

# ÍNDICE SISTEMÁTICO

<b>FOREWORD</b> , Miguel Ángel Fernández-Ballesteros y David Arias .....	XLIII
<b>HOW SHOULD INTERNATIONAL ARBITRATORS TACKLE CORRUPTION ISSUES?</b> , Dr. Mohamed Abdel Raouf.....	1
I. INTRODUCTION .....	1
II. COMMERCIAL ARBITRATION .....	3
1. Jurisdictional Issues.....	4
2. Substantive Issues.....	5
III. INVESTMENT ARBITRATION .....	10
1. The «Eyes Shut» Approach.....	11
2. The «Zero Tolerance» Approach.....	13
IV. CONCLUSION .....	14
<b>NOTES ON AMIABLE COMPOSITEURS UNDER ARGENTINE LAW</b> , Fernando Aguilar - Roque J. Caivano .....	17
I. PRESENTATION .....	17
II. THE DOUBLE MISSION OF THE AMIABLE COMPOSITEURS.....	19
III. JUDICIAL AWARDS, IURIS AWARDS, AND THE DECISIONS OF AMIABLE COMPOSITEURS.....	21
IV. WHAT EQUITY?.....	24
V. THE LIMITS OF AMIABLE COMPOSITEURS .....	28
VI. WHICH MATTERS MAY BE ARBITRATED BY MEANS OF ARBITRATION EX AEQUO ET BONO?.....	30
VII. SIMPLIFICATION OF THE PROCEDURES .....	32
VIII. REVIEW AND ENFORCEMENT .....	33
IX. CONCLUSIONS .....	33

<b>ARBITRAJE Y DERECHO DE DEFENSA, Antonio Albanés Membrillo.....</b>	<b>35</b>
I. INTRODUCCIÓN.....	35
II. EL DERECHO DE DEFENSA .....	36
III. ASPECTOS INSTRUMENTALES DEL DERECHO DE DEFENSA: AUTODEFENSA Y ASISTENCIA JURÍDICA.....	37
IV. CONTENIDO DEL DERECHO DE DEFENSA EN EL ARBITRAJE.....	41
V. LA PROTECCIÓN DEL DERECHO DE DEFENSA EN EL ARBITRAJE.....	44
VI. EL ABUSO DEL DERECHO DE DEFENSA EN EL ARBITRAJE.....	46
VII. A MODO DE CONCLUSIÓN.....	48
<b>THE OPPORTUNITY TO BE HEARD: ACCOMMODATING AMICUS CURIAE PARTICIPATION IN INVESTMENT TREATY ARBITRATION, Stanimir A. Alexandrov - Marinn Carlson .....</b>	<b>49</b>
I. INTRODUCTION .....	49
II. A BLANK SLATE.....	51
III. KNOCKING ON THE DOOR.....	53
IV. RULES FOLLOW THE PRACTICE .....	56
V. THE OPPORTUNITY TO BE HEARD.....	60
VI. CONCLUSION .....	63
<b>JURISDICTION OF ARBITRAL TRIBUNALS IN ISLAMIC LAW (SHARI'A), Omar Aljazy.....</b>	<b>65</b>
I. INTRODUCTION.....	65
II. THE IMPORTANCE OF SHARI'A IN THE CURRENT WORLD .....	66
III. THE IMPORTANCE OF SHARI'A IN INTERNATIONAL COMMERCIAL ARBITRATION.....	67
IV. SOURCES OF ARBITRATION IN ISLAMIC LAW .....	68
V. THE CONCEPT OF ARBITRATION IN ISLAMIC LAW .....	71
VI. JURISDICTION OF ARBITRAL TRIBUNALS IN ISLAMIC LAW .....	73
VII. POWERS OF ARBITRATORS IN ISLAMIC LAW.....	74
VIII. ARBITRATION CLAUSES IN ISLAMIC LAW .....	75
IX. ARBITRABILITY IN ISLAMIC LAW.....	78
X. THE JURISDICTION OF ARBITRAL TRIBUNALS IN THE ARAB MIDDLE EAST LEGAL SYSTEMS .....	82
XI. CONCLUDING REMARKS ON CHAPTER FOUR.....	98
<b>ARBITRATION AND MEDIATION COMBINED. THE INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS, Jesús Almoguera.....</b>	<b>101</b>
I. INTRODUCTION .....	102
II. CURRENT PROBLEMS OF INTERNATIONAL COMMERCIAL ARBITRATION .....	104

III.	FUNCTIONS OF INTERNATIONAL COMMERCIAL ARBITRATION AND MEDIATION.....	106
IV.	HYBRID FORMS OF ADR.....	110
V.	OBJECTIONS.....	112
VI.	COMMON PRINCIPLES.....	113
	1. Party autonomy.....	114
	2. Equality and Fairness of process.....	115
	3. Independence and impartiality.....	117
VII.	ARBITRATION AND MEDIATION COMBINED.....	120
VIII.	CONCLUSIONS.....	130
	 <b>DELIBERATION AND DRAFTING AWARDS IN INTERNATIONAL ARBITRATION, José María Alonso</b> .....	 131
I.	DELIBERATION.....	131
	1. Introduction to the deliberations of the arbitral tribunal.....	131
	2. General considerations.....	131
	2.1. Special features of deliberation in arbitration.....	131
	2.2. When the deliberation takes place.....	133
	2.3. Content of the obligation to deliberate.....	135
	3. Development of the deliberations.....	136
	4. Decision-making.....	138
	5. Dissenting opinions.....	140
	6. Pathological deliberations.....	143
II.	DRAFTING OF THE AWARD.....	144
	1. Introduction to the drafting of the award.....	144
	2. Formal requirements.....	150
	3. Essential requirements.....	155
	4. Time limit for rendering the award.....	156
	5. Conclusion.....	157
	 <b>ICSID VERSUS NON-ICSID INVESTMENT TREATY ARBITRATION, Piero Bernardini</b> .....	 159
I.	INTRODUCTION.....	159
II.	ICSID AND NON-ICSID ARBITRATION: DIFFERENCES OF A GENERAL NATURE.....	161
III.	ICSID AND NON-ICSID ARBITRATION: SPECIFIC DIFFERENCES.....	163
	1. Independence of the arbitrator.....	163
	2. The tribunal's jurisdiction.....	168

3.	The arbitral proceeding.....	171
4.	The challenge of the award.....	175
5.	The enforcement of the award .....	185
IV.	CONCLUDING REMARKS .....	187

**COMMERCIAL ARBITRATION AND THE ITALIAN AND EC ANTITRUST LEGISLATION WITH AN EMPHASIS ON INTELLECTUAL PROPERTY RIGHTS,**  
Luigi Biamonti.....

189

I.	INTRODUCTION .....	189
II.	THE DISCUSSION AT HAND.....	190
III.	ARBITRATION AND ANTITRUST LAW.....	191
	1. The EU View.....	191
	2. The Initial Decisions Regarding Arbitration and Antitrust.....	193
	3. Mitsubishi .....	194
	4. The European Perspective .....	197
	5. The Role of Antitrust Rules.....	199
IV.	ARBITRATION AND INTELLECTUAL PROPERTY.....	203
V.	A RECENT DECISION OF THE COURT OF JUSTICE REGARDING COMPETITION .....	209
VI.	CONCLUSION .....	209

**BERNARDO CREMADE'S CONTRIBUTION TO THE DEVELOPMENT OF ARBITRATION LAW IN LATIN AMERICA,** Gonzalo Biggs.....

211

I.	FORUM INTERVENTIONS .....	211
	1. Madrid 1982.....	212
	2. Guatemala 1987 .....	213
	3. Santiago 1998.....	214
	3.1. The globalization process.....	214
	3.2. Dilatory Tactics .....	214
	3.3. The Duty of Due Diligence .....	215
	3.4. International Arbitration in Hispanic Countries.....	215
II.	WRITINGS.....	216
	1. Investment disputes in latin america and the Calvo doctrine .....	216
	2. Comments on the Calvo doctrine.....	217
	3. Contract and treaty claims and choice of forums .....	219
	3.1. Treaty and Contract Claims .....	219
	3.2. The Content of Treaty Rights .....	221
	3.2.1. The concept of investments.....	221

3.2.2. The content of treaty rights .....	222
3.2.3. Choice of Forum.....	222
III. ARBITRAL AWARDS .....	223
1. Lanco international .....	224
2. Waste management.....	226
3. Autopista.....	227
3.1. Antecedents.....	227
3.2. The Dispute.....	228
3.3. Summary of Venezuela's Main Arguments .....	228
3.4. Summary of AUCAVEN's Main Arguments.....	228
3.5. The Jurisdiction of the Tribunal .....	229
4. Lucchetti .....	231
4.1. Summary of the Facts .....	231
4.2. Respondent's Objections to Jurisdiction .....	232
4.3. Jurisdiction Ratione Temporis.....	232
4.4. Findings of the Tribunal.....	233
5. Fraport .....	234
5.1. Antecedents (Summary).....	234
5.2. The Jurisdiction Issue.....	234
5.3. Fraport's Breach of the Law .....	236
5.4. Doctor CREMADES' Dissent.....	237
5.5. Conclusions.....	240
IV. FINAL COMMENTS.....	240
<b>ARBITRABILITÉ ET DROIT DE LA CONCURRENCE, Matthieu de Boissésou.....</b>	<b>243</b>
I. L'ARBITRABILITÉ DU DROIT DE LA CONCURRENCE ILLIMITÉE DANS SON PRINCIPE.....	245
1. Une compétence matérielle récemment élargie par les textes: l'arbitre, comme le juge étatique, peut désormais se prononcer sur l'article 81§3 du Traité (Règlement CE 1/2003).....	245
2. Une compétence matérielle obligatoire et non plus seulement facultative: obligation faite à l'arbitre de soulever d'office les moyens tirés du droit de la concurrence (Eco Swiss: CJCE, 1999; Euromissile: Cour d'appel de Paris, 2004).....	246
3. Une compétence matérielle minimalement contrôlée par les juridictions étatiques: seule une violation concrète, effective et flagrante de l'ordre public justifie l'annulation ou la non reconnaissance de	

	la sentence (Euromissile: Cour d'appel de Paris, 2004; Cytec: Cour d'appel de Paris, 2006 et Cour de cassation, Civ. 1ère, 2008).....	247
II.	L'ARBITRABILITÉ DU DROIT DE LA CONCURRENCE LIMITÉE DANS SON EXERCICE.....	249
	1. Les moyens d'investigation limités de l'arbitre: comparaison entre les pouvoirs de l'arbitre et ceux de la Commission et du Conseil de la concurrence.....	249
	2. La coopération limitée entre l'arbitre et les autorités de la concurrence nationales ou communautaires.....	250
	<b>POLYGAMY OF TREATIES IN ARBITRATION — A LATIN AMERICAN AND MERCOSUL PERSPECTIVE</b> , Adriana Braghetta.....	253
I.	ARBITRATION AND THE IDEAL OF COORDINATION OF THE SYSTEM.....	253
II.	GUIDING PRINCIPLES OF THE ANALYSIS OF THE CONCURRENCE OF TREATIES.....	254
III.	COMPATIBILITY CLAUSE IN THE GLOBAL CONTEXT (GENÈVE 1923/27 VS NEW YORK).....	256
IV.	COMPATIBILITY CLAUSE IN THE INTER-AMERICAN SCENARIO (PANAMA VS MONTEVIDEU).....	258
V.	COMPATIBILITY CLAUSE IN THE MERCOSUL CONTEXT (LAS LEÑAS VS BUENOS AIRES AGREEMENT).....	261
VI.	CONVENTION OF NEW YORK VS. PROTOCOL OF PANAMA/MONTEVIDÉU.....	264
VII.	NEW YORK/PANAMA CONVENTION VS. BUENOS AIRES/LAS LEÑAS AGREEMENT.....	269
VIII.	CONCLUSION.....	271
	<b>MAY COURTS IN LATIN AMERICAN COUNTRIES REFUSE RECOGNITION AND/OR ENFORCEMENT OF A FOREIGN ARBITRAL AWARD THAT IS BEING CHALLENGED AT THE PLACE OF ARBITRATION?</b> , María Beatriz Burghetto ...	273
I.	IN WHAT CIRCUMSTANCES SHOULD AN AWARD BEING CHALLENGED IN THE COUNTRY OF ORIGIN BE CONSIDERED «SUSPENDED» UNDER THE NEW YORK CONVENTION (ARTICLE V.1(E))?.....	274
	1. The term «suspended» should be interpreted in an autonomous manner.....	274
	2. The history of the drafting of the New York Convention shows that an express decision is necessary in order to consider the award «suspended».....	276
	3. What «suspension» of an award may mean under certain national arbitration legislations.....	278

4.	Options that are available to enforcement courts when faced with a request for recognition and/or enforcement of an arbitral award that is being challenged (or subject to a request for suspension) at its country of origin.....	280
4.1.	Is the above applicable to (and if so, applied by) Latin American countries? .....	281
4.2.	Conclusion .....	282
II.	SHOULD A SIMILAR CONCLUSION BE REACHED IN THOSE CASES WHERE OTHER TREATIES MAY BE APPLICABLE?.....	282
1.	The Panama and the Montevideo Conventions .....	282
2.	The Mercosur agreements .....	283
3.	Relationship between the Mercosur agreements and the Panama, Montevideo and New York Conventions.....	284
4.	Conclusion: Potential contradictory decisions by Latin American courts.....	287
III.	IS THE NATIONAL ARBITRATION LEGISLATION OF LATIN AMERICAN COUNTRIES MORE FAVORABLE TO THE RECOGNITION AND/OR ENFORCEMENT OF FOREIGN ARBITRAL AWARDS THAN THE NEW YORK CONVENTION?.....	287
IV.	WOULD AN AMENDMENT TO THE NEW YORK CONVENTION BE A SUITABLE SOLUTION TO AVOID CONTRADICTORY DECISIONS?.....	288
	<b>ADVOCACY AND THE FUNCTIONS OF LAWYERS IN INTERNATIONAL ARBITRATION, David. J. A. Cairns.....</b>	291
I.	THE AMBIGUITY OF «ADVOCACY» IN INTERNATIONAL ARBITRATION	292
II.	THE FUNCTIONS OF A LAWYER IN INTERNATIONAL ARBITRATION .	295
1.	Strategy .....	295
2.	Investigation.....	297
3.	Advocacy.....	297
4.	Management .....	298
5.	The Coordination of Legal Functions .....	298
III.	THE SKILLS OF THE ADVOCATE.....	299
1.	Legal Expertise .....	299
2.	Logical Reasoning.....	300
3.	Questioning and Answering Techniques.....	301
4.	Expression.....	302
5.	Ethics .....	303
6.	Tact.....	304
7.	Concluding Comments.....	306
IV.	CONCLUSIONS: THE FUTURE OF THE ARBITRAL LAWYER .....	306

<b>THE ARBITRATOR’S FAILURE TO DISCLOSE CONFLICTS OF INTEREST: IS IT PER SE A GROUND FOR ANNULING THE AWARD?</b> , Antonio Crivellaro.....	309
1. THE ESSENTIAL REQUIREMENT: AN ARBITRATOR MUST BE AND REMAIN INDEPENDENT AND IMPARTIAL.....	309
2. HOW TO TEST WHETHER THE REQUIREMENT IS MET: THE ARBITRATOR WORKING IN A LAW FIRM AND UNAWARE OF THE CONFLICT	310
3. THE DUTY OF DISCLOSURE.....	312
4. HOW TO DISCLOSE WHAT IS UNKNOWN: THE FACTS UNDERLYING A RECENT DECISION OF THE PARIS APPEAL COURT.....	313
5. THE STRIKING ANOMALIES IN THE APPEAL COURT JUDGEMENT .....	314
6. THE EVIDENT AND UNJUSTIFIED LATENESS OF THE CHALLENGE .....	315
7. THE ENDORSEMENT OF THE CIRCUMVENTION OF THE RULES OF THE ARBITRATION .....	316
8. THE DISREGARD OF THE ICC REJECTION OF THE CHALLENGE.....	317
9. THE IDENTITY OF THE GROUNDS FOR THE TWO CHALLENGES: DOUBLE EXAMINATION OR <i>NE BIS IN IDEM</i> ? .....	319
10. THE UNAWARENESS OF THE CONFLICT BY THE ARBITRATOR AND THE LACK OF ANY FACT FINDING .....	319
11. THE STRIKING CONTRAST WITH PREVIOUS FRENCH CASE-LAW.....	321
12. THE OVER-EVALUATION OF THE NON-DISCLOSURE AS SUCH.....	324
13. CONCLUSIONS .....	325
<b>EL TURISMO ARBITRAL, ¿REALIDAD O ESPEJISMO?</b> , Yves Derains .....	327
I. TURISMO Y ELECCIÓN DE LA SEDE DEL ARBITRAJE .....	328
1. La globalización del arbitraje internacional .....	328
2. Los peligros del parámetro turístico en la elección de la sede del arbitraje .....	329
II. LA VISITA DEL SITIO DE EJECUCIÓN DEL CONTRATO .....	331
III. LAS CONFERENCIAS SOBRE EL ARBITRAJE INTERNACIONAL.....	332
<b>VALIDITY IN SPAIN OF BILLS OF LADING’S JURISDICTION CLAUSES AND ANTI-SUIT INJUNCTIONS IN THE EUROPEAN UNION</b> , Luis de San Simón...	335
<b>COLLECTION OF EVIDENCE IN INTERNATIONAL ARBITRATION</b> , O.L.O. de Witt Wijnen.....	351
I. INTRODUCTION.....	351
II. THE EVALUATION/ REVIEW OF THE IBA RULES OF EVIDENCE .....	352
III. THE CPR PROTOCOL AND THE ICDR GUIDELINES .....	354
IV. THE NEW IBA RULES.....	356
V. CONCLUSIONS .....	359



<b>LEVERAGING THE ARBITRAL PROCESS TO ENCOURAGE SETTLEMENT: SOME PRACTICAL AND LEGAL ISSUES, Ugo Draetta.....</b>	<b>361</b>
I. INTRODUCTION .....	361
II. PRE-ARBITRATION SETTLEMENT NEGOTIATIONS.....	363
III. SETTLEMENT BY THE PARTIES DURING THE ARBITRATION PROCEED- ING .....	364
1. The motivations to start the arbitration and their impact on settle- ment .....	364
2. Factors affecting chances of settlement during the arbitration pro- ceeding .....	365
3. The provisions posted in the company’s books and their impact on the chances of a settlement.....	366
IV. ROLE OF ARBITRATORS WITH REGARD TO A SETTLEMENT AND RE- LATED ISSUES .....	368
1. How the arbitration process may indirectly facilitate settlement .....	369
2. A direct role of the arbitrators in facilitating settlement .....	371
V. RECOMMENDATIONS AND CONCLUSIONS.....	373
 <b>THE NEW LAW ON ARBITRATION IN SYRIA, Jacques El-Hakim.....</b>	 <b>375</b>
I. GENERAL PRINCIPLES .....	375
1. Definitions .....	375
2. International Conventions .....	376
II. ARBITRATION AGREEMENT.....	377
III. ARBITRAL TRIBUNAL .....	377
IV. ARBITRAL PROCEDURE.....	379
V. AWARD .....	381
VI. MEANS OF RECOURSE.....	383
VII. AUTHORITY AND ENFORCEMENT OF THE AWARD.....	384
VIII. ARBITRATION CENTERS.....	384
 <b>ETHICS IN ARBITRATION, Fernando Estavillo-Castro .....</b>	 <b>387</b>
I. FOREWORD .....	387
II. NOTION .....	388
III. ETHICS OF THE ÁRBITRATOR.....	390
1. Independence and Impartiality.....	390
2. Duty to Disclose .....	392

3.	Professional skills.....	393
4.	Availability.....	394
5.	Duty to act with due care .....	395
6.	Direct performance of the duties as arbitrator .....	395
7.	Diligence in the performance of the duties .....	396
8.	Equal treatment to the parties.....	397
9.	Opportunity to the parties to present their cases .....	397
10.	Confidentiality .....	398
11.	Communication with the parties .....	400
12.	Effort to make sure that the award is enforceable at law .....	400
13.	Settlement of the dispute.....	402
14.	Fees .....	403
IV.	ETHICS OF THE PARTIES .....	404
1.	Respect of the agreement to arbitrate.....	404
2.	Acting in good faith in the proceedings .....	405
3.	Declarations of witnesses and experts.....	406
4.	Individual communication with the arbitrators.....	407
5.	Deceptive practices and trickery related to the annulment, recognition and enforcement of awards.....	408
V.	BIBLIOGRAPHY .....	409
<b>CLEARER ETHICS GUIDELINES AND COMPARATIVE STANDARDS FOR ARBITRATORS, José Carlos Fernández Rozas.....</b>		<b>413</b>
I.	LEGAL AND REGULATORY IMPROVEMENTS TO ARBITRAL ETHICS ...	413
1.	Arbitrator's commitment to ethical values.....	413
2.	Ethical standards imposed by law and by arbitration centres .....	415
3.	Code of ethics for arbitrators.....	417
II.	ETHICAL ELEMENTS OF ACCESS TO ARBITRATION.....	420
1.	Disclosure of Conflicts of Interest.....	420
2.	Requirement of transparency .....	426
	2.1. Impartiality .....	426
	2.2. Independence.....	427
3.	Party appointed arbitrators .....	429
4.	Disqualification of arbitrators due to breach of the requirement of transparency.....	432
	4.1. Different cases.....	432

4.2. Relations between arbitrators and the parties and/or their re- representatives.....	435
4.3. Membership of the arbitrator or the secretary of the arbitral tribunal of the committee of an arbitration institution.....	437
III. ETHICAL ELEMENTS OF THE ARBITRAL SERVICE .....	439
1. Availability.....	439
2. Relations of the arbitrators with those involved in the arbitration process.....	440
3. Confidentiality .....	441
3.1. Scope .....	441
3.2. Secrecy of deliberations.....	443
IV. EFFECT ON THE ARBITRAL AWARD OF A VIOLATION OF ETHICAL VAL- UES .....	445
1. Breach of the requirement of transparency.....	445
2. Violation of the requirement of confidentiality.....	447
V. FINAL CONSIDERATIONS .....	448
<b>SET-OFFS ARE NOT COUNTERCLAIMS IN INTERNATIONAL ARBITRATION,</b> Alberto Fortún .....	451
I. INTRODUCTION .....	451
II. DISTINGUISHING SET-OFFS AND COUNTERCLAIMS.....	453
III. SET-OFF SYSTEMS.....	455
IV. SET-OFF DEFENCES ARE NOT DEPENDENT ON THE ARBITRATION AGREEMENT .....	456
V. SCOPE OF THE ARBITRATION AGREEMENT: ARGUMENTS FOR JURIS- DICTION OVER SET-OFFS .....	459
1. Set-off defences «connected with» the contract .....	459
2. The arbitration agreement's silence.....	460
3. Presumption in favour of the arbitrator's jurisdiction over set-offs...	460
4. Institutional rules.....	461
4.1. UNCITRAL Rules.....	462
4.2. ICC rules .....	463
4.3. Swiss rules.....	463
5. Default application of domestic procedural rules.....	464
6. Fundamental requirements of justice.....	464
7. Compatibility of dispute resolution clauses is irrelevant for set-off ..	465

VI.	THE PARTIES» AUTONOMY TO REGULATE SET-OFF RIGHTS.....	466
1.	The law applicable to set-offs .....	466
2.	The law chosen by the parties.....	467
VII.	FINAL CONSIDERATIONS .....	469
<b>REMARKS ON THE SOVEREIGN IMMUNITY FROM EXECUTION AND ITS INTERPRETATION BY SOME SYSTEMS AND THEIR COURTS, Nicolás Gamboa-Morales .....</b>		<b>471</b>
I.	INTRODUCTION .....	471
II.	FROM UNRESTRICTED SOVEREIGN IMMUNITY TO LIMITED SOVEREIGN IMMUNITY .....	472
III.	¿DOES IMMUNITY FROM EXECUTION FOLLOW THE SAME PATTERN OF IMMUNITY OF JURISDICTION?.....	481
IV.	CLOSING COMMENTS .....	491
<b>INTERNATIONAL ARBITRATION AND <i>JURA NOVIT CURIA</i>, Towards Harmonization - Teresa Giovannini.....</b>		<b>495</b>
I.	INTRODUCTION .....	495
II.	THE NOTION.....	496
1.	In general.....	496
III.	DELINEATION.....	496
1.	Court Rule vs Arbitration Rule .....	496
2.	The subject matter of the dispute .....	497
3.	The contents of the law in general .....	499
4.	Jura Novit Curia: A discretionary power? A duty? .....	499
III.	CONTENTS OF THE RULE JURA NOVIT CURIA .....	501
1.	Independent verification of the legal sources provided by the parties .....	501
2.	New qualification .....	501
3.	New remedies .....	503
IV.	OBLIGATION TO SUBMIT THE NEW LEGAL REASONING TO THE PARTIES?.....	504
V.	CONCLUSION .....	508
VI.	BIBLIOGRAPHY .....	508
1.	Treaties, Articles, Notes .....	508

<b>CONTRA LOS RECURSOS INFUNDADOS</b> , Prof. Dr. Julio González-Soria .....	511
<b>LA IRONÍA DE COMPÉTENCE-COMPÉTENCE</b> , Francisco González de Cossío....	521
I. INTRODUCCIÓN.....	521
II. <i>LEITMOTIV</i> Y SIGNIFICADO DE <i>COMPÉTENCE</i> .....	522
1. Leitmotiv.....	522
2. Significado.....	523
III. LOS CASOS.....	523
1. México.....	523
1.1. Contradicción de Colegiados.....	524
1.2. Decisión de la Suprema Corte Mexicana.....	524
2. Estados Unidos.....	525
2.1. Antecedentes.....	525
2.2. Decisión de la Suprema Corte de Justicia.....	525
3. Similitudes .....	527
IV. PARADOJA DE <i>COMPÉTENCE PARCIAL</i> .....	527
1. La letra de la ley .....	527
1.1. México .....	527
1.2. Estados Unidos.....	528
2. El Espíritu de la ley .....	529
3. Confusión textual.....	529
3.1. La historia legislativa .....	530
3.2. La Convención de Nueva York.....	531
3.3. La experiencia extranjera.....	531
3.3.1. Nivel de revisión limitado .....	531
3.3.2. Nivel de revisión profundo .....	532
3.3.3. Nivel de revisión mixto .....	533
3.3.4. Acciones de previo pronunciamiento judicial sobre la jurisdicción del tribunal arbitral.....	533
3.4. La doctrina .....	533
V. ARGUMENTOS A FAVOR DE <i>COMPÉTENCE PARCIAL</i> .....	535
1. Refutación.....	535
2. <i>Compétence</i> Parcial contradice <i>Compétence</i> .....	537
3. Una distinción sin diferencia .....	537
VI. COMENTARIO FINAL .....	537

<b>ATTORNEYS' FEES AGONISTES: THE IMPLICATIONS OF INCONSISTENCY IN THE AWARDING OF FEES AND COSTS IN INTERNATIONAL ARBITRATIONS, John Y. Gotanda.....</b>	<b>539</b>
I. INTRODUCTION.....	539
II. OVERVIEW.....	541
1. Defining Costs and Fees in International Arbitrations.....	541
2. Methods for Allocating Costs and Fees.....	542
2.1. Costs Follow the Event.....	542
2.2. The American Rule.....	544
III. AWARDS OF COSTS AND FEES IN INTERNATIONAL ARBITRATIONS.....	546
IV. THE PROPOSALS.....	550
V. CONCLUSION.....	555
<b>CULTURAL CLASHES IN INTERNATIONAL COMMERCIAL ARBITRATION: HOW MUCH OF A REAL ISSUE?, Horacio A. Grigera Naón.....</b>	<b>557</b>
<b>NON-SIGNATORIES AND ARBITRATION: RECENT DEVELOPMENTS, Elena Gutiérrez García de Cortázar.....</b>	<b>561</b>
I. INTRODUCTION.....	561
II. DIFFERENT JURISDICTIONS, DIFFERENT SOLUTIONS.....	562
III. A LOOK AT THE RECENT CASELAW.....	563
IV. THE ARBITRAL INSTITUTIONS.....	568
V. CONCLUSION.....	571
<b>MISCONDUCT BY PROXY? TRYING TO UNDERSTAND ARTICLE 22 OF THE ECT, Prof. Dr. Kaj Hobér.....</b>	<b>573</b>
I. INTRODUCTION.....	573
II. RULES OF ATTRIBUTION UNDER CUSTOMARY INTERNATIONAL LAW.....	574
1. Introductory remarks.....	574
2. Attribution of the conduct of state organs under Article 4 of the ILC Articles.....	575
3. Attribution of the conduct of persons or entities exercising elements of governmental authority under Article 5 of the ILC Articles.....	575
4. Attribution of conduct of entities that the state directs or controls under Article 8 of the ILC Articles.....	575
III. WHAT IS THE NATURE OF ARTICLE 22 OF THE ECT?.....	577

1.	Introductory remarks.....	577
2.	Aspects to consider when interpreting the ECT and specifically Article 22(1).....	579
3.	Arbitral awards on the application of Article 22(1) ECT.....	582
4.	The <i>travaux préparatoires</i> as a supplementary means of interpretation.....	586
5.	What is the meaning of «shall ensure» in Article 22(1)?.....	591
6.	What is a «state enterprise»?.....	594
7.	The character of the violation of a Part III obligation.....	595
IV.	CONCLUDING REMARKS.....	597
<b>STATE INTERVENTION IN THE FINANCIAL CRISIS AND INTERNATIONAL INVESTMENT ARBITRATION, Norbert Horn.....</b>		<b>599</b>
I.	GERMAN LEGISLATION ON THE FINANCIAL CRISIS.....	600
1.	Financial Supervisory Law and the Recapitalization of Banks.....	600
1.1.	Supervisory law.....	600
1.2.	Rescue measures.....	601
2.	The Law on the Stabilization of Financial Markets (Oct. 2008).....	601
3.	The Law Amending the Stabilization Law (April 2009); the HRE-case..	602
3.1.	How to rescue HRE. Two ways to gain State control.....	602
3.2.	The law on rescue take-overs of financial enterprises (rescue law).	602
3.3.	The acquisition of shares in connection with a recapitalization.	603
4.	The issue of the constitutionality of the new laws.....	603
4.1.	The law on rescue take-overs of financial enterprises (rescue law).	603
4.2.	Constitutionality of the acquisition of shares in a recapitalization.....	605
4.3.	Equal treatment of investors.....	607
5.	German legislation on the financial crisis and EU law.....	607
II.	INVESTOR PROTECTION UNDER INTERNATIONAL LAW AND THE EU	608
1.	Customary International Law and Investment Treaties.....	608
1.1.	Customary International Law.....	608
1.2.	Investment treaties.....	608
1.3.	Precedence of international law over domestic law of the host State.....	609
2.	EU law and BITs.....	610

2.1. Limited use of BITs within the EU.....	610
2.2. Precedence of EU-law .....	611
III.    SUMMARY AND CONCLUDING REMARKS .....	612
<b>ELECTRONICALLY STORED INFORMATION AND PRIVILEGE IN INTERNATIONAL ARBITRATION, Martin Hunter - Gregory Travaini.....</b>	<b>615</b>
I.    INTRODUCTION .....	615
II.   THE GORDIAN KNOT .....	616
III.  UNTYING THE KNOT.....	617
1.    Procedural or Substantive law? .....	617
1.1. Privilege as a matter of procedural law.....	617
1.2. Privilege as a matter of substantive law .....	617
2.    Privilege and choice of law.....	618
3.    Privilege and Domestic Law.....	618
3.1. In common law countries.....	618
3.2. In civil law countries .....	619
4.    Privilege and Lawyers .....	619
5.    Case law, National Law, International Law .....	620
6.    Rules of International Arbitral Institutions and Organisations .....	620
II.   CUTTING THE KNOT .....	622
1.    Pro-Contractual Approach.....	622
1.1. Privilege as a general principle of law .....	622
1.2. Agreement of the parties.....	622
1.3. Early consideration during the arbitral proceedings .....	623
2.    Levelling the playing field.....	623
2.1. The reasonable expectations of the parties .....	623
2.2. Equal Treatment of the Parties .....	623
2.3. Commonsense, Reasonableness and Flexibility .....	624
2.4. How to decide what is privileged/confidential? .....	624
3.    Conclusions .....	624
<b>WHEN IS AN «INVESTMENT» AN «INVESTMENT»? — FORMALITIES OF APPROVAL AND LIMITATIONS ON THEIR APPLICATION, Robert Hunter.....</b>	<b>627</b>
I.    INTRODUCTION .....	627
II.   HISTORICAL CONTEXT .....	628



III.	DEFINITION OF TERMS: «APPROVAL CLAUSES» VERSUS RESTRICTIONS ON ADMISSION .....	630
IV.	ISSUES ARISING IN PRACTICE.....	632
	1. Yaung Chi Oo Trading v. Myanmar .....	633
	2. Desert Line v Yemen.....	635
V.	THE FUTURE.....	636
VI.	CONCLUSION.....	644
	<b>ECONOMIC CRISIS AND ARBITRATION, Juan-Carlos Jiménez-Mancha .....</b>	<b>645</b>
I.	PERIODIC FORMATION OF SPECULATIVE BUBBLES.....	645
	1. The crisis of the tulips bulbs.....	645
	2. The Wall Street crash: the crash of 1929.....	646
	3. The financial crisis of subprime mortgages: the crash of 2007 .....	647
II.	THE «MOP UP AFTER» THEORY OF GREENSPAN-BLINDER.....	648
	1. Formulation .....	648
	2. How has the «mop up after» theory worked in the XX century economic crisis? .....	649
III.	THE MOP: TOOLS TO ADDRESS THE CRISIS. MONETARY AND FISCAL POLICES. THE ARBITRATION SYSTEM.....	649
IV.	INEFFECTIVENESS OF THE ARBITRATION AGREEMENTS ENTERED INTO BY THE INSOLVENT DEBTOR IN CASE OF DISPUTES ARISING DURING THE PENDENCY OF THE BANKRUPTCY PROCEEDING .....	651
	1. Conditions of ineffectiveness.....	651
	2. Nature of ineffectiveness.....	655
	2.1. Temporary ineffectiveness .....	655
	2.2. Ineffectiveness related to disputes affecting the assets of the bankrupt debtor.....	655
	2.3. ¿Does article 52.1 of the LC apply to international arbitrations?.....	656
	3. Duty of abstention of the arbitrator. Referral of the parties to the Court of the bankruptcy .....	657
	4. Mechanisms to oppose ineffectiveness.....	658
	4.1. Arbitrators can «ex officio» declare ineffectiveness .....	659
	4.2. Any of the parties may oppose the ineffectiveness.....	659

5.	Invalidity of the award issued in arbitration proceeding started after the order of declaration of bankruptcy .....	660
6.	Invalid awards under article 52.1 of the S.B.L can be given force through a settlement agreement .....	660
V.	EFFECTS OF THE BANKRUPTCY ON ARBITRATION PROCEEDINGS INITIATED ON THE DATE OF THE ORDER OF DECLARATION OF BANKRUPTCY.....	661
1.	The declaration of bankruptcy will not disrupt the arbitration proceedings already initiated .....	661
2.	The arbitration procedure must be considered initiated at the time that the defendant has received the request to submit the dispute to arbitration .....	662
3.	The award is non-appealable when nobody has challenged it by filing an action for annulment, or, when, in spite of having filed such action, it has been dismissed by the Provincial Court .....	663
4.	Determination of the start date of the bankruptcy .....	664
5.	Issuance of the order of declaration of bankruptcy during the demurrer proceeding regarding lack of jurisdiction based on the existence of an arbitration clause .....	664
6.	The effects of bankruptcy on proceedings to enforce arbitration awards.	664
7.	Effects of the bankruptcy on precautionary measures.....	665
VI.	BINDING EFFECTIVENESS OF THE ARBITRATION AWARDS FOR RECOGNITION AND CLASSIFICATION OF CREDITS TO BE INTEGRATED THE LIST OF CREDITORS AND FOR THE MAKING OF THE INVENTORY.....	666
1.	Binding effectiveness of the final and non-appealable awards .....	666
2.	Binding effectiveness of the appealable awards .....	667
VII.	ACTION FOR FRAUD AGAINST THE ARBITRAL AWARD .....	667
1.	Nature and purpose .....	667
2.	Applicable legal regime .....	668
	<b>BRIEF REFLECTIONS ON THE APPLICATION OF NORMS BY INTERNATIONAL ARBITRATORS, Charles Kaplan.....</b>	<b>671</b>
I.	APPLYING THE LAW .....	672
II.	APPLYING THE CONTRACT .....	676

<b>APPLICATIONS FOR «REVISION» IN INVESTMENT ARBITRATION: SELECTED CURRENT ISSUES, Prof. Dr. Richard Kreindler.....</b>	<b>679</b>
I. ADMISSIBILITY AND GENERAL SCOPE OF REVISION PROCEEDINGS .	680
II. PRINCIPLES OF INTERPRETATION RESPECTING ARTICLE 51 ICSID CONVENTION AND LAW APPLICABLE TO THE DISPUTE.....	683
III. CORRUPTION ALLEGATIONS AND ICSID REVISION PROCEEDINGS..	686
1. Legal Standards Governing Burden of Proof and Weighing of Evidence in ICSID Revision Proceedings .....	686
2. Legal Standards Governing ICSID Proceedings In General.....	686
3. Legal Standards Governing ICSID Revision Proceedings.....	689
4. Legal Standards As Regards Evidence of Corruption or Bribery .....	691
IV. CONCLUSION .....	696
 <b>FRAUD AND CORRUPTION IN INTERNATIONAL ARBITRATION, Carolyn B. Lamm - Hansel T. Pham- Rahim Moloo.....</b>	 <b>699</b>
I. INTRODUCTION .....	699
II. MATTERS OF EVIDENCE IN FRAUD AND CORRUPTION CASES.....	700
1. The Burden Of Proof.....	700
2. The Standard Of Proof .....	701
3. The Use Of Adverse Inferences.....	704
III. THE TRANSNATIONAL PUBLIC POLICY AGAINST FRAUD AND CORRUPTION .....	706
1. The Applicability Of Transnational Public Policy In International Arbitration .....	707
1.1. Transnational Public Policy in Commercial Arbitration .....	708
1.2. Transnational Public Policy in Treaty Arbitration.....	709
2. The Transnational Public Policy Against Bribery And Corruption....	711
2.1. Convergence of National Law .....	712
2.2. International Conventions.....	712
2.3. Arbitral Case Law .....	713
2.4. Scholarly Opinion .....	714
3. The Transnational Public Policy Against Fraud .....	715
3.1. Convergence of National Law .....	716
3.2. International Conventions.....	717
3.3. Arbitral Case Law .....	717
3.4. General Principles of International Law.....	718
3.5. Scholarly Opinion .....	719

IV.	THE EFFECT OF A POSITIVE FINDING OF FRAUD OR CORRUPTION IN INTERNATIONAL ARBITRATION.....	720
1.	The Treaty Arbitration Context.....	720
1.1.	An Investor's Right to Rely on the Consent Contained in the Arbitration Agreement.....	720
1.2.	The Requirement In Some Investment Treaties That Invest- ments Be Made In Accordance With The Law.....	721
1.3.	The Clean Hands Doctrine As It Applies To Substantive Legal Rights.....	723
1.4.	The Inadmissibility Of A Claimants' Claims For Breach Of Tran- snational Public Policy.....	727
2.	The Commercial Arbitration Context.....	728
2.1.	Admissibility under the Applicable Law.....	728
2.2.	The Effect That A Breach Of Transnational Public Policy Has On Contracts.....	729
V.	CONCLUSION.....	730
	<b>MULTI-STEP DISPUTE RESOLUTION CLAUSES, Álvaro López de Argumedo Piñeiro.....</b>	<b>733</b>
I.	INTRODUCTION.....	733
II.	NATURE OF THE MULTI-STEP DISPUTE RESOLUTION CLAUSE.....	734
III.	REQUIREMENTS FOR ENFORCING THE NEGOTIATION CLAUSE.....	737
1.	Subjective requirements.....	737
2.	Formal requirements.....	738
3.	Time limits for the request.....	738
4.	Requirements as to content.....	739
5.	Requirements to prove compliance with the obligation to negotiate .	741
IV.	COMMENCEMENT OF ARBITRATION WITHOUT FULFILLING THE OBLIGATION TO NEGOTIATE.....	742
V.	VACATING THE ARBITRAL AWARD DUE TO BREACH OF THE NEGOTIATION CLAUSE.....	744
VI.	ENFORCEABILITY OF THE NEGOTIATION CLAUSE AND ANTI-SUIT INJUNCTIONS.....	744
VII.	CONCLUSION.....	745
	<b>COUNTERMEASURES, DIPLOMATIC PROTECTION, AND INVESTOR-STATE ARBITRATION, Andreas F. Lowenfeld.....</b>	<b>747</b>
I.	BACKGROUND: THE RISE OF HFCS.....	747

II.	THE SURPRISE DEFENSE.....	748
III.	THE ANCIENT REGIME.....	750
IV.	INVESTOR VS. STATE: THE UN GENERAL ASSEMBLY, THE WORLD BANK CONVENTION AND BILATERAL INVESTMENT TREATIES.....	752
V.	BACK TO THE SWEETENER CASES.....	755
VI.	A LOOK AHEAD.....	758

**THE ENTITLEMENT OF THE STATE AND PUBLIC ENTITIES TO ARBITRATE UNDER LEBANESE LAW, Ghaleb S. Mahmassani.....** 759

I.	THE HISTORICAL DEVELOPMENT OF LEBANESE LAW REGARDING STATE AND PUBLIC ENTITIES ENTITLEMENT TO ARBITRATE.....	760
	1. The old Lebanese Code of Civil Procedure of 1934:.....	760
	2. The new Code of Civil Procedure of 1983.....	761
	2.1. Domestic arbitration:.....	761
	2.2. International arbitration:.....	762
II.	THE STATE AND PUBLIC ENTITIES ENTITLEMENT TO ARBITRATE UNDER THE CURRENT AMENDED LEBANESE LAW.....	765
III.	THE EXPANSION OF STATE ARBITRATION UNDER THE BILATERAL INVESTMENT TRATIES:.....	767
IV.	CONCLUSION.....	768

**SOME CONSIDERATIONS ABOUT CURRENT INTERNATIONAL ARBITRATION CONDUCT, Habib Malouche.....** 771

I.	THE TENDENCY OF DEVELOPMENT IN ARBITRATION.....	772
II.	THE PRINCIPAL ACTUAL PREOCCUPATIONS OF ARBITRATORS.....	775
III.	THE ARBITRATION IN THE SOUTH OF MEDITERRANEAN.....	778
IV.	THE MISCONDUCTS AND INSUFFICIENCIES IN ARBITRATION.....	782
V.	PERSONAL OPINIONS ON DELAYS, CONFIDENTIALITY AND CONTROL OF THE AWARD.....	785

**¿EXISTE HOSTILIDAD HACIA EL ARBITRAJE DE INVERSIÓN EN AMÉRICA LATINA?, Fernando Mantilla-Serrano.....** 789

I.	LA PERSPECTIVA HISTÓRICA.....	790
II.	EL ARBITRAJE DE INVERSIÓN SIGUE ACTIVO EN AMÉRICA LATINA...	791
	1. Arbitrajes en curso.....	791
	2. Fallos favorables a Estados de América Latina.....	792

III.	MEDIDAS ADOPTADAS PARA RESTRINGIR EL ACCESO AL ARBITRAJE CONTRA EL ESTADO .....	793
1.	Medidas tendientes a retirar el consentimiento al arbitraje internacional.....	793
1.1.	Denuncia del Convenio CIADI.....	793
1.2.	Notificación sobre tipo de disputas arbitrables .....	797
1.3.	La revocatoria del instrumento que expresa el consentimiento .....	800
2.	Medidas de derecho interno .....	801
IV.	LA ACTIVIDAD EN MATERIA DE SUSCRIPCIÓN DE TRATADOS QUE CONTEMPLAN EL ARBITRAJE.....	802
1.	Tratados de Libre Comercio y Tratados Bilaterales de Inversión .....	802
2.	Nuevas tendencias en materia tratados multilaterales regionales .....	804
V.	CONCLUSIONES .....	805
 <b>BILATERAL INVESTMENT TREATY ARBITRATION IN THE EARLY 21<sup>ST</sup> CENTURY, Arthur Marriot.....</b>		807
 <b>COLLISIONS OF LEGAL REGIMES IN WORLD SOCIETY. THE UMBRELLA CLAUSE AS A SUBSTANTIVE AND PROCEDURAL MECHANISM OF LEGAL COORDINATION, Elina Mereminskaya - Aldo Mascareño .....</b>		819
I.	DIFFERENTIATION OF WORLD SOCIETY AND NORMATIVE EXPECTATIONS .....	820
II.	LEGAL FRAGMENTATION AND EMERGENT LEVELS OF LAW .....	822
III.	WEAK NORMATIVE COMPATIBILITY: DEFINITIONS AND OPERATIONAL CRITERIA.....	824
IV.	FUNCTION OF THE UMBRELLA CLAUSE .....	825
V.	SUBSTANTIVE OBLIGATIONS UNDER THE UMBRELLA CLAUSE .....	826
VI.	PROCEDURAL PROBLEMS UNDER THE UMBRELLA CLAUSE.....	830
VII.	REDUCTION OF LEGAL UNCERTAINTY UNDER THE UMBRELLA CLAUSE.....	833
VIII.	CONCLUSION .....	835
IX.	REFERENCES .....	836
 <b>SOME COMMENTS ON DENIAL OF JUSTICE IN PUBLIC AND PRIVATE INTERNATIONAL LAW AFTER LOEWEN AND SAIPEM, Alexis Mourre - Alexandre Vagenheim .....</b>		843
I.	THE ORIGINS OF DENIAL OF JUSTICE IN PUBLIC AND PRIVATE INTERNATIONAL LAW.....	844

II.	DENIAL OF JUSTICE AS THE FAILURE OF A NATIONAL LEGAL SYSTEM TO ADMINISTER JUSTICE.....	850
	1. The exhaustion of local remedies.....	851
	2. The substantive conditions of the State's responsibility .....	855
III.	MINIMUM STANDARD OF ADMINISTRATION OF JUSTICE AND PRIVATE INTERNATIONAL LAW ABUSE OF JURISDICTION .....	858

**VENTAJAS E INCONVENIENTES DEL ARBITRAJE INSTITUCIONAL, Ramon Mullerat.....** 867

I.	EL ARBITRAJE INSTITUCIONAL .....	867
	1. Descripción .....	867
	2. Desarrollo .....	868
	3. Función de la institución arbitral .....	868
	4. El arbitraje institucional en la actualidad .....	868
II.	PRINCIPALES VENTAJAS DEL ARBITRAJE INSTITUCIONAL .....	869
	1. Constituye un sello distintivo de calidad.....	869
	2. Simplifica las reglas preestablecidas con el contenido del convenio arbitral .....	869
	3. Facilita el convenio arbitral.....	870
	4. Facilita la designación de los árbitros .....	870
	5. Evita problemas de carácter financiero .....	870
	6. Impide la paralización o retraso del procedimiento por mala fe o negligencia de las partes o del árbitro.....	871
	7. Asesora y supervisa formalmente a los árbitros .....	871
	8. Presta asistencia administrativa .....	871
	9. Cuenta con un formato experimentado .....	871
	10. Permite la responsabilidad civil de la institución .....	871
III.	LOS INCONVENIENTES .....	872
IV.	ELECCIÓN DE LA INSTITUCIÓN ARBITRAL.....	872

**LIMITS OF CONSENT — ARBITRATION WITHOUT PRIVACY AND BEYOND, Michael D. Nolan - Frédéric G. Sourgens.....** 873

I.	INTRODUCTION .....	873
II.	THEORIES OF CONSENT.....	874
	1. A simple «offer-and-acceptance» model .....	875
	2. A firm offer erga omnes .....	876
	3. A binding international commitment to jurisdiction .....	878

III.	JURISDICTIONAL DECLARATIONS UNDER PUBLIC INTERNATIONAL LAW.....	880
1.	Jurisdictional Declarations In The International Court Of Justice.....	881
1.1.	Jurisdictional declarations in international treaties.....	881
1.2.	Jurisdiction by means of special agreement.....	885
1.3.	Jurisdiction by means of forum prorogatum.....	886
1.4.	Unilateral jurisdictional declarations — obligation and offer to resolve disputes.....	887
2.	Commitments Without Privity And An «Offer» Of Arbitration In Investor-State Arbitration.....	891
IV.	DENUNCIATION OF OBLIGATIONS AND CONSENT.....	895
1.	Recent Arbitral Awards.....	896
2.	Denunciation of the ICSID Convention.....	898
2.1.	Articles 71 and 72 of the ICSID Convention and their history .	899
2.2.	Drafting history of «consent» in the context of the ICSID Convention.....	900
2.3.	The history of the provisions addressed to denunciation of the Convention.....	905
3.	State consent is unaffected by denunciation of the ICSID Convention.....	907
4.	Denunciation of instruments of consent.....	909
V.	CONCLUSION.....	911

**THE PRINCIPLES OF INTERNATIONAL ARBITRATION PRACTICE IN FRANCE,**  
Carmen Núñez-Lagos..... 913

I.	A FRENCH CITY AS A SEAT FOR INTERNATIONAL ARBITRATIONS.....	914
1.	The significance of the seat of arbitration.....	914
2.	What are the principles of international arbitration in France?.....	916
II.	EFFECTIVENESS OF THE ARBITRATION AGREEMENT.....	916
1.	The «Jules Vernes» decision: the autonomy of arbitration agreement from national laws.....	916
2.	The «Bomar Oil» decision: the validity of an arbitration clause incorporated by reference.....	917
3.	The «ABS» decision: the circulation of an arbitration agreement in a chain of contracts.....	919



III.	EFFECTIVENESS OF THE ARBITRAL PROCESS: THE LIMITS TO COURT INTERVENTION .....	919
1.	The «Jules Verne» decision: the negative effect of the competence-competence principle as a mandate addressed to the French judge in all circumstances .....	919
2.	The «NIOC» decision: The judicial assistance at the constitution of the arbitral tribunal and the denial of justice.....	920
3.	The «Miss France» decision: action to set aside awards rendered in Paris may be heard abroad .....	922
	<b>USE OF ARBITRATION IN THE WTO, Luiz Olavo Baptista .....</b>	<b>925</b>
I.	ARBITRATION AND COMPLIANCE WITH DSB RECOMMENDATIONS AND RULINGS.....	927
1.	DSU article 21.3 arbitration: surveillance of implementation of recommendations and rulings.....	927
1.1.	Peculiarities and general aspects .....	927
1.2.	Third Parties .....	928
2.	DSU article 22.6 arbitration: compensation and the suspension of concessions.....	929
2.1.	Peculiarities and general aspects .....	929
2.2.	Third Parties .....	930
3.	Provisions on arbitration in the GATS and the SCM.....	931
II.	ARBITRATION AS AN ALTERNATIVE MEANS OF WTO DISPUTE SETTLEMENT.....	932
1.	Sui generis arbitration and the 2005 Banana Tariff Cases.....	933
2.	DSU Article 25 arbitration: an alternative to the mainstream dispute resolution way .....	935
III.	CONCLUSION .....	936
IV.	BIBLIOGRAPHY .....	936
	<b>THE EVOLVING NATURE OF PROVISIONAL MEASURES, Francisco Orrego Vicuña.....</b>	<b>939</b>
I.	FROM THE STATUTE TO THE GENERAL PRINCIPLES OF LAW: THE EXPERIENCE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE .....	940
II.	INTERNATIONAL LAW FINDS ITS WAY TO THE INTERNATIONAL COURT OF JUSTICE.....	941

III.	CONFIRMATION OF THE BINDING NATURE IN THE WORK OF OTHER INTERNATIONAL TRIBUNALS.....	945
IV.	DISCUSSIONS AND CLARIFICATIONS IN INTERNATIONAL COMMERCIAL ARBITRATION.....	947
	1. Should provisional measures in investment arbitration have a non-binding nature?.....	950
	2. The concurrent sources of investment law arbitration.....	952
	<b>E HOW CASE LAW MADE MEXICO A TRUE INTERNATIONAL ARBITRATION PLACE, Leonel Pereznieta Castro - James A. Graham.....</b>	<b>955</b>
I.	ELIMINATING CONSTITUTIONAL CONTROVERSIES.....	957
II.	FAVOURING ARBITRATION.....	958
III.	A LEGAL RIGHT TO CERTAINTY AND THE PRINCIPLE OF EXPEDITIOUS AS GENERAL PRINCIPAL OF INTERNATIONAL ARBITRATION .	959
IV.	WHAT REMAINS TO BE DONE.....	961
	<b>SELECTED NATIONALITY ISSUES IN ECT ARBITRATION, Philippe Pinsolle....</b>	<b>965</b>
I.	INTRODUCTION.....	965
II.	NATIONALITY ISSUES IN ARTICLE 1(7): ASSESSING THE ELIGIBILITY REQUIREMENTS FOR JURISDICTION.....	967
	1. Nationality for purposes of jurisdiction under the ECT is defined at Article 1(7).....	967
	2. EC nationals may bring claims against the EC.....	968
	2.1. Natural persons.....	969
	2.2. Legal persons.....	970
III.	NATIONALITY ISSUES IN ARTICLE 17: WHAT IS «THIRD STATE»?.....	970
	<b>ARBITRATION AND ANTI SUIT INJUNCTIONS IN THE CASE LAW OF THE EUROPEAN COURT OF JUSTICE, Fernando Pombo.....</b>	<b>975</b>
I.	INTRODUCTION.....	975
II.	CONCEPT OF ANTI-SUIT INJUNCTION.....	976
III.	GENERAL FRAME: THE UE RULES ON INTERNATIONAL JURISDICTION.....	977
IV.	THE POSITION OF THE EUROPEAN COURT OF JUSTICE CONCERNING ANTI-SUIT INJUNCTIONS AND THE JURISDICTION OF STATE COURTS: THE DECISION IN THE TURNER CASE.....	980
	1. Arguments against anti-suit injunctions.....	980
	2. Arguments in favour of anti-suit injunctions.....	981
	3. Opinion of the Court.....	982

V.	THE POSITION OF THE EUROPEAN COURT OF JUSTICE CONCERNING ANTI-SUIT INJUNCTIONS AND ARBITRAL PROCEEDINGS .....	983
1.	Preliminary question: The substantive scope of Regulation 44/2001 .....	984
1.1.	The decision in the case <i>Marc Rich</i> .....	985
1.2.	The decision in <i>Van Uden</i> case.....	986
2.	Anti-suit injunctions and arbitration.....	989
VI.	CONCLUSION .....	990

**UNLAWFUL INTERFERENCE WITH INTERNATIONAL ARBITRATION BY NATIONAL COURTS OF THE SEAT IN THE AFTERMATH OF *SAIPEM V. BANGLADESH*, Luca G. Radicati Di Brozolo - Loretta Malintoppi .....**

I.	INTRODUCTION .....	993
II.	THE STATE OF THE CASE LAW PRIOR TO <i>SAIPEM V. BANGLADESH</i> ..	994
III.	PROCEEDING WITH AN ARBITRATION IN DISREGARD OF THE DECISIONS OF LOCAL COURTS.....	996
1.	Obstacles and practical difficulties.....	996
2.	Do arbitrators have the power to disregard the law of the State of the seat? .....	997
3.	The standards adopted by arbitral tribunals in disregarding the decisions of the local courts .....	998
IV.	THE SIGNIFICANCE OF THE <i>SAIPEM</i> AWARD: THE STANDARD OF ABUSIVE INTERFERENCE WITH ARBITRATION AND ILLEGALITY UNDER INTERNATIONAL LAW .....	1002
1.	The ICC arbitration and the related litigation before the domestic courts.....	1002
2.	The ICSID arbitration .....	1003
3.	A review of the <i>Saipem</i> award: the domestic law roots of international commercial arbitration and the limits of the supervisory jurisdiction of the courts of the seat .....	1008
V.	CONCLUSION .....	1011

**INTERNATIONAL ARBITRATION AS AN ANALOGUE TO THE INTERNATIONAL CIVIL SOCIETY, Jesús Remón Peñalver - Virginia Allan .....**

I.	.....	1013
1.	What is civil society? .....	1013

2.	International Trade and Commerce — International Arbitration.....	1014
3.	The impact of Globalization .....	1016
II.	.....	1016
1.	The voluntary and autonomous nature of arbitration .....	1018
2.	International arbitration at the public-private crossroads.....	1021
III.	.....	1024
<b>EVIDENCE IN INTERNATIONAL ARBITRATION: A SYNTETIC GLIMPSE,</b>		
Edoardo F. Ricci .....		1025
I.	INTRODUCTION .....	1025
II.	CHOICE AND WEIGHT OF MEANS OF EVIDENCE .....	1026
III.	TAKING EVIDENCE IN THE PROCEEDINGS.....	1027
IV.	RULES OF FAIRNESS AS A LIMIT TO THE ARBITRAL TRIBUNAL'S POWER .....	1029
V.	CONCLUSION .....	1031
<b>INVESTMENT AND ECONOMIC DEVELOPMENT, Andrés Rigo Sureda.....</b>		1033
I.	ICSID'S WORLD BANK CONNECTION.....	1036
II.	THE EVOLVING CONCEPT OF ECONOMIC DEVELOPMENT.....	1038
1.	Economic Development under the Establishing Agreements of the World Bank Group Institutions.....	1038
2.	How Economic Development has been understood in the Practice of the World Bank.....	1040
3.	Law as an Input to Economic Development.....	1041
4.	Culture as an Input to Development .....	1042
III.	THE INTERPRETATION OF THE ARTICLES OF AGREEMENT OF THE WORLD BANK.....	1044
IV.	CONCLUSIONS .....	1046
<b>ARBITRATION IS USEFUL ONLY IF IT IS BETTER THAN COURT PROCEED- INGS, Mauro Rubino-Sammartano.....</b>		1047
I.	THE HUMAN FACTOR .....	1048
II.	THE RULES OF PROCEDURE.....	1048
1.	The Rules of procedure .....	1049
2.	No review of the merits .....	1049
3.	Duration .....	1049
4.	A Self Executory Award.....	1050
5.	Leave to Appeal .....	1050

<b>FAST-TRACK ARBITRATION AGREEMENTS OF MAC CLAUSES, Klaus Sachs...</b>	<b>1051</b>
I. THE USE OF MAC CLAUSES IN M&A TRANSACTIONS .....	1051
II. DISPUTE RESOLUTION MECHANISMS IN M&A TRANSACTIONS .....	1053
1. Dispute Resolution regarding MAC Clauses: Needs of the Parties and Conceivable Mechanisms .....	1053
2. Fast-Track Arbitration and MAC Clauses.....	1053
III. DESIGNING FAST-TRACK ARBITRATION AGREEMENTS IN MAC CLAUSES .....	1054
1. <i>Ad Hoc</i> or Institutional Proceedings? .....	1054
2. Expediting the Proceedings .....	1055
2.1. Constituting the Arbitral Tribunal .....	1055
2.2. Written Submissions .....	1056
2.3. Oral Hearing .....	1056
2.4. Admissible Evidence.....	1057
2.5. Arbitral Award.....	1057
2.6. Setting up of a Timetable.....	1057
3. Further Content of the Arbitration Agreement .....	1058
4. Model Fast-Track Arbitration Agreement.....	1059
5. Summary.....	1060
 <b>THE RIGHT OF FOREIGN INVESTORS TO ACCESS THE DOMESTIC SPANISH MARKETS, Otto Sandrock .....</b>	 <b>1061</b>
I. THE PROBLEM.....	1061
II. THE SAGA OF THE NORTH-AMERICAN / GERMAN DIVIDE.....	1062
1. The right of access under the North-American BITs .....	1064
1.1. Its legal basis .....	1064
1.2. Retention by the host State of its sovereign power to restrict the access to its domestic markets .....	1065
1.2.1. Present rules restraining the access of foreign investors	1065
1.2.2. Future rules restraining the access of foreign investors..	1066
1.2.3. Barriers arising from customary international law .....	1066
1.3. The relationship between the sovereign power to restrict and the subjective right of access: legislative discretion v. admini- strative constraints .....	1067
1.4. The enforceability of the right of access .....	1068

2.	The right of access under the German BITs.....	1068
2.1.	The legal basis of the right for access .....	1069
2.2.	Retention by the host State of its sovereign power to restrict the access to its domestic markets.....	1070
2.2.1.	The principle of free trade and investment and its limits.....	1071
2.2.2.	Authorization for other prohibitions and restrictions.....	1071
2.3.	The relationship between the sovereign power to restrict and the subjective right of access: legislative discretion v. administrative constraints .....	1074
2.4.	The enforceability of the right of access .....	1074
III.	SPANISH INTERNATIONAL INVESTMENT LAW: AN ANALYSIS OF ART. 2 PARA. 1 OF THE POST-2000 SPANISH BITS .....	1075
1.	The language in Art. 2 para. 1 of the post-2000 Spanish BITs.....	1075
2.	The conclusion to be drawn from the identity between the Spanish and the German BITs .....	1077
3.	The meaning of the reservation «conforme a sus disposiciones legales (y reglamentarias)» / «in accordance with its laws and regulations» .....	1077
4.	The enforceability of the right of access.....	1078
IV.	FINAL RESULTS.....	1079
 <b>BELATED JURISDICTIONAL OBJECTIONS IN ICSID ARBITRATION, Christoph Schreuer.....</b>		
I.	INTRODUCTION .....	1081
II.	TIMELINESS OF OBJECTION TO JURISDICTION.....	1082
1.	As Early as Possible.....	1082
2.	Not Later than the Deadline for the Counter-Memorial.....	1084
3.	Deadline for Jurisdictional Objections to Ancillary Claims .....	1085
4.	Subsequently Discovered Facts .....	1085
5.	Objections made After a Decision on Jurisdiction.....	1086
III.	CONSEQUENCE OF UNTIMELY OBJECTION.....	1088
1.	Waiver of Jurisdictional Objections.....	1088
2.	Examination of Jurisdiction on the Tribunal's Initiative .....	1090
IV.	THE CONFLICTING APPROACHES .....	1092
V.	LOSS OF PROCEDURAL OR SUBSTANTIVE RIGHTS.....	1093
VI.	WHAT JURISDICTIONAL REQUIREMENTS ARE SUBJECT TO WAIVER?	1095

VII.	DELAY AND WAIVER .....	1096
VIII.	SUMMARY AND CONCLUSION .....	1097

**THE APPLICATION OF ARBITRATION TO PUBLIC ENTITIES. THE SPANISH CASE,** Juan Serrada Hierro - Juan Carlos Calvo Corbella .....

1099

I.	INTRODUCTION .....	1099
II.	THE LEGAL REGIME OF ARBITRATION AS AN INSTRUMENT TO RESOLVE CONFLICTS IN PUBLIC ENTITIES AFTER THE PROMULGATION OF THE CONSTITUTION OF 1978.....	1101
III.	INCIDENCE OF THE ARBITRATION LAW OF 23RD DECEMBER 2003 ON THE APPLICABILITY OF ARBITRATION TO PUBLIC ENTITIES .....	1103
IV.	THE LEGAL REGIME OF ARBITRATION FOR PUBLIC ENTITIES THAT ARE NOT PUBLIC ADMINISTRATIONS AS DEFINED IN THE LAW ON PUBLIC SECTOR CONTRACTS OF 30TH OCTOBER 2007.....	1104
V.	THE EXTENSION OF ARBITRATION IN SPECIAL LAWS. THE CASE OF ARBITRATION REGARDING THE ISSUE OF COMPETITION RIGHTS....	1107
VI.	SUBMITTING THE STATE TO ARBITRATION FOR DISPUTES PROMOTED BY FOREIGN INVESTORS .....	1107
VII.	CONTENTS OF THE COURT DECISION REGARDING THE PROCEEDING .....	1111

**THE 2000 HAGUE CONVENTION ON JURISDICTION AND FOREIGN JUDGMENTS. A LATINAMERICAN PERSPECTIVE,** José Luis Siqueiros .....

1115

I.	THE PRELIMINARY DRAFT CONVENTION ON JURISDICTION AND FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS.....	1115
II.	A PARALLEL EVALUATION OF THE PROPOSED CONVENTION FROM THE LATIN AMERICAN PERSPECTIVE.....	1116
III.	THE LATIN AMERICAN HISTORICAL TRADITION ON INTERNATIONAL PROCEDURAL ASSISTANCE .....	1117
IV.	CONCLUSION .....	1119

**MOST FAVOURED NATION (MFN) CLAUSES IN BILATERAL INVESTMENT TREATIES,** Christer Söderlund .....

1121

I.	INTRODUCTION .....	1121
II.	MFN TREATMENT DOES NOT EXTEND TO DISPUTE RESOLUTION. ...	1122
	1. Generally about MFN Clauses .....	1122
	2. Is interpretation of the treaty language a quest for party intent? .....	1124
	3. Dealing with different procedural issues .....	1124

III.	THRESHOLD QUESTIONS.....	1125
1.	What is more favourable? .....	1125
2.	Is state court adjudication by definition less favourable?.....	1125
3.	Choice is better.....	1126
IV.	HOW IS IT POSSIBLE TO ENVISAGE AN EXTENSION OF THE MFN CLAUSE TO DISPUTE RESOLUTION?.....	1126
1.	The threshold question.....	1126
2.	May «treatment» be interpreted to include dispute resolution? .....	1127
3.	Can the Umbrella Clause be imported on the strength of the MFN Clause? .....	1128
4.	The Plama Tribunal’s Decision on Jurisdiction.....	1129
5.	RosInvestCo .....	1129

**PRELIMINARY JUDGMENTS, LIS PENDENS AND RES IUDICATA IN ARBITRATION PROCEEDINGS, Miguel Temboury Redondo.....** 1131

I.	PRELIMINARY JUDGMENTS, LIS PENDENS, AND RES IUDICATA IN JUDICIAL PROCEEDINGS .....	1131
II.	PRELIMINARY JUDGMENTS, LIS PENDENS, AND RES IUDICATA IN ARBITRAL PROCEEDINGS .....	1133
1.	General considerations .....	1133
2.	General rules governing <i>lis pendens</i> and <i>res iudicata</i> in arbitration	1133
3.	Preliminary judgments in arbitration .....	1136
4.	Triple identity vs. «parties and issues that are the same or substantially the same».....	1138
III.	THE STRUCTURE OF A JUDGMENT .....	1140
1.	Proven facts .....	1140
2.	Legal reasoning.....	1142
IV.	FURTHER SPECIFICATIONS ON THE GENERAL RULES GOVERNING PRELIMINARY JUDGMENTS, LIS PENDENS AND RES IUDICATA IN ARBITRAL PROCEEDINGS .....	1143
V.	CONCLUSIONS .....	1145

**THE DOCUMENT PRODUCTION MASTER AND THE EXPERTS’ FACILITATOR: TWO POSSIBLE AIDES FOR AN EFFICIENT ARBITRATION, Hans Van Houtte.....** 1147

I.	THE DOCUMENT PRODUCTION MASTER.....	1147
1.	Possible Tasks .....	1147



2.	Can Arbitrators appoint a DPM? .....	1151
2.1.	The authority of the DPM to decide .....	1152
2.2.	The authority of the DPM to suggest.....	1153
3.	The DPM's Profile.....	1153
4.	The DPM's Terms of Reference.....	1154
II.	THE EXPERTS' FACILITATOR .....	1155
1.	Evidence from Party-appointed experts .....	1155
2.	The mandate of the Experts' Facilitator .....	1156
3.	The Profile of the Experts' Facilitator.....	1157
4.	The selection of the Expert's Facilitator.....	1157
IV.	CONCLUSION .....	1158
<b>INTERVIEWING AND PREPARING WITNESSES FOR TESTIMONY IN INTERNATIONAL ARBITRATION PROCEEDINGS: THE QUEST FOR DEVELOPING TRANSNATIONAL STANDARDS OF LAWYERS' CONDUCT, Fabian Von Schlabrendorff.....</b>		<b>1161</b>
I.	THE FUNCTION OF WITNESS PREPARATION IN INTERNATIONAL ARBITRAL PROCEDURE.....	1162
II.	DEVELOPMENTS IN NATIONAL ETHICAL RULES ON COUNSEL-WITNESS CONTACTS.....	1163
1.	The Significance of Criminal Law .....	1164
2.	Overview of National Ethical Rules .....	1164
2.1.	United States .....	1165
2.2.	England .....	1166
2.3.	France .....	1169
2.4.	Germany .....	1171
2.5.	Austria.....	1172
2.6.	Switzerland.....	1173
3.	A (Partial) Convergence of Rules.....	1174
III.	DETERMINING TRANSNATIONAL RULES ON WITNESS PREPARATION IN INTERNATIONAL ARBITRATION.....	1175
1.	Transnational Standards .....	1176
2.	The Choice of Law Approach .....	1177
3.	Devising a Procedural Rule.....	1179
4.	Enforcement of Rules on Witness Preparation.....	1180
IV.	CROSS-CULTURAL TRANSNATIONAL STANDARDS? .....	1180

<b>A NEW APPROACH TO INTERNATIONAL INVESTMENT AGREEMENTS (IIAS) IN BRAZIL, Arnaldo Wald.....</b>	<b>1183</b>
I. THE LESSON OF BERNARDO CREMADES .....	1185
II. THE HISTORY OF ARBITRATION IN BRAZIL .....	1186
III. RECENT ECONOMIC EVOLUTION .....	1189
1. The growth of brazilian companies» investments abroad and the initial difficulties .....	1189
2. Direct foreign investments in Brazil .....	1192
IV. THE EVOLUTION OF THE LAW .....	1195
1. New View of the Legal Doctrine.....	1195
2. The current position of brazilian law: the guarantees of the rule of law and arbitration.....	1196
3. The Treaties of the New Generation .....	1198
4. The Argentine Experience .....	1201
V. CONCLUSIONS .....	1202
 <b>TREATY PLANNING: CURRENT TRENDS IN INTERNATIONAL INVESTMENT DISPUTES THAT IMPACT FOREIGN INVESTMENT DECISIONS AND TREATY DRAFTING, EDUARDO Zuleta - ANDREA Saldarriaga - ANA Vohryzek-Griest</b>	 <b>1207</b>
I. INTRODUCTION: THE NOTION OF TREATY PLANNING.....	1207
II. JURISDICTIONAL REQUIREMENTS AS RELEVANT ELEMENTS FOR TREATY PLANNING.....	1211
1. Personal jurisdiction: the investor .....	1212
1.1. Natural persons — nationality.....	1213
1.1.1. Establishing nationality: the IIAs and domestic law.....	1213
1.1.2. Overriding or imposing nationality .....	1216
1.1.3. The case of double nationals under the ICSID Conven- tion .....	1218
1.1.4. Summary .....	1220
1.2. Juridical persons .....	1221
1.2.1. Foreign incorporated company .....	1222
1.2.2. Local incorporated entities (LIEs) .....	1224
1.2.2.1. Consent .....	1224
1.2.2.2. Requirement of control .....	1226
A. Control: definition and interpretation .....	1226
B. Control and piercing the veil.....	1228
1.2.2.3. Summary .....	1230

1.3. Shareholders.....	1231
1.3.1. Corporate structures.....	1233
1.3.1.1. Shareholders with direct ownership in a simple structure.....	1233
1.3.1.2. Shareholders claiming through a series of intermediate companies in a complex structure.....	1233
2. International and domestic law requirements.....	1239
3. Temporal jurisdiction.....	1240
3.1. Retrospective Application.....	1240
3.2. Scope of retroactivity: investment v. dispute.....	1241
3.2.1. When does a dispute arise? .....	1241
3.2.2. Continuing breaches.....	1243
3.3. Investor as treaty beneficiary through assignment.....	1245
3.4. Other requirements .....	1248
III. THE BORDERLINE BETWEEN TREATY PLANNING AND TREATY SHOPPING.....	1249
1. Early planning.....	1250
2. Late planning.....	1251
IV. ADDITIONAL ISSUES: TREATY PROVISIONS TO COMPENSATE FOR EARLY STRUCTURING PROBLEMS .....	1252
1. MFN .....	1252
2. Umbrella Clause .....	1254
V. CONCLUSION.....	1255