	1116
	7. Waste Management, Inc. v. United Mexican States, Case No.	1110
	ARB(AF) 00/00/3; (NAFTA) Award of 25 June 2003	1117
	8. CME Czech Republic B.V. v. The Czech Republic, UNCITRAL	111/
	Partial Award of 13 September 2001	1119
	9. Phillips Petroleum v. Iran, Case No. 39, Chamber No. Two, Award	1117
	No. 425-39-2, Iran-U.S., Cl. Trib. (June 1989)	1122
	10. Case Concerning Elettronica Sicula, S.A. (ELSI) case (U.S. v. Italy),	1122
	Judgment of 20 July 1989, 1989 I.C.J. 15	1127
	11. Gami Investments, Inc. v. The Government of the United Mexican	
	States, UNCITRAL (NAFTA), Final Award of 12 November 2004	1128
	12. UNCTAD, Taking of Property (2000)	1130
	13. UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1131
	14. Comments and Questions	1132
		1133
Α.		1133
	1. U.S. Model BIT Art. II (1) and (8) (1992)	1133
	2. NAFTA Art. 1102	1134
	3. The Energy Charter Treaty Art. 10(2) (3) (7) and (10)	1134
	4. S.D. Myers, Inc. v. Canada, Partial Award of 13 November 2000	1105
	(NAFTA)  5. Done 9. Talket Inc. in Canada Linicited At (NIAFTA) Assert of	1135
	5. Pope & Talbot, Inc. v. Canada, UNCITRAL (NAFTA) Award of	1100
	10 April 2001  6 Manyin Foldman v. Mariae ICSID Core No. ADD(AE)/00/1	1138
	6. Marvin Feldman v. Mexico, ICSID Case No. ARB(AF)/99/1,	111/
	NAFTA Award of 16 December 2002	1146

	7. Loewen Group, Inc. and Raymond L. Loewen v. United States of	
	America, ICSID Case No. ARB(AF)/98/3, Award of 25 June 2003, 7	
	ICSID Rep.	1151
	8. Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
	(Kluwer Law International 1995)	1152
	9. United Nations Conference on Trade and Development (UNCTAD),	
	National Treatment (1999)	1152
	10. Comments and Questions	1154
B.	Most-Favored-Nation Treatment	1156
	1. U.S. Model BIT Art. II(9) (1992)	1156
	2. NAFTA Art. 1103	1156
	3. Maffezini v. Spain, ICSID Case No. ARB/97/7, Decision on	
	Jurisdiction of 25 January 2000, 16 ICSID Rev. – FILJ 212 (2001)	1156
	4. UNCTAD, Most-Favoured-Nation Treatment (1999)	1162
	5. UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1163
	6. Rodolf Dolzer and Margrete Stevens, Bilateral Investment Treaties	
	(Kluwer 1995)	1164
	7. Comments and Questions	1165
IV.	Transparency	1166
	U.S. Model BIT, Art. II (7)	1166
	NAFTA Article 102: Objectives	1166
	ECT Art. 20	1166
	UNCTAD, Bilateral Investment Treaties in the Mid-1990s (1998)	1166
	Metalclad Corp. v. United Mexican States, ICSID (NAFTA) Case	1100
٠.	No. ARB(AF)/97/1, 16 ICSID Rev. – FILJ 168 (2001)	1167
Г		1169
Г.	Comments and Questions	1109
CHAI	PTER 10	
DEFE	INCES	1171
	Introduction	1171
		1172
	Force Majeure	11/4
A.	National Oil Corporation (Libya) v. Libyan Sun Oil Company	
	(USA), Case No. 4462/A5, First Award of 31 May 1985, 29 I.L.M.	1150
	565	1172
	Comments and Questions	1174
C.	Gould Marketing, Inc. v. Ministry of National Defense of Iran,	
	Interlocutory Award No. 24-49-2 of 27 July 1983, 3 Iran-US Cl.	
	Trib. Rep. 147	1175
D.	Amoco International Finance Corporation v. The Government of the	?
	Islamic Republic of Iran, Award of 14 July 1987, 15 Iran-US CTR	
	189 (1987-II)	1176
E	Comments and Questions	1178
		The state of the s

F.	Phillips Petroleum Company Iran v. The Islamic Republic of Iran	
	& the National Iranian Oil Company, Award of 29 June 1989, 21	
	Iran-US CTR 79 (1989-I)	1178
G.	Comments and Questions	1180
H.,	UNIDROIT Principles of International Commercial Contracts	
	(2004), Articles 6.2.1, 6.2.2, 6.2.3, 7.1.7	1181
I.	Comments and Questions	1182
J.	International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Article 23 and	
	Commentary	1182
K.	Comments and Questions	1187
L.	James Crawford & Anthony Sinclair, The Unidroit Principles of	
	International Commercial Contracts and their Application to State	
	Contracts, ICC Court of Arbitration Bulletin, Special Supplement	
	57-75 (Paris, 2002)	1187
M.	Comments and Questions	1195
III.	Coercion and Duress	1195
A.	Detlev Vagts, Coercion and Foreign Investment Rearrangements,	
	72 Am. J. Int'l L. 17 (1978)	1195
B.	Comments and Questions	1198
C.	UNIDROIT Principles of International Commercial Contracts,	
	article 3.9 (2004)	1198
D.	International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Article 18 and	
	Commentary	1199
E.	Comments and Questions	1201
F.	Government of Kuwait v. American Independent Oil Company	
	(AMINOIL), Award of 24 March 1982, 66 I.L.R. 519	1201
G.	Comments and Questions	1203
IV.	Necessity	1203
A.	Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/	
	Slovakia), Judgment of 25 September 1997, 1997 I.C.J. 7	1203
B.	International Law Commission, Articles on Responsibility of States	
	for Internationally Wrongful Acts, November 2001, Article 25 and	
	Commentary	1209
	Comments and Questions	1213
D.	Himpurna California Energy Ltd. v. Indonesia (1999), Final Award	
	of 4 May 1999, 25 Y.B. Com. Arb. 11-432 (2000)	1213
E.	Comments and Questions	1216
V.	Corruption	1217
A.	Anti-Bribery Provisions of The Foreign Corrupt Practices Act	1217

B.	OECD Convention on Combating Bribery of Foreign Public	
	Officials in International Business Transactions 1997	1221
C.	International Chamber of Commerce, Award in Case no. 1110 of	
	1963, 21 Y.B. Com. Arb. 47 (1996)	1225
D.	J. Gillis Wetter, Issues of Corruption before International Arbitral	
	Tribunals: The Authentic Text and True Meaning of Judge Gunnar	
	Lagergren's 1963 Award in ICC Case No. 1110, 10 Arb. Int'l 277	
	(1994)	1226
E.	Comments and Questions	1229
F.	International Chamber of Commerce, Second Interim Award in	
	Case 4145 of 1984, 12 Y.B. Com. Arb.97 (1987)	1229
G.	Comments and Questions	1232
H.	International Chamber of Commerce, Final Award in Case no. 5622	
	of 1988, 19 Y.B. Com. Arb. 105 (1994)	1232
	Comments and Questions	1235
J.	International Chamber of Commerce, Partial Award in Case no.	
	6286 of 28 August 1991, 19 Y.B. Com. Arb. 141 (1994)	1235
	Comments and Questions	1236
L.	ICSID, Tanzania Electric Supply Company Limited v. Independent	
	Power Tanzania Limited, Case No. ARB/98/8, Decision on Tariff	
	and Other Remaining Issues of 9 February 2001, 8 ICSID Reports	1006
T) //	272	1236
	Comments and Questions	1237
IN.	Phillippe Fouchard et al., Fouchard Gaillard Goldman on	
	International Commercial Arbitration (Emmanuel Gaillard & John	1027
	Savage eds., Kluwer Law International, 1999)	1237
	Comments and Questions	1230
VI.	Fundamental Change of Circumstances (Rebus Sic Stantibus /	1000
	Imprévision)	1239
A.	UNIDROIT Principles of International Commercial Contracts	1020
T	(2004), Articles 6.2.1, 6.2.2, 6.2.3	1239
В.	Questech, Inc. v. The Ministry of National Defence of the Islamic	
	Republic of Iran, Award of 20 September 1985, 9 Iran-US CTR	1240
	107 (1985) Comments and Organians	1240 1244
C.	Comments and Questions	1244
HAI	PTER 11	
EPA	RATIONS RECOVERABLE BY FOREIGN INVESTORS IN	
ITE	RNATIONAL LAW	1245
$\mathbb{I}_{\bullet}$	Introduction	1245
II.	Reparations Generally	1246
A.	General types of reparations	1246

	1. International Law Commission (ILC) Articles on State	
	Responsibility, Fifty-third session (2001), Articles 31 & 34	1246
	2. Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545,	1246
D	581 (1961)  Conoral Principle of Penarations Factors at Charges Case 1029	1240
D.	General Principle of Reparations – Factory at Chorzow Case, 1928	1047
	P.C.I.J. No. 13	1247
C.	Causation and limits on reparations  1. James Crawford, Special Representation. Third Report on State	1247
	1. James Crawford, Special Rapporteur, <i>Third Report on State Responsibility</i> , International Law Commission 52nd Sess., at 22,	,
	U.N. Doc. A/CN.4/507 (2000)	1247
	2. United Nations Compensation Commission, Report and	127/
	Recommendations Made by the Panel of Commissioners	
	Concerning Part Two of the Third Installment of "F3" Claims,	
	S/AC.26/2002/19 (2002)	1248
	3. 2 F. V. Garcia-Amador, The Changing Law of International	
	Claims, 599-601 (Oceana Publications 1984)	1249
	4. ILC Articles on State Responsibility article 39	1250
	5. Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545, 581 (1961)	1250
	6. Bridas S.A.P.I.C. (Argentina) et al. v. Government of Turkmenistan,	1230
	ICC Case No. 9058/FMS/KGA, Third Partial Award of 2 September	
	2000	1251
	7. Comments and Questions	1252
III.	Declaratory and Injunctive Relief	1252
A.	ILC Articles on State Responsibility, articles 29, 30 and 35	1252
B.	James Crawford, Special Rapporteur, Third Report on State	
	Responsibility, International Law Commission 52nd Sess., at 22,	
	U.N. Doc. A/CN.4/507 (2000)	1253
C.	Christoph Schreuer, The ICSID Convention: A Commentary, Art.	
	54(c) 1124-1126 (Cambridge U. Press 2001)	1253
D.	Ian Brownlie, Principles of Public International Law 462 (Oxford,	
	Clarendon Press 1998)	1255
E.	2 F. V. Garcia-Amador, The Changing Law of International Claims,	
	576-78, 581-83 (1984)	1255
F.	Arbitral Award in the Martini Case, 25 Am. J. Int'l Law 554 (1931)	1257
G.	Enron Corp. v. Argentina, ICSID Case No. ARB/01/3, Decision on	
	Jurisdiction of 14 January 2004, available at http://www.asil.org/	
	ilib/Enron.pdf (last visited 24 May 2005)	1260
H.	Comments and Questions	1262
IV.	Compensation for Breach of Contract	1267
	Sapphire International Petroleums Ltd. v. National Iranian Oil Co.,	
	35 I.L.R. 136 (1967); 13 Int'l & Comp. LQ 1011 (1964)	1267
В.	P. W. Shufeldt v. Guatemala, 2 R.I.A.A. 1080, Award of 24 July	
	1930	1269

C.	Bridas S.A.P. I.C. v. Government of Turkmenistan, Partial Award of 25 June 1999	1270
D	Karaha Bodas Co., LLC v. Pertamina & Others, Final Award of 18	12/0
	December 2000, 16 Int'l Arb. Rep. C-2	1273
E.	ILC Articles on State Responsibility, Fifty-third session, article 36 (2001)	1275
F.	Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545, 581 (1961)	1275
G	UNIDROIT Principles of International Commercial Contracts	1276
	Comments and Questions	1277
V.	Restitution and Compensation for Unlawful, Tortious or	
	Delictual Conduct	1278
A.	Chorzow Factory Case, 1928 P.C.I.J. No. 13	1278
	ILC Articles on State Responsibility, Fifty-third session, article 35 (2001)	1283
	Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545,	
	581 (1961)	1284
D.	Kuwait Petroleum Corporation v. Iraq; United Nations	
	Compensation Commission	1284
E.	Asian Agricultural Products Ltd. v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/87/3, Award of 27 June 1990, 4 ICSID Rep. 245	1291
E		1471
Г.	American Manufacturing & Trading, Inc. v. Republic of Zaire, ICSID Case No. ABR/93/1, Award of 21 February 1997, 36 I.L.M.	1005
	1531 (1992)	1295
G.	Comments and Questions	1298
VI.	Restitution and Compensation for Expropriations	1298
A.	Introduction	1298
B.	Specific Performance (restitutio in integrum)	1299
	1. Texaco Overseas Petroleum Company/California Asiatic Oil	
	Company v. The Government of the Libyan Arab Republic, Award of 19 January 1977, 17 I.L.M. 3 (1978)	1299
	2. Libyan American Oil Company (LIAMCO) v. Government of the Libyan Arab Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	1302
	3. Dr. J. Gillis Wetter & Stephen M. Schwebel, Some Little-Known	1202
	Cases on Concessions, 40 Brit. Y.B. Int'l L. 183, 220-22 (1964)	1303 1305
	4. Comments and Questions  What is the Standard of Componention for an Expression?	1305
<b>C</b> .	What is the Standard of Compensation for an Expropriation?  1. Treaty Standard – <i>Lex Specialis</i>	1305
	a. U.S. Model BIT (1992)	1305
	b. <i>Phillips Petroleum Company Iran</i> v. <i>The Islamic Republic of Iran</i> , Award No. 425-39-2 (Chamber Two) of 29 June 1989, 21 Iran-U.S.	
	Cl. Trib. Rep. 79	1306

	c. CME Czech Republic B.V. (The Netherlands) v. The Czech Republic,	
	UNCITRAL Final Award of 14 March 2003	1308
	d. Comments and Questions	1310
	2. Customary International Law	1311
	a. United Nations Resolutions	1311
	i. Resolution 1803 (XVII) entitled "Permanent Sovereignty over	
	Natural Resources", adopted by the General Assembly of the	
	United Nations on 14 December 1962	1311
	ii. Resolution 3201 (S-VI) adopted by the United Nations General Assembly on 1 May 1974, entitled "Declaration on the	
	Establishment of a New International Economic Order", Article 4,	
	paragraph (e)	1311
	iii. Resolution 3281 (XXIX), Article 2, adopted by the General	
	Assembly of the United Nations, on 12 December 1974, entitled	
	"Charter of Economic Rights and Duties of the States"	1311
	b. Shahin Shaine Ebrahimi v. Iran, Iran-U.S. Claims Tribunal Award	
	560-44/46/47-3 of 12 October 1994	1311
-	c. Libyan American Oil Company (LIAMCO) v. Government of the	
	Libyan Arab Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	1312
	d. Government of the State of Kuwait v. American Independent Oil	
	Co. (AMINOIL), Award of 24 May 1982, 21 I.L.M. 976 (1982)	1313
	e. Amoco International Finance Corporation v. The Government of	
	the Islamic Republic of Iran, Award No. 310-56-3 (Chamber Three)	
	of 14 July 1987, 15 Iran-US Cl. Trib. Rep. 189	1316
	f. Phillips Petroleum Company Iran v. The Islamic Republic of Iran,	
	Award No. 425-39-2 (Chamber Two) of 29 June 1989, 21 Iran-US	
	Cl. Trib. Rep. 79	1321
	g. Brice Clagett, Just Compensation in International Law: The Issues	
	Before the Iran-United States Claims Tribunal, in The Valuation of	
	Nationalized Property in International Law, Vol. IV (Lillich ed.	
	1987)	1321
	h. World Bank Guidelines on the Treatment of Foreign Direct	
•	Investment, 31 I.L.M. 1363, 1379, 1382-84 (1992)	1322
	i. Comments and Questions	1324
D.	Date of Expropriation as Affecting Valuation	1326
	1. Compania del Desarrollo de Santa Elena S.A. v. Costa Rica,	
	ICSID Case No. ARB/96/1, Award of 17 February 2000, 15 ICSID	
	Rev. – Foreign Inv. L.J. 169 (2000), 39 I.L.M 1317 (2000)	1326
	2. Phillips Petroleum Co. Iran v. Islamic Republic of Iran, Award	
	No. 425-39-2 of 29 June 1989, 21 Iran-U.S. Cl. Trib. Rep. 79	1329
	3. Comments and Questions	1331
T		1331
1.	Generally  1. Corporal property	1331
	1. Corporeal property  1. Libuary American Oil Company (LIAMCO) w Consumer of the	1331
	a. Libyan American Oil Company (LIAMCO) v. Government of the	1221
	Libyan Arab Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	1331

	b. SEDCO, Inc. v. National Iranian Oil Company, Award No.	0.2
	309-129-3 (Chamber Three) of 7 July 1987, 15 Iran-U.S. Cl. Trib. R	ep. 23
$p_{\perp}$	1333	1006
	2. Lost profits	1336
	a. Delagoa Bay Arbitration, described in M. Whiteman, Damages in	1006
	International Law 1694, 1697-99 (1943)	1336
	b. Dr. J. Gillis Wetter & Stephen M. Schwebel, Some Little-Known	
	Cases on Concessions, 40 Brit. Y. B. Int'l L. 183 (1964)	1339
	c. The Claim of the Salvador Commercial Company and other citizens	
	of the United States, stockholders in the corporation styled "El	
	Triunfo Company, Limited" v. El Salvador, Award of 8 May 1902,	4.0.40
	15 R.I.A.A. 457	1340
	d. Libyan American Oil Company (LIAMCO) v. Government of the	
	Libyan Arab Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	1341
	e. Comments and Questions	1343
B.	Income-Producing Assets	1344
	1. Paul D. Friedland & Eleanor Wong, Measuring Damages for the	
	Deprivation of Income-Producing Assets: ICSID Case Studies, 6	
	ICSID Rev. – Foreign Inv. L.J. 400, 405-407 (1991)	1344
	2. Asset Values	1346
	a. Actual Investment	1346
	i. Metalclad Corp. v. The United Mexican States, ICSID Case No.	
	ARB (AF)/97/1, Award of 30 August 2000, 16 (1) ICSID Rev. –	
	Foreign Inv. L.J. 168, 197-99	1346
	b. Net Book Value Method	1348
	i. Finance Corp. v. Government of the Islamic Republic of Iran,	
	Award No. 310-56-3 of 14 July 1987, 15 Iran-US Cl. Trib. Rep.	
	189	1348
	c. Liquidation Value	1351
	i. SEDCO, Inc. v. Iran Marine Industrial Company, Award No.	
	419-128/129-2 of 30 March 1989, 21 Iran-U.S. Cl. Trib. Rep. 31	1351
	d. Depreciated Replacement Value	1353
	i. Government of the State of Kuwait v. American Independent Oil	
	Co. (AMINOIL), Award of 24 May 1982, 21 I.L.M. (1982)	1353
	e. Comments and Questions	1354
	3. Going Concern Value	1355
	a. Brice M. Clagett, Just Compensation in International Law: The	
	Issues Before the Iran-United States Claims Tribunal, in The	
	Valuation of Nationalized Property (1987)	1355
	b. Comparable Sales	1356
	i. CME Czech Republic B.V. (The Netherlands) v. The Czech	
	Republic, UNCITRAL Final Award of 14 March 2003	1356
	c. Discounted Cash Flow Method	1359
	i. Amoco International Finance Corporation v. The Government of	
	the Islamic Republic of Iran, Award No. 310-56-3 (Chamber Three	18 N. L. Col. 18 (2012)
	of 14 July 1987, 15 Iran-US Cl. Trib. Rep. 189	1359
	ii. Government of the State of Kuwait v. American Independent Oil	
	Co. (AMINOIL), Award of 24 May 1982, 21 I.L.M. 976 (1982)	1362

	iii. Phillips Petroleum Company Iran v. The Islamic Republic of Iran,	
	Award No. 425-39-2 (Chamber Two) of 29 June 1989, 21 Iran-	1065
	U.S. Cl. Trib. Rep. 79	1365
	iv. CME Czech Republic B.V. (The Netherlands) v. The Czech	10/7
	Republic, UNCITRAL Final Award of 14 March 2003	1367
	v. Comments and Questions	1368
	4. Underlying Asset Valuation Method	1369
	a. Phillips Petroleum Company Iran v. The Islamic Republic of Iran,	
	Award No. 425-39-2 (Chamber Two) of 29 June 1989, 21 Iran-	1260
	U.S. Cl. Trib. Rep. 79  b. Comments and Overtions	1369
	b. Comments and Questions  5. Alternate Confirming Voluntion Methods	1369
	5. Alternate Confirming Valuation Methods a. Charles N. Brower & Jason D. Brueschke, <i>The Iran-United States</i>	1370
	Claims Tribunal (Kluwer Law International 1998), Ch. 16	1370
	6. Minority Share Discount and Share-Transfer Restrictions	1370
	a. Charles N. Brower & Jason D. Brueschke, The Iran-United States	1370
	Claims Tribunal (Kluwer Law International 1998) Ch. 16	1370
W 7WW		
	I. Inflation	1372
P	A. Government of the State of Kuwait v. American Independent Oil	
	Co. (AMINOIL), Award of 24 May 1982, 21 I.L.M. 976 (1982)	1372
	K. Interest	1373
	A. Libyan American Oil Company (LIAMCO) v. Government of the	1010
1	Libyan Arab Republic, Award of 12 April 1977, 20 I.L.M. 1 (1981)	1373
T		1313
1	3. McCollough & Company, Inc. v. Ministry of Post, Telegraph and	
	Telephone, Award No. 225-89-3 (Chamber Three) of 22 April 1986,	
	11 Iran-U.S. Cl. Trib. Rep. 3	1374
	C. John Gotanda, Supplemental Damages in Private International	
	Law (Kluwer 1998)	1377
I	). ILC Articles on State Responsibility, Fifty-third session (2001)	1380
]	E. Draft Convention on State Responsibility, art. 38, 55 Am. J. Int'l L.	
	545, 581 (1961)	1381
	F. UNIDROIT Principles on International Commercial Contracts	1381
	G. Compound Interest	1381
	1. James Crawford, Special Rapporteur, Third Report on State	1301
	Responsibility, International Law Commission 52nd Sess., at 22,	
	U.N. Doc. A/CN.4/507 (2000)	1381
	2. F.A. Mann, Compound Interest as an Item of Damage in	1001
	International Law, in Further Studies in International Law 377-78,	
	383-85 (Oxford, Clarendon Press 1990)	1382
	3. Compania des Desarrollo de Santa Elena SA v. Republic of Costa	
	Rica, ICSID Case No. ARB/96/1, Award of 17 February 2000, 15	
t.	ICSID Rev Foreign Inv. L.J. 169 (2000), 39 I.L.M. 1317 (2000)	1383
I	H. Comments and Questions	1385
	K. Currency and Exchange Rate	1386
1	TO CHELLAND MANUELLE TRUCK	TOOL

A.	Lighthouses Arbitration Between France And Greece, Permanent	
	Court of Arbitration, Award of July 24, 1956, 1956 I.L.R. 299, 302	1386
	McCollough & Company, Inc. v. Ministry of Post, Telegraph and	
	Telephone, Award No. 225-89-3 (Chamber Three) of 22 April 1986,	
	11 Iran-U.S. Cl. Trib. Rep. 3	1387
C.	Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545,	
	581 (1961)	1388
XI.	Costs	1389
A.	Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545,	
	581 (1961)	1389
B.	Bridas S.A.P.I.C. v. Government of Turkmenistan, Case No. 9058/	
	FMS/KGA, Third Partial Award of 2 September 2000	1389
XII.	Taxes	1390
	Draft Convention on State Responsibility, 55 Am. J. Int'l L. 545,	
	581 (1961)	1390
B.	Comments and Questions	1390
<b>~</b>		
	PTER 12	1201
PROC	CEDURE AND PROOF: DEVELOPING THE CASE	1391
I.	Introduction	1391
A.	Source of Procedural Rules	1391
B.	Strategizing the Case and Selecting Arbitrators	1392
	1. R. Doak Bishop, Toward a Harmonized Approach to Advocacy in	
	International Arbitration, in The Art of Advocacy in International Arbitration (Juris Publishing 2004)	1392
TT		
	Initiation of ICSID Case	1395
	ICSID Convention, Article 36 – Request for Arbitration	1395 1395
	ICSID Institution Rules, Rule 6  Companie de Aguas del Aconquiia S.A. V. Argentine Republic	1393
<b>C</b> .	Compania de Aguas del Aconquija, S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, 16 ICSID Rev. – FILJ 643, 650-52 (200	11)
	1395	1)
D.	Comments and Questions	1396
	Preliminary Hearing	1397
	ICSID Arbitration Rules, Rules 20-21	1397
	Judge Howard Holtzmann (Judge, Iran-United States Claims	1371
. ע	Tribunal), Streamlining Arbitral Proceedings: Some Techniques of	
	the Iran-United States Claim Tribunal, 11 Arb. Int'l 39 (1995)	1397
C	Karl-Heinz Bockstiegel, Presenting Evidence in International	
	Arbitration, 16(1) ICSID Review – FILJ 1 (2001)	1402
D.	ICSID Model Agenda for the Organizational Hearing	1402
	UNCITRAL Notes on Organizing an Arbitral Proceeding	1403

F.	Stanton Belland, The Iran-United States Claims Tribunal: Some	
	Reflections on Trying a Claim, 1 J. Int'l Arb. 237 (1984)	1413
G.	Comments and Questions	1413
IV.	Jurisdictional Objections	1414
	ICSID Arbitration Rules, Rule 41	1414
B.	UNCITRAL Arbitration Rules, Article 21	1415
C.	Compañía de Aguas del Aconquija, S.A. v. Argentine Republic,	
	ICSID Case No. ARB/97/3, Award of 21 November 2000, 16	
	ICSID Rev. – FILJ 643, 650-52 (2001)	1415
D.	Comments and Questions	1416
$\mathbb{V}$ .	Arbitral Procedure	1418
A.	ICSID Arbitration Rules, Rules 29-38	1418
B.	UNCITRAL Arbitration Rules, Articles 15, 24-25	1420
C.	ICC Arbitration Rules, Articles 15, 20-21	1421
D.	International Bar Association's (IBA) Rules on the Taking of	
	Evidence in International Commercial Arbitration (1999)	1422
E.	Michael Bühler & Carroll Dorgan, Witness Testimony Pursuant to	
	the 1999 IBA Rules of Evidence in International Commercial	
	Arbitration, 17 J. Int. Arb. 1 at 3, 20-21, 24-25, 28-29 (2000)	1423
F.	Nicolas C. Ulmer, Winning the Opening Stages of an ICC	
	Arbitration, 8 J. Int'l Arb. 33 (1991)	1426
G.	Paul D. Friedland, A Standard Procedure for Presenting Evidence	
	in International Arbitration, 11(4) Mealey's Int'l Arb. R. 25	
	(April 1996)	1429
H.	R. Doak Bishop, Toward a Harmonized Approach to Advocacy in	
	International Arbitration, in The Art of Advocacy in International	1 10 1
т	Arbitration (Juris Publishing 2004)	1431
1.	Metalclad Corp. v. United Mexican States, ICSID Case No.	
	ARB(AF)/97/1, Award of 30 August 2000, 16 ICSID Rev. – FILJ	1.420
Т	168, 174 (2001) Société Ouagt Africaina Dag Pétang Industrials ISOADII y State of	1432
J.	Société Ouest Africaine Des Bétons Industriels [SOABI] v. State of Senegal, ICSID Case No. ARB/82/1, Award on Merits of 25	
	February 1988, 2 ICSID Rep. 165, 195-96 (1994)	1435
K	Tradex Hellas S.A. v. Republic of Albania, ICSID Case No. ARB/	1433
	94/2, 14 ICSID Rev. – FILJ 197 (1999)	1436
	Robert Azninian, Kenneth Davitian, & Ellen Baca v. The United	1730
	Mexican States, ICSID Case No. ARB(AF)/97/2, 14 ICSID Rev. –	
	FILJ 538 (1999)	1436
M.	L. Yves Fortier, The Minimum Requirements of Due Process in Takin	19
	Measures Against Dilatory Tactics: Arbitral Discretion in Internatio	0
	Commercial Arbitration – "A Few Plain Rules and a Few Strong	
	Instincts,"	1438

N.	Comments and Questions	1439
VI.	Confidentiality	1440
	Metalclad Corp. v. United Mexican States, ICSID Case No. ARB(AF)/97/1, Award of 30 August 2000, 16 ICSID Rev. – FILJ 168, 174 (2001)	1440
B.	Amco Asia Corporation v. Republic of Indonesia, ICSID Case No. ARB/81/1, Decision on Request for Provisional Measures of 9 December 1983, 1 ICISD Rep. 377, 410-12 (Cambridge Grotius	
	1993)	1441
VII.	Burden of Proof	1443
A.	Durward V. Sandifer, <i>Evidence Before International Tribunals</i> (U. Virginia Press 1975, revised edition)	1443
B.	Charles N. Brower, Evidence Before International Tribunals: The	
	Need for Some Standard Rules, 28 Int'l Law. 47 (1994)	1446
C.	Karl-Heinz Bockstiegel, Presenting Evidence in International	
	Arbitration, 16(1) ICSID Review – FILJ 1 (2001)	1446
D.	The Loewen Group, Inc., and Raymond L. Loewen v. United States	
E.	of America; ICSID Case No. ARB(AF)/98/3 Award of 26 June 2003 Marvin Feldman v. Mexico, ICSID Case No. ARB/(AF)/99/1,	1446
	Award of December 16, 2002	1447
F.	Comments and Questions	1448
VIII.	Presumptions and Inferences	1448
A.	Durward V. Sandifer, Evidence Before International Tribunals (U.	
	Virginia Press 1975, revised edition)	1448
B.	Charles N. Brower, Evidence Before International Tribunals:	
	The Need for Some Standard Rules, 28 Int'l Law. 47 (1994)	1451
C.	G. C. Christie, What Constitutes a Taking of Property Under	
	International Law, 38 Brit. Y.B. Int'l L. 307 (1962)	1451
D.	Comments and Questions	1452
IX.	Discovery	1452
A.	Document Production	1452
	1. International Bar Association's (IBA) Rules on the Taking of	
	Evidence in International Commercial Arbitration (1999)	1452
	2. Judge Howard M. Holtzmann (Judge, Iran-United States Claims	
	Tribunal), Fact-Finding by the Iran-United States Claims Tribunal, Eleventh Sokol Colloquium at 101, 119-20 (Transnational	
	Publishers, Inc. 1992)	1454
	3. Karl Heinz Bockstiegel, Presenting Evidence in International	
	Arbitration, 16(1) ICSID Rev. – FILJ 1 (2001)	1455
	4. Christoph H. Schreuer, The ICSID Convention: A Commentary	
	Art. 93 (11)(c), p 650 (Cambridge U. Press 2001)	1456
	5. CME Czech Republic B. V. (The Netherlands) v. The Czech Republic,	1456
	UNCITRAL Partial Award of 13 September 2001	1420

	6. Ceskoslovenska Obchodni Bana, A.S. v. The Slovak Republic,	1 1 5 7
D	ICSID Case No. ARB/97/4, 14 ICSID Rev. – FILJ 251 (1999)	1457
B.	Adverse inferences  1. Durwood V. Sandifer, Evidence Before International Tribunals (U.	1457
	Va. Press 1975, revised edition)	1457
	2. Charles N. Brower, Evidence Before International Tribunals: The	1757
	Need for Some Standard Rules, 28 Int'l Law. 47 (1994)	1458
	3. Judge Howard M. Holtzmann (Judge, Iran-United States Claims	
	Tribunal), Fact-Finding by the Iran-United States Claims Tribunal,	
	Eleventh Sokol Colloquium at 101, 127-28 (Transnational	1 450
	Publishers, Inc. 1992)	1459
	Comments and Questions	1459
	Evidence	1460
	ICSID Administrative and Financial Regulations, Regulation 30	1460
В.	International Bar Association's (IBA) Rules on the Taking of	
_	Evidence in International Commercial Arbitration (1999)	1461
C.	Karl Heinz Bockstiegel, Presenting Evidence in International	
	Arbitration, 16 (1) ICSID Rev. – FILJ 1 (2001)	1461
D.	Charles N. Brower, Evidence Before International Tribunals:	
	The Need for Some Standard Rules, 28 Int'l Law. 47 (1994)	1463
E.	Judge Howard M. Holtzmann (Judge, Iran-United States Claims	
	Tribunal), Fact-Finding Before the Iran-United States Claims	
	Tribunal, Eleventh Sokol Colloquium at 101, 126-27	
_	(Transnational Publishers, Inc. 1992)	1466
F.	Interested witnesses	1466
	1. Michael Straus, The Practice of the Iran – U. S. Claims Tribunal in	
	Receiving Evidence from Parties and from Experts, 3 J. Int'l Arb. 57 (1986)	1466
	2. Charles N. Brower, Evidence Before International Tribunals:	1700
	The Need for Some Standard Rules, 28 Int'l Law. 47 (1994)	1469
G.	Asian Agricultural Products Limited v. Republic of Sri Lanka,	
	ICSID Case No. ARB/87/3, 4 ICSID Rep. 246 (1997)	1469
H.	Tradex Hellas S.A. v. Republic of Albania, ICSID Case No.	
	ARB/94/2, 14 ICSID Rev FILJ 197 (1999)	1470
J.	Parker v. United Mexican States (U.S. v. Mex.), 4 R.I.A.A. 35,	
	39 (General Claims Commission 1926)	1472
J.	Western Co. of North America v. Oil and Natural Gas Comm'n,	
	13 Y.B. Com. Arb. 5, 13-14 (1988) (ad hoc arbitration, Ian Kinnell,	
	umpire, 1985)	1473
K.	Shufeldt v. Guatemala (Guatemala v. US), 2 R.I.A.A. 1083	1474
L.	Hatton v. United Mexican States (U.S. v. Mexico), 4 R.I.A.A. 329,	
	331 (General Claims Commission 1928)	1474
M.	McCurdy v. United Mexican States (U.S. v. Mex.), 4 R.I.A.A. 418,	
	421 (General Claims Commission 1929)	1475

N.	Studer v. Great Britain (U.S. v. U.K.), 6 R.I.A.A. 149, 152	
	(American & British Claims Arbitration Tribunal 1925)	1476
O.	Robert Azninian, Kenneth Davitian, & Ellen Baca v. United	
	Mexican States, ICSID Case No. ARB(AF)/97/2, 14 ICSID Rev	
	FILJ 538 (1999)	1476
P.	Comments and Questions	1477
XI.	Experts	1478
	ICC Arbitration Rules, Article 20 (4)	1478
	UNCITRAL Arbitration Rules, Article 27	1478
C.	International Bar Association's (IBA) Rules on the Taking of	
	Evidence in International Commercial Arbitration (1999)	1479
D.	Gillian White, The Use of Experts by International Tribunals	
	(Syracuse U. Press, Syracuse, NY 1965), Appendix III	1481
E.	Durward V. Sandifer, Evidence Before International Tribunals	
	§77 at 327-28 (U. Virginia Press 1975, revised edition)	1482
F.	Michael Straus, The Practice of the Iran-U.S. Claims Tribunal in	
	Receiving Evidence from Parties and from Experts, 3 J. Int'l Arb.	
	57, 63-67 (1986)	1483
G.	R. Doak Bishop, Toward a Harmonized Approach to Advocacy in	
	International Arbitration, in The Art of Advocacy in International	
	Arbitration (Juris Publishing 2004)	1486
H.	Société Ouest Africaine Des Bétons Industriels [SOABI] v. State of	
	Senegal, ICSID Case No. ARB/82/1, Award on Merits of 25	1 407
ν.	February 1988, 2 ICSID Rep. 165, 196 (1994)	1487
1.	Lehigh Valley RR Co. v. Germany (Sabotage Cases) (U.S. v.	
	Germany) (Mixed Claims Commission 1932), 8 Rep. Int'l Arb.	1 1 0 7
т	Awards 121 (UN 1948-1980)	1487 1488
	Comments and Questions	
	Oral Hearings	1489
A.	International Bar Association's (IBA) Rules on the Taking of	1 400
-	Evidence in International Commercial Arbitration (1999)	1489
B.	Michael Bühler and Carroll Dorgan, Witness Testimony Pursuant	
	to the 1999 IBA Rules of Evidence in International Commercial	
	Arbitration, 17 J. Int. Arb.1 at 3, 20-21, 24-25, 28-29 (Kluwer	1400
	2000) Indee Herwood Heltzmann (Indee Iron United States Claims Tribun	1490
C.	Judge Howard Holtzmann (Judge, Iran-United States Claims Tribun Stragmlining Arbitral Proceedings: Some Techniques of the Iran	iai),
	Streamlining Arbitral Proceedings: Some Techniques of the Iran – United States Claims Tribunal, 11 Arb. Int'l. 39 (1995)	1492
D	Stanton Belland, The Iran – United States Claims Tribunal: Some	1 サブム
IJ.	Reflections on Trying a Claim, 1 J. Int'l Arb. 237 (1984)	1494
	Rejuditions on in young a diant, i J. Int I Ald. 231 (1707)	エイノイ

E.	Paul D. Friedland, A Standard Procedure for Presenting Evidence in	
	International Arbitration, 11 (4) Mealey's Int'l Arb. R. 25 (April	
	1996)	1496
F.	Jack J. Coe, Jr., International Commercial Arbitration: American	
	Principles and Practice in a Global Context at 249 (Transnational	
	Publishers, Inc. 1997)	1497
G.	R. Doak Bishop, Toward a Harmonized Approach to Advocacy in	
	International Arbitration, in The Art of Advocacy in International	
	Arbitration (Juris Publishing 2004)	1498
H.	Vacuum Salt Products Limited v. Government of the Republic of	1 170
	Ghana, ICSID Case No. ARB/92/1, 4 ICSID Rep. 320, 347-48	
	(1997), Award of 16 February 1994	1501
I.	Tradex Hellas S.A. v. Republic of Albania, ICSID Case No. ARB/	
	94/2, 14 ICSID Rev. – FILJ 197 (1999)	1501
J.	Comments and Questions	1502
	Translations	1503
	ICSID Arbitration Rules, Rule 22 – Procedural Languages	1503
	Durward V. Sandifer, Evidence Before International Tribunals	1303
D.	§ 68, p. 285 (U. Virginia Press 1975, Rev. Ed.)	1502
	Jack J. Coe, Jr., International Commercial Arbitration: American	1503
<b>C</b> .	Principles and Practice in a Global Context at 249 (Transnational	
	Publishers, Inc. 1997)	1503
D	Stanton Belland, The Iran-United States Claims Tribunal: Some	1303
D.		1504
	Reflections on Trying a Claim, 1 J. Int'l Arb. 237 (1984) Comments and Questions	1504 1504
		1304
XIV.	The Role of Amicae in Investment Disputes Involving Public	
	Issues	1505
A.	Methanex v. United States; Decision of the Tribunal on Petitions	
	from Third Persons to Intervene as "Amici Curiae"	1505
В.	Statement of the NAFTA Free Trade Commission on non-disputing	
	party participation (October 7, 2003)	1512
C.	United States Statement on Open Hearings in NAFTA Chapter	
	Eleven Arbitrations (October 7, 2003)	1514
D.	Comments and Questions	1514
CHAF	PTER 13	
	OGNITION AND ENFORCEMENT OF INTERNATIONAL ARBITRA	Т,
		1515
	Introduction	1515
	Recognition and Enforcement Mechanisms	1515
	The Special Regime of the ICSID Convention	1515
11.	THE SPECIAL RESIDENT OF THE LOSID CONVENIENT	

	1. Convention on the Settlement of Investment Disputes Between State and Nationals of Other States ("ICSID Convention") Done at	S
	Washington, 18 March 1965; Entered into force, 14 October 1966;	
	575 U.N.T.S. 160 (1966)	1515
	2. Christoph H. Schreuer, The ICSID Convention: A Commentary	
	(Cambridge, 2001), Article 54	1516
	3. Benvenuti et Bonfant SRL v. The Government of the People's	
	Republic of the Congo, ICSID Case No. ARB/77/2, Judgment of	
	26 June 1981, 1 ICSID Reports 368, France, Cour d'appel	1521
B	Enforcement of Arbitral Awards (Other than ICSID)	1524
	1. The New York Convention	1524
	a. In general	1524
	i. Convention on the Recognition and Enforcement of Foreign	
	Arbitral Awards ("New York Convention") Done at New York,	
	10 June 1958; Entered into force, 7 June 1959; 330 U.N.T.S. 38	
	(1959)	1524
	b. Direct effect of international arbitral awards made under treaties	1528
	i. Dallal v. Bank Mellat, Judgment of 26 July 1985, 75 I.L.R. 151,	
	England, High Court, Queen's Bench Division	1528
	c. Grounds for Refusal of Recognition and Enforcement	1531
	i. Southern Pacific Properties (Middle East) Limited v. Arab	
	Republic of Egypt, ICSID Case No. ARB/84/3, Judgment of 12	
v	July 1984, 3 ICSID Reports p. 92 (86 I.L.R. 492), The Netherlands	5,
	District Court of Amsterdam	1531
	2. Regional Conventions	1533
	a. Inter-American Convention on International Commercial	
	Arbitration ("Panama Convention") Done at Panama City, 30	
	January 1975; Entered into force, 16 June 1976; 1438 U.N.T.S. 248	4 = 0 0
	(1986)	1533
	b. European Convention on International Commercial Arbitration	1506
	Done at Geneva, 21 April 1961; Entered into force, 7 January 1964	1536
II.	Challenge to Arbitral Awards	1542
A.	Challenge to Awards under the ICSID Convention	1542
	1. Interpretation, Revision and Annulment of an ICSID Award	1542
	a. Convention on the Settlement of Investment Disputes Between	
	States and Nationals of Other States ("ICSID Convention") Done	
	at Washington, 18 March 1965; Entered into force, 14 October	
	1966; 575 U.N.T.S. 160 (1966)	1542
	b. Wena Hotels Limited v. Arab Republic of Egypt, ICSID Case No.	
	ARB98/4, Decision on Annulment of 8 December 2000, 6 ICSID	
	Rep. p. 129, 41 ILM 933 (2002) Ad Hoc Committee	1544
	c. Compañia de Aguas del Aconquija S.A. and Vivendi Universal	
	(Formerly Compagnie Générale Des Eaux) v. Argentine Republic,	
	ICSID Case No. ARB97/3, Decision on Annulment of 3 July 2002,	المناو السور المن
	6 ICSID Rep. 340, 41 ILM 1135 (2002) Ad Hoc Committee	1549
	d. Comments and Questions	1561
	2. Supplementation and Rectification of an ICSID Award	1561

	a. Convention on the Settlement of Investment Disputes Between	
	States and Nationals of Other States ("ICSID Convention")	1561
	b. Compañia de Aguas del Aconquija S.A. and Vivendi Universal	
	(Formerly Compagnie Générale Des Eaux) v. Argentine Republic,	
	ICSID Case No. ARB97/3, Decision on Supplementation and	
	Rectification of 28 May 2003, 7 ICSID Rep. p. 489, Ad Hoc	
	Committee	1561
В.	Challenge of Awards of non-ICSID Tribunals	1562
	1. UNCITRAL Model Law on International Commercial Arbitration,	
	1994	1562
	2. Explanatory Note by the UNCITRAL Secretariat on the Model Law	
	on International Commercial Arbitration	1563
	3. The Czech Republic v. CME Czech Republic B.V., UNCITRAL	
	Judgment of 15 May 2003, Challenge to Arbitration Award Sweden,	
	Court of Appeal, Stockholm, 9 ICSID Rep. (in press)	1564
	4. Comments and Questions	1578
	5. Swedish Arbitration Act 1999 (sfs 1999:116)	1578
	6. United Kingdom Arbitration Act 1996	1579
	7. Arab Republic of Egypt v. Southern Pacific Properties Limited and	
	Southern Pacific Properties (Middle East) Limited, Judgment of	
	12 July 1984, 3 ICSID Reports 79, France, Cour d'appel, Paris	
	(First Additional Chamber)	1583
C.	Interpretation and Supplementary Decisions of Awards under the	
	ICSID Additional Facility	1589
	1. Rules Governing the Additional Facility for the Administration of	
	Proceedings by the Secretariat of the International Centre for	
	Settlement of Investment Disputes (Additional Facility Rules)	1589
	2. United Mexican States v. Metalclad Corporation, ICSID Case No.	
	ARB(AF)97/1, Judgment of 2 May 2001, 5 ICSID Reports 238 (119	
	International Law Reports 647), Canada, Supreme Court of British	
	Columbia (Tysoe J)	1590
IV.	Issues of State or Sovereign Immunity	1613
A.	Basic Distinctions	1613
	1. "Sovereign" and "Commercial" Activity	1613
	a. ILC, Ad Hoc Committee on Jurisdictional Immunities of States	
	and Their Property Draft Articles on jurisdictional immunities of	
	States and their property	1613
	2. Immunity from Jurisdiction and Immunity from Enforcement	1616
	a. Restatement of the Law (Third): The Foreign Relations Law of	
	the United States, §451 St Paul, American Law Institute, 1987	1616
4	b. Restatement of the Law (Third): The Foreign Relations Law of	
	the United States, §460 St Paul, American Law Institute, 1987	1617
	c. ILC, Ad Hoc Committee on Jurisdictional Immunities of States and	
	Their Property Draft Articles on jurisdictional immunities of States	
	and their property	1619

	d. ILC, Ad Hoc Committee on Jurisdictional Immunities of States and	
	Their Property Draft Articles on jurisdictional immunities of States	
	and their property	1621
В.	Differing National Approaches	1621
	1. The US Approach: Foreign Soverign Immunities Act 1976	1621
	a. United States Foreign Sovereign Immunities Act 1976	1621
	b. Creighton Limited v. Government of the State of Qatar, Decision of	
	2 July 1999, US Court of Appeals, Dist. of Columbia Circuit decided	1
	2 July 1999, 181 F.3d 118 (D.C. Cir. 1999)	1628
	c. S & Davis International, Inc. v. The Republic of Yemen, Decision	
	of 21 July 2000, United States, Court of Appeals, 11th Circuit,	
	218 F.3d 1292 (11th Cir. 2000)	1636
	d. Restatement of the Law (Third): The Foreign Relations Law of the	
	United States, §456 St Paul, American Law Institute, 1987	1646
	2. The U.K. Approach – State Immunity Act 1978	1649
C.	Assets Subject to Attachment and Execution	1650
	1. United States "Helms Amendment"	1650
	2. Foreign States Immunities Act 1985 (Australia)	1652