

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

THE INTERNATIONAL LAW ON FOREIGN INVESTMENT

Given recent seismic upheavals in the world's money markets, an updated edition of an authoritative, reliable textbook on the international law of foreign investment has rarely been so timely. Sornarajah's classic text surveys how international law has developed to protect foreign investments by multinational actors and to control any misconduct on their part. It analyses treaty-based methods, examining the effectiveness of bilateral and regional investment treaties. It also considers the reverse flow of investments from emerging industrialising powers such as China and Brazil and explores the retreat from market-oriented economics to regulatory controls. By offering thought-provoking analysis of not only the law, but related developments in economics and political sciences, Sornarajah gives immediacy and relevance to the discipline. This book is required reading for all postgraduate and undergraduate international law students specialising in the law of foreign investments.

M. SORNARAJAH is C.J. Koh Professor at the Faculty of Law of the National University of Singapore and the Tunku Abdul Rahman Professor of International Law at the University of Malaya at Kuala Lumpur.

Cambridge University Press
978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition
M. Sornarajah
Frontmatter
[More information](#)

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

THE INTERNATIONAL LAW ON FOREIGN INVESTMENT

THIRD EDITION

M. Sornarajah



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition
M. Sornarajah
Frontmatter
[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9780521763271

© M. Sornarajah 2010

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2010

5th printing 2014

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-76327-1 Hardback

ISBN 978-0-521-74765-3 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press
978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition
M. Sornarajah
Frontmatter
[More information](#)

To Ramanan

Cambridge University Press
978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition
M. Sornarajah
Frontmatter
[More information](#)

Contents

| | |
|--|----------------|
| <i>Preface to the third edition</i> | <i>page</i> xv |
| <i>Preface to the second edition</i> | xvii |
| <i>Preface to the first edition</i> | xviii |
| <i>Table of cases</i> | xix |
| <i>List of abbreviations</i> | xxx |
| 1 Introduction | 1 |
| 1. The definition of foreign investment | 8 |
| 1.1 The distinction between portfolio investment and foreign direct investment | 8 |
| 1.2 Definition of foreign investment in investment treaties | 10 |
| 1.3 The evolution of the meaning of the term ‘investment’ | 11 |
| 2. The history of the international law on foreign investment | 19 |
| 2.1 The colonial period | 19 |
| 2.2 The post-colonial period | 21 |
| 3. An outline of the book | 29 |
| 2 The shaping factors | 33 |
| 1. The historical setting | 36 |
| 1.1 State responsibility for injuries to aliens | 36 |
| 1.1.1 The natural resources sector | 38 |
| 1.1.2 The plantation sector | 41 |
| 1.1.3 The manufacturing sector | 42 |
| 1.1.4 The financial sector | 44 |
| 1.1.5 Intellectual property | 44 |
| 2. Conflicting economic theories on foreign investment | 47 |
| 2.1 The classical theory on foreign investment | 48 |
| 2.2 The dependency theory | 53 |
| 2.3 The middle path | 55 |
| 3. Actors in the field of foreign investment | 60 |
| 3.1 The multinational corporation | 61 |
| 3.2 State corporations | 63 |

| | | |
|------|--|-----|
| 3.3 | International institutions | 65 |
| 3.4 | Non-governmental organisations | 67 |
| 3.5 | Other actors | 68 |
| 3.6 | Sovereign wealth funds | 68 |
| 4. | Risks in foreign investment | 69 |
| 4.1 | Ideological hostility | 71 |
| 4.2 | Nationalism | 71 |
| 4.3 | Ethnicity as a factor | 73 |
| 4.4 | Changes in industry patterns | 74 |
| 4.5 | Contracts made by previous regimes | 75 |
| 4.6 | Onerous contracts | 76 |
| 4.7 | Regulation of the economy | 77 |
| 4.8 | Human rights and environmental concerns | 77 |
| 4.9 | The law-and-order situation | 79 |
| 5. | Sources of the international law on foreign investment | 79 |
| 5.1 | Treaties | 79 |
| 5.2 | Custom | 82 |
| 5.3 | General principles of law | 85 |
| 5.4 | Judicial decisions | 87 |
| 3 | Controls by the host state | 88 |
| 1. | Regulation of entry | 97 |
| 1.1 | Guarantees against expropriation | 99 |
| 1.2 | Guarantees relating to dispute settlement | 102 |
| 1.3 | Tax and non-tax incentives to foreign investors | 103 |
| 1.4 | Screening of foreign investment entry | 104 |
| 1.5 | Requirements of local collaboration | 106 |
| 1.6 | Capitalisation requirements | 108 |
| 1.7 | Requirements relating to environmental protection | 109 |
| 1.8 | Requirements relating to export targets | 111 |
| 1.9 | Requirements relating to local equity | 112 |
| 1.10 | Other requirements | 115 |
| 1.11 | Regulation and expropriation | 115 |
| 2. | New forms of foreign investment | 116 |
| 2.1 | The joint venture | 116 |
| 2.2 | The production-sharing agreement | 118 |
| 3. | Constraints on control: customary international law | 119 |
| 3.1 | State responsibility for injuries to aliens | 120 |
| 3.2 | The conflict between the United States and Latin American states | 124 |
| 3.3 | The content of the international minimum standard | 128 |
| 3.4 | State responsibility and developing states | 130 |
| 3.5 | The ‘noble synthesis’ | 131 |

| <i>Contents</i> | <i>ix</i> |
|---|-----------|
| 3.6 Damage to property in the course of civil disturbances | 134 |
| 3.7 Validity of conditions on foreign investment | 136 |
| 3.7.1 Regulations on screening of foreign investments | 137 |
| 3.7.2 Local equity requirements | 138 |
| 3.7.3 Export requirements | 141 |
| 4. Conclusion | 142 |
| 4 The liability of multinational corporations and home state measures | 144 |
| 1. Obligations of multinational corporations | 145 |
| 1.1 The obligation not to interfere in domestic politics | 148 |
| 1.2 Obligations relating to human rights | 149 |
| 1.3 Liability for violations of environmental norms | 152 |
| 1.4 The obligation to promote economic development | 154 |
| 2. Extraterritorial control by home states | 155 |
| 2.1 State responsibility of home states for failure to control multinational corporations | 157 |
| 2.2 The existing rules on state responsibility | 157 |
| 2.3 The duty to control nationals abroad | 164 |
| 2.4 State responsibility and the duty to provide remedies to victims | 169 |
| 3. Conclusion | 170 |
| 5 Bilateral investment treaties | 172 |
| 1. Introductory survey | 175 |
| 2. Treaties of friendship, commerce and navigation | 180 |
| 3. Reasons for making bilateral investment treaties | 183 |
| 4. Features of bilateral investment treaties | 187 |
| 4.1 The statement of the purpose of the treaty | 188 |
| 4.2 Definitions | 190 |
| 4.2.1 Investments | 190 |
| 4.2.2 Limitation on the definition of investment | 194 |
| 4.2.3 Portfolio investments | 196 |
| 4.2.4 Corporate nationality and the protection of shareholders | 197 |
| 4.3 Standard of treatment | 201 |
| 4.3.1 National standard of treatment | 201 |
| 4.3.2 Fair and equitable standard | 204 |
| 4.3.3 Most-favoured-nation treatment | 204 |
| 4.3.4 Full protection and security | 205 |
| 4.4 Performance requirements | 205 |
| 4.5 Repatriation of profits | 206 |
| 4.6 Nationalisation and compensation | 207 |
| 4.6.1 Compensation for destruction during wars and national emergencies | 213 |

| | | |
|-------|---|-----|
| 4.7 | Protection of commitments | 215 |
| 4.8 | Dispute resolution | 216 |
| 4.9 | Arbitration and the exhaustion of local remedies | 219 |
| 4.9.1 | Arbitration between states | 221 |
| 4.9.2 | Subrogation | 222 |
| 4.10 | Safeguard provisions and exceptions | 222 |
| 4.11 | Succession of governments and bilateral investment treaties | 224 |
| 5. | New concerns in bilateral investment treaties | 224 |
| 5.1 | Environmental concerns | 225 |
| 5.2 | Human rights | 227 |
| 5.3 | Economic development | 229 |
| 5.4 | International concerns | 230 |
| 5.5 | Regulatory space and bilateral treaties | 231 |
| 5.6 | Bilateral investment treaties and customary international law | 232 |
| 6. | Conclusion | 234 |
| 6 | Multilateral instruments on foreign investment | 236 |
| 1. | The international norms on multinational corporations | 238 |
| 2. | The Draft Codes on Multinational Corporations | 242 |
| 2.1 | Description of the UNCTC Draft Code | 242 |
| 2.1.1 | The preamble | 243 |
| 2.1.2 | Definition | 243 |
| 2.1.3 | Respect for national sovereignty | 243 |
| 2.1.4 | Renegotiation of contracts | 244 |
| 2.1.5 | Non-interference in domestic affairs | 244 |
| 2.1.6 | Abstention from corrupt practices | 246 |
| 2.1.7 | Economic and other controls | 247 |
| 2.1.8 | Disclosure of information | 248 |
| 2.1.9 | Treatment of transnational corporations | 248 |
| 3. | The outstanding issues | 249 |
| 3.1 | The relevance of international law | 249 |
| 3.2 | Non-interference in domestic affairs | 250 |
| 3.3 | Permanent sovereignty and international obligations | 252 |
| 4. | The regional agreements | 253 |
| 4.1 | NAFTA | 253 |
| 4.2 | The ASEAN agreements | 254 |
| 5. | The Multilateral Agreement on Investment | 257 |
| 6. | The WTO and foreign investment | 262 |
| 6.1 | Investment in the Uruguay Round | 263 |
| 6.2 | GATS | 263 |
| 6.3 | TRIPS | 265 |
| 6.4 | TRIMS | 266 |

| <i>Contents</i> | <i>xi</i> |
|--|-----------|
| 7. An investment regime under the WTO | 267 |
| 7.1 The definition of investment | 267 |
| 7.2 Definition and preservation of regulatory control | 268 |
| 7.3 Definition of investor | 269 |
| 7.4 Treatment standards | 269 |
| 7.4.1 Most-favoured-nation treatment | 270 |
| 7.5 Performance requirements | 271 |
| 7.6 Expropriation | 271 |
| 7.7 Balance-of-payment safeguards | 272 |
| 7.8 Dispute resolution | 272 |
| 8. The right to regulate foreign investment | 273 |
| 9. Conclusion | 275 |
| 7 Settlement of investment disputes: contract-based arbitration | 276 |
| 1. Contractual devices for foreign investment protection | 279 |
| 1.1 The essential clauses | 281 |
| 1.1.1 The stabilisation clause | 281 |
| 1.1.2 Choice-of-law clause | 284 |
| 1.1.3 Arbitration clause | 286 |
| 2. The internationalisation of state contracts | 289 |
| 2.1 The origin of the theory of internationalisation | 289 |
| 2.2 The ICSID Convention and international law | 299 |
| 2.3 The continued relevance of contract-based arbitration | 300 |
| 2.4 Lex mercatoria and state contracts | 302 |
| 2.5 Umbrella clauses and internationalisation | 304 |
| 2.6 Arbitration based on investment legislation | 304 |
| 3. Conclusion | 305 |
| 8 Treaty-based investment arbitration: jurisdictional issues | 306 |
| 1. Jurisdiction <i>ratione materiae</i> | 308 |
| 1.1 The definition of investment | 308 |
| 1.2 Economic development as a characteristic of investment | 313 |
| 1.3 Does portfolio investment qualify as investment? | 314 |
| 1.4 Pre-contractual expenses as investment | 316 |
| 1.5 The qualification of investment as subject to local laws and regulations | 317 |
| 1.6 Good faith limitations | 318 |
| 1.7 Investments ‘approved in writing’ | 319 |
| 1.8 The time factor | 319 |
| 1.9 Negotiations | 320 |
| 1.10 The ‘fork in the road’ and waiver | 320 |
| 1.11 Most-favoured-nation clause | 322 |
| 1.12 Exhaustion of local remedies | 322 |

| | | |
|-------|--|-----|
| 2. | The investor as claimant | 323 |
| 2.1 | Natural persons | 323 |
| 2.2 | Juridical person: corporate nationality | 323 |
| 2.3 | Locally incorporated company | 324 |
| 2.4 | The wholly owned company | 325 |
| 2.5 | The migration of companies | 325 |
| 2.6 | Shopping for jurisdiction | 327 |
| 2.7 | Round-tripping and corporate nationality | 328 |
| 2.8 | Denial of benefits | 329 |
| 2.9 | Protection of minority shareholders | 329 |
| 3. | Conclusion | 330 |
| 9 | Causes of action: breaches of treatment standards | 332 |
| 1. | The customary international law standards | 334 |
| 2. | The violation of national treatment standards | 335 |
| 2.1 | Performance requirements and national treatment | 342 |
| 2.2 | National treatment and infant industries | 343 |
| 2.3 | Subsidies, grants and national treatment | 344 |
| 2.4 | Ethnicity and national treatment | 344 |
| 2.5 | Conclusion | 344 |
| 3. | International minimum standard treatment | 345 |
| 4. | Fair and equitable standard of treatment | 349 |
| 4.1 | Violation of legitimate expectations | 354 |
| 4.2 | Denial of justice | 357 |
| 4.3 | Due process and administrative irregularity | 358 |
| 5. | Full protection and security | 359 |
| 6. | Conclusion | 360 |
| 10 | The taking of foreign property | 363 |
| 1. | What constitutes taking? | 364 |
| 1.1 | New forms of taking | 367 |
| 1.2 | The ideas of property | 369 |
| 1.2.1 | Forced sales of property | 376 |
| 1.2.2 | Forced sales of shares | 377 |
| 1.3 | Privatisation and forced sales | 380 |
| 1.3.1 | Indigenisation measures | 380 |
| 1.3.2 | Interference with property rights | 382 |
| 1.4 | Evolving US and European notions of property | 383 |
| 1.5 | The impact on international law | 386 |
| 1.6 | Survey of authorities | 389 |
| 2. | The exercise of management control over the investment | 400 |
| 2.1 | Cancellation of permits and licences | 402 |
| 2.2 | Takings by agents and mobs | 404 |
| 2.3 | Excessive taxation | 405 |

| <i>Contents</i> | | xiii |
|-----------------|--|------|
| 2.4 | Expulsion of the foreign investor | 405 |
| 2.5 | Freezing of bank accounts | 406 |
| 2.6 | Exchange controls | 406 |
| 3. | Illegal takings | 406 |
| 3.1 | The taking must be for a public purpose | 407 |
| 3.2 | Discriminatory taking | 409 |
| 3.3 | Takings in violation of treaties | 410 |
| 4. | Conclusion | 410 |
| 11 | Compensation for nationalisation of foreign investments | 412 |
| 1. | The competing norms: the views of the capital-exporting states | 413 |
| 1.1 | The claim that ‘prompt, adequate and effective’ compensation must be paid | 414 |
| 1.1.1 | Treaties | 415 |
| 1.1.2 | Customary practice | 417 |
| 1.1.3 | General principles of law | 418 |
| 1.1.4 | Unjust enrichment | 418 |
| 1.1.5 | Acquired rights | 419 |
| 1.1.6 | Right to property | 420 |
| 1.1.7 | Foreign investment codes | 424 |
| 1.1.8 | Decisions of courts and tribunals | 425 |
| 1.1.9 | International courts | 425 |
| 1.1.10 | Awards of arbitral tribunals | 429 |
| 1.1.11 | National courts | 440 |
| 1.1.12 | Writings of publicists | 441 |
| 2. | The competing norms | 443 |
| 2.1 | The claim that it is permissible to deduct past excess profits from compensation | 443 |
| 2.2 | The claim that the taking is a ‘revindication’ for which no compensation is necessary | 444 |
| 2.3 | The claim that appropriate compensation should be paid | 445 |
| 2.3.1 | Categories of takings for which damages rather than compensation must be paid | 447 |
| 2.3.2 | Categories of lawful takings for which full compensation must be paid | 447 |
| 2.3.3 | Full compensation must be paid where there is a one-off taking of a small business | 448 |
| 2.3.4 | Full compensation need not be paid as part of a full-scale nationalisation of a whole industry | 448 |
| 2.3.5 | Partial compensation | 449 |
| 3. | Valuation of nationalised property | 450 |
| 4. | Conclusion | 451 |

| | | |
|-----|--|-----|
| xiv | <i>Contents</i> | |
| 12 | Defences to responsibility | 453 |
| 1. | Treaty-based defences | 455 |
| 1.1 | National security | 457 |
| 1.2 | Economic crises and national security | 458 |
| 1.3 | Necessity | 461 |
| 1.4 | Force majeure | 465 |
| 2. | Violation of the fair and equitable standard by the foreign investor | 466 |
| 3. | Ius cogens, competing obligations and liability | 469 |
| 3.1 | Transactions with undemocratic governments | 470 |
| 3.2 | Investments in areas of secessionist claims | 471 |
| 3.3 | Cultural property and foreign investment | 471 |
| 3.4 | Environmental obligations | 472 |
| 3.5 | Human rights considerations | 472 |
| 4. | Conclusion | 473 |
| | <i>Bibliography</i> | 474 |
| | <i>Index</i> | 494 |

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

Preface to the third edition

Since the second edition of this book, the international law on foreign investment has witnessed such enormous activity that a new edition is justified within five years. The number of arbitration awards based on investment treaties has increased, resulting in several books written solely on the subject of investment treaty arbitration. New works have appeared on several aspects of the law on foreign investment. This work has held the area of the law together without fragmenting it any further. The carving out of an international law on foreign investment itself may have furthered fragmentation in international law. Yet, the aim was to ensure that the base remained clearly in international law principles. That aim does not appear to have been preserved in many of the later works which sought to carve out further areas as free-standing ones. The original niche of this work remains unaffected. It seeks to establish the foundations of the law clearly in the international law rules on state responsibility and dispute resolution rather than approach it with the central focus on investment treaties and arbitration which seems to have attracted the practitioner more than the scholar.

It also has a focus that is different from that of the other works in the field. It is written from the perspective of development. The claim to neutrality of the works in the field cloaks the fact that they deal with an asymmetrical system of the law created largely to ensure investment protection. The fact that it does not follow this routine does not by itself make it a partial work. As before, the criticisms of this work have been made best by my students who have come from all over the world. I have taught courses based on this book in London, at the Centre for Transnational Legal Studies, in Toronto, at Osgoode Hall Law School, at Dundee at the Centre for Petroleum and Natural Resources Law and at my own home institution, the National University of Singapore, which, through its joint programme with the New York University Law School, attracts a global body of students. All possible criticisms that could be made of its central approach are reflected in the work. No criticism can be more valuable to an academic than those made by young minds coming fresh to the subject. In many ways, the stances that were taken in the first two editions seem to be justified in light of the global economic crisis and the retreat of some of the tenets of free market liberalisation that it is alleged to have brought about.

That the subject will continue to undergo rapid changes is very clear. Even as the preface is written, new developments are taking place. As I sat to write it, the Lisbon Treaty of the European Union came into effect giving the EU competence over investment policy and investment treaties. It is not possible in this edition to speculate what the effects of the Treaty

might be. States, particularly in Latin America, are pulling out of investment treaties and the ICSID Convention. The United States and South Africa have announced major reviews of their investment treaties. Some treaties are being made without an investor–state dispute-resolution provision. There is an evident retreat from the perception that investment protection is the only purpose of the investment treaty by the recognition of defences often on the basis of the relevance of the international law generally and of the international law on human rights and the environment in particular. In any event, the newer treaties are beginning to include concerns relating to labour rights, human rights and the environment. The impact of sovereign wealth funds as foreign investors has to be assessed. These changes are captured in this edition, but the manner in which they will take hold is still unclear.

As indicated in the previous editions, this area of the law is in constant change simply because different interests clash and outcomes differ based on constantly changing power balances. As a consequence, it is not an area to be studied by looking at only the language of the treaties and the awards interpreting them (the approach taken in the conventional texts on the subject), but in light of a variety of factors, among them the movement of power balances among states, the dominance and retreat of particular economic theories at given periods and the prevailing viewpoints within the arbitral community. This edition seeks to capture these changing factors which are responsible for the rapid developments that have taken place in the law.

As in the case of the previous editions, I thank those who have travelled the same path with me in the study of this exciting branch of international law. Working with those at the Division on Investment and Enterprise at UNCTAD, particularly with James Chan and Anna Joubin-Brett, has enabled me to keep abreast of the new developments that have taken place, especially in the economic aspects of the field. My academic friends, Peter Muchlinski, Frederico Ortino, Gus van Harten, Kerry Rittich, Karl Sauvant, Wenhua Shan, David Schneiderman, Kenneth Vandevelde, Jiangyu Wang and Jean Ho, have always been good sources of information, criticism and commentary, for which I am grateful. The work was first written at the Lauterpacht Centre for International Law at Cambridge. Its Directors, Sir Eli Lauterpacht and Professor James Crawford, have remained supportive. I thank also my graduate students, Huala Adolf, George Akpan, Lu Haitian and Adefolake Oyewande Adeyeye, who worked with me in aspects of this field.

I thank Finola O’Sullivan, Sinéad Moloney, Richard Woodham, Daniel Dunlavy and Martin Gleeson for the care taken over the production of my book.

The National University of Singapore has facilitated my research in every way I wished for. It has been a pleasure to be an academic at the NUS.

I commend to the readers of this work the excellent website run by Professor Andrew Newcombe of the University of Victoria, Canada, at <http://ita.law.uvic.ca>, which provides the texts of and other documents concerning investment treaty awards, and the equally excellent website run by Luke Peterson, www.iareporter.com, which reports on developments in the field. Both are free services of immense help to students of this field. Most of the arbitral awards cited in this work are to be found on these websites.

Thanga was there, as always. Ahila has now studied this area of the law. Ramanan and Vaishnavi have careers of their own. The book has grown up with them.

Preface to the second edition

The international law on foreign investment has witnessed an explosive growth since the last edition. The decade had witnessed a proliferation of bilateral and regional investment treaties, and a dramatic rise in litigation under such treaties. The attempt to fashion a multilateral instrument on investment within the World Trade Organization has given the debate on issues in the area a wider focus. This edition seeks to capture such developments.

In the course of the decade, I have had the good fortune of being involved actively in many facets of the operation of this area of the law. During such activity, I have acquired many friends who work in the area. My association with UNCTAD has brought me in contact with Karl Sauvant, Anna Joubin-Brett, Victoria Aranda and James Chan. It has also given me the opportunity to work with Arghyrios Fatouros, Peter Muchlinksi and Kenneth Vandavelde, the academic leaders of this field. They have added much to my understanding of the law. The many hours of arguments with them, in various parts of the world, have added to the pleasure of studying this area of the law.

The first edition was written while I was a visiting fellow at the Lauterpacht Centre for International Law, University of Cambridge. The successive Directors of the Centre, Professor Sir Eli Lauterpacht and Professor James Crawford, have continued to encourage my efforts in this and other areas of international law.

My many students in Singapore and Dundee have always challenged me so that I was taught by them to know and remember that there are other ways in which the law could be looked at. To my critics, my answer would be that I am constantly made aware of their criticisms in the classroom. I have accommodated those criticisms in the text.

I thank Finola O'Sullivan, Alison Powell and Martin Gleeson for the care taken over the production of my book.

My research student, Lu Haitian, prepared the bibliography.

Thanga was there, as always. Ahila, Ramanan and Vaishnavi happily are now old enough to let their father alone.

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

Preface to the first edition

This book was written while I was on sabbatical leave from the National University of Singapore. I thank the Vice-Chancellor, the Council and Dean of the Faculty of Law for the generous terms on which I was granted the leave.

I spent the sabbatical year as a Visiting Fellow at the Research Centre for International Law of the University of Cambridge. I thank Eli Lauterpacht, the Director of the Centre, for many acts of kindness in making this year a happy and productive one.

I am grateful to Professor James Crawford, Whewell Professor of International Law at Cambridge, who read and commented on an early draft of this work, to Professor Detlev Vagts, Bemis Professor of International Law at Harvard, who enabled me to spend a month of research at the Harvard Law School and to Robin Pirrie, Fellow of Hughes Hall, Cambridge, who was helpful with his advice. I remain responsible for any errors and omissions.

As always, Thanga has been an unfailing source of strength. Ahila, Ramanan and Vaishnavi have given up time that should have been theirs.

Table of cases

- AAPL *see* Asian Agricultural Products Ltd
- Abu Dhabi Arbitration (1951) 18 *ILR* 144 290
- ADF Group Inc. v. United States, ICSID Case No. ARB(AF)/00/1 (9 January 2003) 202, 338, 339–340, 342, 344, 345, 346, 347, 358, 359, 403
- AGIP v. Congo (1982) 21 *ILM* 726 431
- Aguas del Tunari v. Republic of Bolivia, ICSID Case No. ARB/02/3 (Jurisdiction Award, 21 October 2005) 318, 325–7, 455
- Aguaytia Energy v. Republic of Peru, ICSID Case No. ARB/06/13 337
- Alabama Claim (1872) 1 Moore 495 159
- Al-Adsani v. Kuwait (1996) 106 *ILR* 536 164, 165
- Alcoa *see* United States v. Aluminium Company of America (Alcoa)
- Amco Asia Corporation v. Republic of Indonesia, ICSID Case No. ARB/81/1 (Award, 20 November 1984); (1984) 23 *ILM* 351; (1988) 27 *ILM* 1281; 1 *ICSID Reports* 589 43, 51, 70, 93, 96, 104, 105, 108–9, 139, 140–1, 187, 192, 198, 318, 324, 329, 330, 358, 376, 392–3, 394, 396, 403, 405, 419
- American International Group Inc. v. Iran (1983) 4 *Iran–US CTR* 96 433
- American Machine Tools v. Zaire (1997) 36 *ILM* 1531 122, 124, 205, 218, 359, 404
- Aminoil v. Kuwait (1982) 21 *ILM* 976 38, 39, 75, 277, 282, 283, 293, 392, 405, 420, 431, 444, 448
- Amoco International Finance Corporation v. Iran (1987) 15 *Iran–US CTR* 189 291, 417, 437–8
- Amphitrite v. R. [1921] 3 KB 300 284
- AMT *see* American Machine Tools v. Zaire
- Anglo-American Oil Company Case [1952] *ICJ Reports* 93 22, 277, 428
- Anglo-Iranian Oil Company Ltd v. Jaffrate (The ‘Rose Mary’) [1953] 1 WLR 246 20
- Aramco Arbitration (1958) 27 *ILR* 117 290
- Argentine Bribery Case, ICC Case No. 1110 (1963) 434
- Asian Agricultural Products Ltd (AAPL) v. Democratic Socialist Republic of Sri Lanka, ICSID Case No. ARB/87/3; IIC 18 (1990); (1990) 4 *ICSID Reports* 245; (1991) 6 *ICSID Rev* 526 3, 130, 134, 149, 177, 200, 213–15, 218–19, 221, 234, 300, 308, 322, 330, 335, 360, 361, 405, 465, 466

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

xx

Table of cases

- Asurix v. Argentina, ICSID Case No. ARB/01/12 (Award, 14 July 2006) 360
- Atlantic Triton v. Guinea (1986) 3 *ICSID Reports* 13 309
- Attorney-General for Canada v. Cain [1906] AC 542 89
- Autopista Concessionada de Venezuela v. Bolivarian Republic of Venezuela (2001) *ICSID Reports* 417 309
- Aydin v. Turkey [1997] IIHRL 111 163
- Azinian (Robert) v. Mexico (1998) 5 *ICSID Reports* 269 104, 135, 346, 394
- Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F 2d 875 (1981) 440
- Banro American Resources Inc. and Société Aurifère du Kivu et de Maniema SARL v. Democratic Republic of Congo, ICSID Case No. ARB/98/7 (Award, 1 September 2000) 326–7
- Barcelona Traction Case [1970] *ICJ Reports* 1 11, 37, 87, 105, 184, 190–4, 197, 198, 315, 324, 329, 362, 368, 377–9, 382, 394, 428
- Bayinder Insaat Turizm Ticaret ve Sanayi v. Pakistan, ICSID Case No. ARB/03/29 (2005) 309, 354
- Bayview Irrigation District No. 11 v. United Mexican States, ICSID Case No. ARB(AF)/05/1 (19 January 2005) 228
- Baywater Irrigation District v. Mexico (NAFTA/ICSID), ICSID Case No. ARB(AF)/05/1 (Award, 19 June 2007) 400
- Beanal v. Freeport-McMoran, 969 F Supp 362 (ED La, 1997) 147, 150, 165
- Benvenuti and Bonfant v. Congo (1982) 21 *ILM* 740 300, 431
- Berschader v. Russia, SCC Case No. 080/2004 322
- Biloune and Marine Drive Complex Ltd v. Ghana Investment Centre (1990) 95 *ILR* 184 43, 70, 295, 369, 393, 403, 405
- Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania, ICSID Case No. ARB/05/22 (Award, 2 February 2007) 228, 320, 356, 455, 466
- Bosnia Genocide Case [1996] *ICJ Reports* 595 161
- Bowoto v. Chevron, 312 F Supp 2d 1229 (2004) 152
- BP v. Libya (1977) 53 *ILR* 296 293, 430, 434
- Brickworks Ltd v. Warrigah Shire Council (1963) 108 CLR 568 101
- Campaña del Desarrollo de Santa Elena SA v. Republic of Costa Rica *see* Santa Elena v. Costa Rica
- Cape plc v. Lubbe [2000] 1 WLR 1545 151
- Carl Zeiss Stiftung Case [1967] 1 AC 853 191
- CEMSA *see* Karpa (Marvin Roy Feldman) (CEMSA) v. United Mexican States
- Centros Ltd v. Erhverves-og Selskabsstyrelsen [2000] Ch 446; [2000] 2 WLR 1048; [1999] 2 CMLR 551 198
- Ceskoslovenská Obchodní Banka v. Slovakia (1999) 14 *ICSID Rev* 251 16–17, 218, 308
- Champion Trading Company and Ameritrade International Inc. v. Egypt, ICSID Case No. ARB/02/9 (Award, 27 October 2006); (2006) IIC 57 323

Table of cases

xxi

- Chevreau Case (1931) 27 *AJIL* 153 347
- Chevreau Case (1933) 27 *AJIL* 160 124
- Chinn (Oscar) Case (1934) PCIJ Series A/B No. 64 132, 356, 407
- Chorzow Factory Case (1928) PCIJ Series A No. 17 44, 85, 87, 122, 191, 410, 425, 433, 435, 438, 439, 450
- CME v. Czech Republic, UNCITRAL Arbitration Proceedings (Award, 14 March 2003) 353, 359, 373, 393, 396, 403
- CMS Gas Transmission Company v. Argentina, ICSID Case No. ARB/01/8 (Jurisdiction Award, 17 July 2003); (2003) 30/42 *ILM* 778; (2005) 44 *ILM* 1205 321, 330, 354, 355, 396, 406, 457, 460, 461, 462–3, 465, 469
- Commonwealth Aluminium Corporation v. Attorney-General [1976] Qd 231 100
- Compagnie Européenne de Pétroles v. Sensor Nederland BV (1983) 22 *ILM* 320 198
- Compania de Aguas del Aconquijia and Vivendi Universal SA v. Argentine Republic, ICSID Case No. ARB/97/3 (Annulment Decision, 3 July 2003) 300, 321
- Continental Casualty Company v. Argentine Republic, ICSID Case No. ARB/03/9 (Award, 5 September 2008) 464
- Corfu Channel Case [1949] *ICJ Reports* 4 163
- Corn Products International Inc. v. Mexico, ICSID Case No. ARB/04/01 (Decision, 15 January 2008) 473
- Crude Oil Windfall Tax Case *see* United States v. Ptasynski
- CSOB *see* Československá Obchodní Banka v. Slovakia
- Czarnikow Ltd v. Rolimpex [1979] AC 351 284
- Dagi v. BHP [1997] 1 VR 428 151
- De Jaeger v. Attorney-General of Natal [1907] AC 326 97
- De Sabla v. Republic of Panama (1934) 28 *AJIL* 602 366, 389
- Delgoa Bay Railway Company Case (1900) Whiteman, *Digest*, vol. 3, p. 1694 289, 429–30, 448
- Desert Line Projects LLC v. Yemen, ICSID Case No. ARB/05/17 (Award, 6 February 2008) 359
- Deutsche Schachtbau- und Tiefbohrgesellschaft mbH v. Ras Al-Khaimah National Oil Company [1988] 3 WLR 230; [1988] 2 All ER 833 285
- Diallo v. Congo, ICJ (Judgment, 24 May 2007) 28, 37, 87, 198, 324, 329, 378
- Dillingham-Moore v. Murphyores (1979) 136 CLR 1 109–10
- Doe (John) et al. v. Exxon Mobil et al. ('Doe I'), Civ No. 01-1357 (DDC) 245
- Doe (John) v. Unocal ('Doe I'), 963 F Supp 880 (CD Cal., 1997) 147, 150, 165, 166, 167
- Doe v. Unocal, 27 F Supp 2d 1174 (1998) (CD Cal., 1997) 165
- East Timor Case [1995] *ICJ Reports* 139 470
- Eastern Greenland Case (1933) PCIJ Series A/B No. 5 101
- Elf Aquitaine v. NIOC (1982) 11 *YCA* 112 294
- Elkin v. United States, 142 US 65 (1892) 89

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

xxii

Table of cases

- ELSI Case [1989] *ICJ Reports* 15 37, 87, 129, 139–40, 141, 167, 180, 190, 197, 201, 219–20, 347, 357, 377, 379, 391, 400, 401, 404
- Empresa Luchetti SA v. Peru (2005) 20 *ICSID Rev* 319
- EnCana Corporation v. Ecuador, London Court of International Arbitration Case No. UN3481 (UNCITRAL) (27 February 2004) 399
- Enron Corporation and Ponderosa Assets LP v. Argentine Republic, ICSID Case No. ARB/01/3 354, 457, 460, 461, 462
- Ethyl Corporation v. Canada (Ethyl Case) (1999) 38 *ILM* 708 25, 93, 356, 373, 388, 395
- Eureko BV v. Republic of Poland (Netherlands–Poland BIT Ad Hoc Award, 23 November 2006) 360
- Fedax NV v. Venezuela (1998) 37 *ILM* 1378 9, 17, 196–7, 309, 315, 327
- Feldman v. Mexico *see* Karpa (Marvin Roy Feldman) (CEMSA) v. United Mexican States Foreign Investment Review Act (FIRA) Case, GATT BISD (30th Supp) (7 February 1984) 137
- Foresti (Piero), de Carli (Laura) and others v. Republic of South Africa, ICSID Case No. ARB(AF)/07/01 73, 382
- Fortino v. Quasar Company, 950 F 2d 389 (1991) 181
- Framatome and others v. Atomic Energy Organization of Iran (30 April 1982), (1983) 6 *YCA* 94; (1984) 111 *Journal du Droit International* 58 284
- Fraport AF Frankfurt Airport Services v. Republic of the Philippines, ICSID Case No. ARB/03/25 (Award, 16 August 2007) 43, 76, 93, 114, 190–201, 295, 300, 318, 390
- Fraser Island sandmining dispute *see* Dillingham-Moore v. Murphyores
- French Nuclear Test Case [1974] *ICJ Reports* 253 101
- Fuji v. Kodak, WTO (Decision, 5 December 1997) 273
- Funnekotter (Bernardus Henricus) v. Republic of Zimbabwe, ICSID Case No. ARB/05/6 (Award, 22 April 2009) 215, 364, 365
- Gabcikovo–Nagymaros Case [1997] *ICJ Reports* 7 399, 462
- Gami Investments v. Mexico, NAFTA (Final Award, 15 November 2004); (2004) 44 *ILM* 811 316, 341, 355
- Gelbtrunk (Rosa) v. Salvador (1902) *Foreign Relations of 1902* 877 124–5
- Generation Ukraine v. Ukraine (Award, 16 September 2003); (2005) 44 *ILM* 404 329, 468
- Genin (Alex) v. Estonia, ICSID Case No. ARB/99/2 (2001); (2002) 17 *ICSID Rev* 395 321, 333, 353, 356, 358, 376, 468
- Glamis Gold Ltd v. United States, NAFTA/UNCITRAL (Award, 8 June 2009) 357
- Goetz (Antoine) v. Burundi, ICSID Case No. ARB/95/3; (1999) 15 *ICSID Rev* 457; (2001) 26 *YCA* 24 393, 402, 403, 467
- Goldberg (David) Case (1930) 2 *UNRIAA* 901 407
- Goldenberg and Sons v. Germany (1928) *AD* 452 126, 430
- Grand River Enterprises Six Nations v. United States, UNCITRAL Arbitration Proceedings (Decision on Objections to Jurisdiction, 20 July 2006) 400

Table of cases

xxiii

- Grueslin (Philip) v. Malaysia (2000) 5 *ICSID Reports* 483 194, 319, 459
 Gudmundson v. Iceland (1960) 30 *ILR* 253 392
 Guinea v. Republic of Congo, ICJ (Judgment, 24 May 2007) 324
- Hartford Fire Insurance Company v. California, 509 US 764 (1993) 156
 Hawaii Housing Authority v. Midkiff, 467 US 229 (1984) 423
 Himpurna v. Indonesia (2000) 25 *YCA* 13 228, 301, 302, 465, 466
 Hoffman-La Roche v. Empagran SA (2004) 542 US 155 156
 Holiday Inns v. Morocco (1980) 51 *BYIL* 123 198, 324
 Holy Monasteries v. Greece (1995) 20 *EHRR* 1 385
 Home Missionary Society Case (1920) 6 *UNRIAA* 42 126, 135, 167
 Hubco v. WAPDA (Pakistan Civil Appeal Nos. 1398 and 1399 of 1999), 16 Arb Intl (No. 4, 2000) 439 228, 302
- INA Corporation v. Iran (1985) 8 *Iran-US CTR* 373 434–5
 Inceysa Vallisoletana v. El Salvador, ICSID Case No. ARB/03/26 (Jurisdiction Award, 2 August 2006) 317, 318
 Indonesia (Republic of) v. Newmont (unreported *ad hoc* award under UNCITRAL Rules, 2009) 225
 International Bank of Washington v. OPIC (1972) 11 *ILM* 1216 110, 230
 International Thunderbird Gaming Corporation v. United Mexican States, NAFTA/UNCITRAL (Award, 26 January 2006) 348, 354, 468
 Ioannis Kardassopoulos v. Georgia, ICSID Case No. ARB/05/18 (Jurisdiction Award, 6 July 2007) 318
 Iran (Islamic Republic of) v. United States (1988) 13 *Iran-US CTR* 173 387
- James v. United Kingdom (1986) 8 *EHRR* 123 385, 408, 422, 423
 Jan de Nul Dredging International NV v. Arab Republic of Egypt, ICSID Case No. ARB/04/13 (Jurisdiction Award, 16 June 2006) 313, 319
 Janes Claim (1926) 4 *UNRIAA* 82 130
 John Doe v. Mobil *see* Doe (John) et al. v. Exxon Mobil et al. ('Doe I')
 John Doe v. Unocal *see* Doe (John) v. Unocal ('Doe I')
 Jota v. Texaco Inc., 157 F 3d 153 (2nd Cir., 1998) 248
 Joy Mining Machinery v. Egypt, ICSID Case No. ARB/03/11 (2004) 309
- Kahler v. Midland Bank [1950] AC 24 286
 Karaha Bodas Company LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 364 F 3d 274 (2004) (USCA 5th Cir.); [2003] 380 HKCU 1 301, 302, 465, 466
 Karpa (Marvin Roy Feldman) (CEMSA) v. United Mexican States, ICSID Case No. ARB (AF)/99/1 (Award, 16 December 2002), (2003) 42 *ILM* 625 202, 208, 317, 323, 338, 341, 372, 387, 394–5, 396, 398, 401, 405

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)

xxiv

Table of cases

- Klockner v. Cameroon (1983) 2 *ICSID Reports* 16 324
- Kozacioglu v. Turkey (European Court of Human Rights, Application No. 2334/03, Judgment of 19 February 2009) 187–224
- Kugele v. Polish State [1931–2] *AD* 69 402
- La Brea y Parinas (1968) 7 *ILM* 1201 444
- Land Sale to Aliens Case (1973) 77 *ILR* 433 106
- Lauder v. Czech Republic, UNCITRAL Arbitration Proceedings (Final Award, 3 September 2001) 353, 359, 368, 382, 393, 403
- Le Courturier v. Rey [1910] AC 262 191
- Lemenda Trading Co. Ltd v. African Middle East Petroleum Co. Ltd [1988] 1 All ER 513 247
- Lena Goldfields v. USSR (1930) *The Times*, 3 September; (1930) Whiteman, *Damages*, vol. 3, p. 1652 289, 430
- LESI SpA and Astaldi SpA v. Algeria, ICSID Case No. ARB/05/3 313
- Letelier v. Chile, 488 F Supp 665 (1980) 164
- LG&E v. Argentina, ICSID Case No. ARB/02/1 (Award, 3 October 2006) 354, 458, 460, 462, 463, 464
- Libyan American Oil Company (Liamco) v. Libya (1981) 20 *ILM* 1 288, 408, 430–1
- Link-Trading Joint Stock Company v. Republic of Moldova, UNCITRAL (Final Award, 18 April 2002); (2002) IIC 154 399
- Lithgow v. United Kingdom (1986) 8 *EHRR* 329 422–3, 440–1
- Lockerbie Case *see* Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK and Libya v. US) (Judgment, 27 February 1998)
- Loewen v. United States (2003) 42 *ILM* 811 102, 341, 357, 394
- Loizidou v. Turkey (1996) 108 *ILR* 443 161
- Maffezini v. Kingdom of Spain (2000) 5 *ICSID Reports* 396 205, 319, 322, 333
- Malaysian Historical Salvors SDN BHD v. Malaysia, ICSID Case No. ARB/05/10 (Award, 17 May 2007) 155, 309, 311–14, 317
- Mavrommatis Palestine Concessions Case (1929) PCIJ Series A No. 2 122, 158
- Metalclad v. Mexico (2001) 5 *ICSID Reports* 209 25, 110, 111, 182, 297, 348, 349, 350, 354, 369, 372, 373, 374, 390, 393, 396, 403
- Methanex v. United States (2005) 44 *ILM* 1345 25, 34, 78, 110, 111, 341, 373, 374, 387, 388, 390, 395, 456, 458, 472
- Middle East Cement Shipping and Handling Co. v. Egypt, ICSID Case No. ARB/99/6 (12 April 2002); (2002) 7 *ICSID Reports* 2 317, 334, 359, 368, 373, 393, 403
- Mihaly v. Sri Lanka (2002) 17 *ICSID Rev* 21 16, 316–17
- Military and Paramilitary Activities In and Against Nicaragua *see* Nicaragua v. United States
- Mitchell (Patrick) v. Congo, ICSID Case No. ARB/99/7 (Award, 1 November 2006) 106, 155, 189, 309, 313

Table of cases

xxv

- Mobil Oil Case *see* Doe (John) et al. v. Exxon Mobil et al. ('Doe I')
- Mondev International v. United States, ICSID Case No. ARB(AF)/99/2 (1999), (2003)
42 *ILM* 85 219, 333, 334, 336, 345, 347, 348
- MTD Equity v. Republic of Chile (2007) 12 *ICSID Reports* 6 354, 356
- Murphyores Ltd v. Commonwealth (1976) 136 CLR 1 402, 403
- Mutasa v. Attorney-General [1979] 3 All ER 257 441
- Myers (S. D.) v. Canada (NAFTA/UNCITRAL Tribunal (21 October 2002); (2002) 121
ILR 1 78, 111, 202, 226, 231, 339, 340, 350–1, 361, 367, 388, 396, 456
- National Grid v. Argentina (unreported) 464
- Nationalization of Gulf Oil in Bolivia (1969) 8 *ILM* 264 444
- Neer Claim (1926) 4 *UNRIAA* 60 122, 124, 130, 347, 348, 352, 354, 468
- Nicaragua v. United States [1986] *ICJ Reports* 14 82, 83, 161, 164, 166, 180, 184, 221, 457
- NIS v. Ukraine *see* Western NIS Enterprise Fund v. Ukraine; ICSID Case No. ARB/04/2
(Order, 16 March 2006)
- North American Dredging Company of Texas v. United Mexican States (Mexico/USA
General Claims Commission Award, 31 March 1926); (1926) 4 *UNRIAA* 26 321
- Norwegian Ship Owners' Claims (1922) 1 *UNRIAA* 307 433
- Nottebohm Case [1955] *ICJ Reports* 4 323
- Occidental v. Ecuador, London Court of International Arbitration (Award, 1 July 2004) 320,
338, 340, 354, 355, 360
- Oil Fields of Texas v. Iran (1982) 1 *Iran–US CTR* 347 101
- Oil Platforms Case [1996] *ICJ Reports* 8 181, 457
- Ok Tedi Mining Case (unreported) 147
- Olguin v. Paraguay, ICSID Case No. ARB/98/5 (Final Award, 26 July 2001) 468
- Oppenheimer v. Cattermole (Inland Revenue Commissioner) [1975] 1 All ER 538
106, 409
- Osthoff v. Hofele, 1 US Ct Rest App 111 (1950) 377
- Palazzolo v. Rhode Island, 533 US 606 (2001) 371
- Panevezys–Saldutiskis Railway Case (1939) PCIJ Series A/B No. 76 121, 122, 124
- Pantechniki SA Contractors & Engineers v. Republic of Albania, ICSID Case No.
ARB/07/21 (Award, 30 July 2009) 309, 359
- Parkerings-Compagniet AS v. Republic of Lithuania, ICSID Case No. ARB/05/8 (Award,
11 September 2007) 354
- Patrick Mitchell *see* Mitchell (Patrick) v. Congo
- Payne (Thomas Earl) v. Iran (1987) 12 *Iran–US CTR* 3, 437
- Pelletier Claim, in C. C. Hyde, *International Law* (1945), p. 1640 159
- Peña-Irala v. Filartiga, 630 F 2d 876 (2nd Cir., 1980) 151
- Penn Central v. New York City, 438 US 104 (1978) 385
- Petrobart v. Kyrgyz Republic (Energy Charter Treaty Case, 2005) (unreported) 317

- Phaiton Energy Company v. Pertamina Perusahaan Tambang Minyak Negara (unreported) 301, 302, 465
- Phelps Dodge Corporation v. Iran (1986) 10 *Iran–US CTR* 157 436, 437
- Phillips Petroleum (1989) 21 *Iran–US CTR* 79 420
- Phoenix Action Ltd v. The Czech Republic (Award, 19 April 2009) ICSID Case No. ARB/06/5 307, 308, 313, 318, 319, 327, 328, 361, 399, 469
- Pinochet Case *see* R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3)
- Plama Consortium Ltd v. Republic of Bulgaria, ICSID Case No. ARB/03/24 (Award, 27 August 2008) 318, 322, 329
- Poemann v. Kulmbache Spinneri AG, US Ct Rest App 701 (1952) 377
- Poggioli Case (1903), in J. Ralston, *The Law and Procedure of International Tribunals* (1926), p. 847 160
- Pope and Talbot v. Canada, NAFTA/UNCITRAL Tribunal (26 January 2000) (2002) 41 *ILM* 1347 348, 351–3, 373, 374, 388, 396
- Presbyterian Church of the Sudan v. Talisman Energy Inc., 453 F Supp 2d 633 (USDC SDNY, 2006) 149
- PSEG Global Inc. v. Republic of Turkey (2005) 44 *ILM* 465 317, 321
- Qatar Arbitration (1953) 20 *ILR* 534 290
- Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK and Libya v. US) (Judgment, 27 February 1998) 161
- R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3) (unreported) 148, 151, 164
- R. v. North and East Devon Health Authority, ex parte Coughlan [2001] QB 203 355
- R. v. Secretary of State for Foreign Affairs, ex parte Pirbhai (1984) 129 SJ 56 441
- Rainbow Warrior Arbitration (France v. New Zealand) (1987) 26 *ILM* 1346; (1990) 82 *ILR* 499 161, 164, 168, 169
- Revere Copper and Brass Inc. v. Overseas Private Investment Corporation (OPIC) (1978) 56 *ILR* 258 52, 201, 294, 391–2
- RFCC Consortium v. Kingdom of Morocco, ICSID Case No. ARB/00/6 (Award, 22 December 2003) 337
- Roberts Claim (1926) 4 *UNRIIA* 77 122, 130, 347
- ‘Rose Mary’, *The see* Anglo-Iranian Oil Company Ltd v. Jaffrate
- RSM Production Corporation v. Grenada, ICSID Case No. ARB/05/14 (Award, 13 March 2009) 309, 317, 465
- Sabbatino v. Banco Nacional de Cuba, 193 F Supp 375 (1961) 407, 440
- Saipem v. Bangladesh, ICSID Case No. ARB/06/07 (Decision, 30 June 2009) 302, 309

Table of cases

xxvii

- Salini Costruttori SpA v. Kingdom of Morocco, ICSID Case No. ARB/00/4 (Jurisdiction Award, 23 July 2001); (2001) 42 *ILM* 577 309, 310, 313
- Saluka Investments BV v. Czech Republic (UNCITRAL Partial Award, 17 March 2006) 347, 354, 359, 375, 398
- Sambaggio Case, 10 *UNRIAA* 534 125, 135, 167
- Sancheti v. Mayor and Commonalty and Citizens of the City of London [2008] EWCA Civ 1283 28, 182
- Santa Elena v. Costa Rica (2002) 5 *ICSID Reports* 153 3, 25, 78, 110, 111, 178, 225, 231, 297, 361, 374, 387, 388, 389, 390, 395, 396, 397, 399, 410, 472
- Sapphire International Petroleum v. National Iranian Oil Company (NIOC) (1963) 35 *ILR* 136 283, 294, 295, 387, 390
- Sarei v. Rio Tinto, 221 F Supp 2d 1116 (CD Cal., 2002) 151
- Saro-Wiwa v. Shell, 226 F 3d 88 (2nd Cir., 2000) 149, 151
- Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch 149 89
- Schufeldt Claim (1930) 5 *AD* 179; (1930) *UNRIAA* 1079; (1930) 24 *AJIL* 799 126, 158, 289, 407, 430
- S. D. Myers v. Canada *see* Myers (S. D.) v. Canada
- Sedco Inc. v. NIOC (1987) 23 *Iran–US CTR* 23 386, 435–6
- Sempra Energy International v. Argentine Republic, ICSID Case No. ARB/02/16 354, 457, 460, 461, 462–3
- Serbian Loans Case (1929) PCIJ Series A No. 20 286, 290
- Settebello v. Banco Totta e Acores [1985] 2 All ER 1025; [1985] 1 WLR 1050 76–7, 284
- SGS Société Générale de Surveillance SA v. Pakistan (unreported, 2004) 177, 304, 309, 465
- SGS Société Générale de Surveillance SA v. Republic of the Philippines, ICSID Case No. ARB/02/06 (Award, 29 June 2004) 216, 300, 304, 309
- Shaffer v. Heitner, 433 US 188 (1977) 89
- Shott v. Iran (1987) 16 *Iran–US CTR* 76 160, 168–9
- Shott v. Iran (1989) 23 *Iran–US CTR* 351 114
- Shott v. Iran (1990) 24 *Iran–US CTR* 203 43
- Siderman de Blake v. Republic of Argentina, 965 F 2d 699 (1992) 364, 409
- Siemens v. Argentine Republic, ICSID Case No. ARB/02/8 (Award, 6 February 2007) 322, 339, 355, 464
- Smith (Walter Fletcher) Case (1930) 24 *AJIL* 384 407
- Sociedad Minera el Teniente SA v. Aktiengesellschaft Nordeutsche Affinerie (1973) 12 *ILM* 251 440
- Société de Grands Travaux de Marseille v. People's Republic of Bangladesh (1980) 5 *YCA* 177 75, 230
- Sola Tiles v. Iran (1987) 14 *Iran–US CTR* 223 419, 436, 437
- Soufraki v. United Arab Emirates, ICSID Case No. ARB/02/07 (Award, 7 July 2004) 323
- Southern Pacific Properties (Middle East) Ltd (SPP) v. Egypt (1992) 8 *ICSID Rev* 328; (1983) 22 *ILM* 752 72, 99, 100–1, 102, 231, 283, 287, 300, 304, 361, 390, 396, 471

- Spielberg (Erna) Claim (1958) Whiteman, *Digest*, vol. 8, p. 988 402
- Sporrong and Lönnroth v. Sweden (1983) 5 *EHRR* 35 385
- SPP v. Egypt *see* Southern Pacific Properties (Middle East) Ltd (SPP) v. Egypt
- Sramek [1984] *Yearbook of the European Commission on Human Rights* 294 106
- Starret Housing Corporation v. Iran (1987) 16 *Iran-US CTR* 112 386, 448
- Sultana Begum v. Returning Officer for the London Borough of Tower Hamlets [2006] EWCA Civ 733 355
- Sumitomo Shoji America Inc. v. Avagliano, 457 US 176 (1982) 180, 181, 198
- Tadic Case (1997) 36 *ILM* 908 161
- Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency, 535 US 302 (2002); 122 S Ct 1465 (2002) 371, 385
- Tams v. Tams-AFFA (1984) 6 *Iran-US CTR* 219 436, 437
- Tecmed v. Mexico, ICSID Case No. ARB(AF)/00/2; (2006) 10 *ICSID Reports* 54 356, 368, 374, 388, 396, 398, 403
- Telenor Mobile Communications AS v. Republic of Hungary, ICSID Case No. ARB/04/15 (Jurisdiction Award, 13 September 2006) 322
- Temple of Preah Vihear Case [1982] *ICJ Reports* 1 298
- Texaco v. Libya (1977) 53 *ILR* 389 83, 86, 277, 282–3, 293, 294, 430, 435, 470
- Thai Tobacco Case (1991) 37 GATT BISD 200 227
- Thunderbird v. Mexico *see* International Thunderbird Gaming Corporation v. United Mexican States
- Tokios Tokelës v. Ukraine, ICSID Case No. ARB/02/18 (Jurisdiction Award, 29 April 2004) 318, 327, 328
- Tokyo Suikosha v. Tokyo Masonic Lodge Association (1966) 53 *ILR* 1 385
- Too (Emmanuel) v. United States (1989) 23 *Iran-US CTR* 378 393
- Trade SA v. Republic of Turkey, ICSID Case No. ARB(AF)/07/2 (ECT) (Award, 13 August 2009) 318
- Tradex v. Albania (1996) 5 *ICSID Reports* 43; (1999) 14 *ICSID Rev* 161 218, 318
- Trail Smelter Case (1941) 35 *AJIL* 684 159
- Tza Yap Shum v. Peru, ICSID Case No. ARB/07/6 (Decision on Jurisdiction and Competence, 19 June 2009) 28, 205, 322
- United Painting Company Inc. v. Iran (1989) 23 *Iran-US CTR* 351 376, 386
- United Parcel Services of America Inc. (UPS) v. Canada *see* UPS v. Canada
- United Postal Workers Union v. Canada *see* United Union of Postal Workers v. Canada Post Corporation
- United States v. Aluminium Company of America (Alcoa), 148 F 2d 416 (2nd Cir., 1945) 155–6
- United States v. Ptasynski, 462 US 74 (1983) 405
- United States v. Sabbatino, 374 US 398 (1964) 1
- United States v. Venezuela (Upton Case), 9 *UNRIAA* 234 (1903) 134

Cambridge University Press

978-0-521-76327-1 - The International Law on Foreign Investment: Third Edition

M. Sornarajah

Frontmatter

[More information](#)*Table of cases*

xxix

- United Union of Postal Workers v. Canada Post Corporation [2001] BCJ No. 680 (CA) 102–3
- Unocal Case *see* Doe (John) v. Unocal ('Doe I')
- UPS v. Canada, UNCITRAL Arbitration Proceedings (NAFTA) (Award on the Merits, 24 May 2007) 25, 202, 307, 334, 337, 338, 339, 340, 353, 376, 415
- Upton case *see* United States v. Venezuela (Upton Case)
- Urenco Case (unreported) 75, 470
- Vacuum Salts v. Ghana (1994) 4 *ICSID Reports* 329; (1997) 4 *ICSID Reports* 323 324
- Vattenfall AB v. Federal Republic of Germany, ICSID Case No. ARB/09/6 (Request filed, 30 March 2009) 28, 182, 185
- Velasquez Rodriguez (1988) 9 *HRLJ* 212 170
- Vivendi Universal SA *see* Compania de Aguas del Aconquijia and Vivendi Universal SA v. Argentine Republic
- Waste Management Inc. v. United Mexican States, ICSID Case No. ARB(AF)/98/2 (Final Award, 30 April 2004) 354, 358
- Wena Hotels v. Republic of Egypt (2002) 41 *ILM* 896 205, 309, 359, 405
- Western NIS Enterprise Fund v. Ukraine, ICSID Case No. ARB/04/2 (Order, 16 March 2006) 320
- Westinghouse v. Philippines (unreported) 76
- Williams and Humbert v. W. and H. Trademarks [1986] AC 368 440
- World Duty Free Ltd v. Kenya, ICSID Case No. ARB/00/7 (Award, 4 October 2006) 147, 300, 455
- Yaung Chi Oo Ltd v. Myanmar (2003) 8 *ICSID Reports* 463; (2003) 42 *ILM* 430 76, 194, 195, 198, 199, 219, 288, 319, 322, 324, 329, 336, 365, 377, 394, 405
- Yeager v. Iran (1987) 17 *Iran–US CTR* 92 404
- Youmans Claim (1926) 4 *UNRIAA* 110 168
- Yukon Lumber Case (1913) 6 *UNRIAA* 17 126
- Zafiro Claim (1925) 6 *UNRIAA* 160 124, 168
- Zhinvali Development Ltd v. Republic of Georgia, ICSID Case No. ARB/00/1 317
- Zwach v. Kraus Brothers, 237 F 2d 255 (2nd Cir., 1956) 377

Abbreviations

| | |
|------------------|---|
| AC | Appeal Cases |
| AD | Annual Digest of Public International Law Cases |
| AJIL | American Journal of International Law |
| All ER | All England Reports |
| ALR | Australian Law Reports |
| ASIL Proceedings | American Society of International Law Proceedings |
| BYIL | British Yearbook of International Law |
| CLR | Commonwealth Law Reports |
| CMLR | Common Market Law Review |
| EHRR | European Human Rights Reports |
| EJIL | European Journal of International Law |
| F Supp | Federal Supplement |
| Hague Recueil | Hague Recueil des Cours |
| ICLQ | International and Comparative Law Quarterly |
| ICSID Rev | ICSID Review – Foreign Investment Law Journal |
| ILJ | International Law Journal |
| ILM | International Legal Materials |
| Iran–US CTR | Iran–United States Claims Tribunal Reports |
| JIA | Journal of International Arbitration |
| JIL | Journal of International Law |
| JWTL | Journal of World Trade Law |
| KB | King’s Bench Reports |
| LJ | Law Journal |
| LQR | Law Quarterly Review |
| LR | Law Review |
| MLR | Modern Law Review |
| PCIJ | Permanent Court of International Justice |
| SJ | Solicitors Journal |
| UNRIAA | United Nations Reports of International Arbitral Awards |
| WLR | Weekly Law Reports |
| YCA | Yearbook of Commercial Arbitration |