Universiteit Leiden
The Netherlands

Principles of evidence in investor-state arbitration: burden, standards, presumptions & inferences

Duggal, K.A.N.

Citation
Duggal, K. A. N. (2019, February 28). *Principles of evidence in investor-state arbitration: burden, standards, presumptions & inferences*. Retrieved from https://hdl.handle.net/1887/68700

Version:	Not Applicable (or Unknown)
License:	Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
Downloaded from:	https://hdl.handle.net/1887/68700

Note: To cite this publication please use the final published version (if applicable).

Cover Page

Universiteit Leiden

Leiden University Repository

The following handle holds various files of this Leiden University dissertation:
http://hdl.handle.net/1887/68700

Author: Duggal, K.A.N.
Title: Principles of evidence in investor-state arbitration: burden, standards, presumptions & inferences
Issue Date: 2019-02-28

ANNEX A

ARBITRATION RULES DEALING WITH EVIDENTIARY PRINCIPLES

Arbitration Rules	Provision
ICSID Convention, Article 43	"Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence, and (b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate."[1]
ICSID Arbitration Rules 34	"(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value. (2) The Tribunal may, if it deems it necessary at any stage of the proceeding: (a) call upon the parties to produce documents, witnesses and experts; and (b) visit any place connected with the dispute or conduct inquiries there. (3) The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure."
ICSID Additional Facility Rules, Article 41	"(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value. (2) The Tribunal may, if it deems it necessary at any stage of the proceeding, call upon the parties to produce documents, witnesses

[1] Article 41(2) of the ICSID Arbitration (Additional Facility) Rules provides for a similar provision. The *ADF v United States of America* tribunal has explained the scope of this clause as follows: "Article 41(2) of the ICSID Arbitration (Additional Facility) Rules state that '[t]he Tribunal may, if it deems it necessary at any stage of the proceeding, call upon the parties to produce documents, witnesses and experts.' There are at least two main aspects of necessity when considered in the context of a request for document production. The first aspect relates to a substantive inquiry into whether the documents requested are relevant to, and in that sense necessary for, the purposes of the proceedings where the documents are expected to be used. Inquiry into the relevancy of the documents requested needs to be done on a category by category basis." *ADF Group Inc. v United States of America*, ICSID Case No. ARB (AF)/00/1, Procedural Order No. 3 (4 October 2001) [3].

Arbitration Rules	Provision
	and experts."
1976 UNCITRAL Arbitration Rules, Article 24	"1. Each party shall have the burden of proving the facts relied on to support his claim or defence. 2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence. 3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine."
2013 UNCITRAL Arbitration Rules, Article 27	"1. Each party shall have the burden of proving the facts relied on to support its claim or defence. 2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them. 3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine. 4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered."
1998 ICC Rules of Arbitration, Arts. 20, 22	Article 20: "5. At any time during the proceedings, the Arbitral Tribunal may summon any party to provide additional evidence."
	Article 22: "1. When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the proceedings closed. Thereafter, no further

Arbitration Rules	Provision
	submission or argument may be made, or evidence produced, unless requested or authorized by the Arbitral Tribunal."
2017 ICC Rules of Arbitration, Arts. 25, 27	Article 25: "5. At any time during the proceedings, the arbitral tribunal may summon any party to provide additional evidence."
	Article 27: "After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal."
2014 LCIA Arbitration Rules, Arts. 15, 22	Article 15: "6. The Arbitral Tribunal may provide additional directions as to any part of the written stage of the arbitration (including witness statements, submissions and evidence), particularly where there are multiple claimants, multiple respondents or any cross-claim between two or more respondents or between two or more claimants."
	Article 22: "The Arbitral Tribunal shall have the power, upon the application of any party or . . . upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide: . . . (vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal."
	Article 31: "(1) The admissibility, relevance, materiality and weight of evidence shall be for the Arbitral Tribunal to determine. (2) The Arbitral Tribunal may order a party to identify the documentary evidence it intends to rely on and specify the

Arbitration Rules	Provision
2017 Stockholm Chamber of Commerce Arbitration Rules, Arts. 29, 31	circumstances intended to be proved by such evidence. (3) At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome."
	Article 29: "(1) Within the period determined by the Arbitral Tribunal, the Claimant shall submit a Statement of Claim which shall include, unless previously submitted: . . . (iii) any evidence the Claimant relies on. (2) Within the period determined by the Arbitral Tribunal, the Respondent shall submit a Statement of Defence which shall include, unless previously submitted: . . . (v) any evidence the Respondent relies on."

ANNEX B

TABLE SUMMARIZING THE COMMONLY RECOGNIZED STANDARDS OF PROOF IN INVESTOR-STATE ARBITRATION

Standard of Proof	What does the Standard entail?	When is it applied?
The *Prima Facie* Evidence Standard	The standard involves examination of the facts as alleged by the claimant to see whether such facts would amount to a breach of the treaty's and otherwise fall within the jurisdiction of the tribunal.	• Typically at the jurisdictional phase of the case, where the investor must allege facts but not prove facts of the merits to show that they would appropriately fall within a tribunal's jurisdiction. The rule will not apply to factual matters that relate to a tribunal's jurisdiction itself. • It will also apply in preliminary screening activities (such as references to competent authorities or preliminary review by ICSID Secretary General to register cases) because a tribunal can subsequently apply the appropriate standard.

Standard of Proof	What does the Standard entail?	When is it applied?
The Preponderance of Evidence or Balance of Probabilities (Civil lawyers refer to this as the "inner conviction" test)	This standard requires an evaluation of all the evidence produced by both parties on a particular issue and this evaluation would ultimately result in the tribunal determining which party's evidence was more likely than not to be true.	• Typically applies as the default rule in investor-state arbitration. • It extends to a wide range of issues such as claim for damages, allegations of breach of contract, interpretation issues, factual controversies, and for breaches of standard of protection (assuming there is no allegation of wrongdoing and the circumstances do not otherwise warrant a heightened standard of proof).
The Heightened Standard of proof	The standard is higher than a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt.	• Typically for matters that are of a quasi-criminal nature and or allegations of wrongdoings (such as bribery, corruption, fraud, impropriety and other such allegations). • When a convention or treaty uses language that calls for a heightened standard (for example, ICSID Convention's usage

Standard of Proof	What does the Standard entail?	When is it applied?
		of the term “manifest” usually requires the evidentiary standard to be higher than a mere balance of probabilities).

FIGURES IN THE THESIS

Figure 1.1: Arbitration Rules and Evidentiary Principles

Figure 1.2: International Bodies and Evidentiary Issues

Figure 1.3: Evidentiary Principle versus Arbitral Discretion

Figure 1.4: Spectrum of the Consequences of Failing to Meet Evidentiary Standard

Figure 3.1: Shifting the Burden of Evidence

Figure 4.1: Distinguishing Burden and Standard of Proof

Figure 4.2: Typology on Standard of Proof

Figure 5.1: Types of Presumptions

Figure 6.1: Two theories on Inferences

Annex A: Arbitration Rules dealing with Evidentiary Principles

Annex B: Table summarizing the commonly recognized standards of proof in investor-state arbitration

BIBLIOGRAPHY

BOOKS

Karen J. Alter and Yuval Shany (eds), *The Oxford Handbook of International Adjudication* (Oxford University Press 2014)

Chittharanjan F. Amerasinghe, *Evidence in International Litigation* (Martinus Nijhoff Publishers 2005)

Peter Ashford, *The IBA Rules on the Taking of Evidence in International Arbitration: A Guide* (Cambridge University Press 2013)

Nigel Blackaby *et al*, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015)

Peter Binder, *Analytical Commentary to the UNCITRAL Arbitration Rules* (Sweet and Maxwell 2013)

R Doak Bishop & Silvia Machili, *Annulment under the ICSID Convention* (Oxford University Press 2012)

Gary B. Born, *International Arbitration: Law and Practice* (Wolters Kluwer 2012)

Gary Born, *International Commercial Arbitration* (Kluwer Law International 2009)

Eric de Brabandere, *Investment Treaty Arbitration as Public International Law: Procedural Aspects and Implications* (Oxford University Press 2014)

David D. Caron & Lee Caplan, *The UNCITRAL Arbitration Rules* (2nd edn, Oxford University Press 2013)

Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press 1956)

Graham Cook, *A Digest of WTO Jurisprudence on Public International Law Concepts and Principles* (Cambridge University Press 2015)

Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law* (2nd edn, Oxford University Press 2012)

James Crawford, *The International Law Commission's Articles on State Responsibility—Introduction, Text and Commentaries* (Cambridge University Press 2003)

Christopher Dugan *et al*, *Investor-State Arbitration* (Oxford University Press 2008)

Richard T. Farrell, *Prince, Richardson on Evidence* (Brooklyn Law School, 11th Ed.)

Michael Fontham, *Trial Technique & Evidence* (4th edn, NITA Publications 2013)

Model Code of Evidence as Adopted and Promulgated by the American Law Institute (15 May 1942)

Charles T. Kotuby Jr. and Luke A. Sabota, *General Principles of Law and International Due Process: Principles and Norms Applicable in Transnational Disputes* (Oxford University Press 2007)

Harold D Lasswell & Myers McDougal, *Jurisprudence for a Free Society* (Kluwer Law International 1992)

Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford University Press 2011)

Aloysius Llamzon, *Corruption in International Investment Arbitration* (Oxford University Press 2014)

Mojtaba Kazazi, *Burden of Proof and Related Issues: A Study on Evidence Before International Tribunals* (Kluwer Law International 1996)

Robert Kolb, *The International Court of Justice* (Hart Publishing Ltd 2013)

Nathan D. O' Malley, *Rules Of Evidence In International Arbitration: An Annotated Guide* (Informa 2012)

V. S. Mani, *Intl Adjudication: Procedural Aspects* (Martinus Nijhoff Publishers 1980)

Irmgard Marboe, *Calculation of Compensation and Damages in Investment Law* (O Oxford University Press 2009)

Campbell McLachlan *et al*, *International investment Arbitration: Substantive Principles* (Oxford University Press 2008)

Santiago Montt, *State Liability in Investment Treaty Arbitration Global Constitutional and Administrative Law in the BIT Generation* (Hart Publication 2009)

Peter Muchlinski *et al* (eds), *The Oxford Handbook of International Investment Law* (Oxford University Press 2008)

Sophie Nappert, *Commentary on the UNCITRAL Arbitration Rules 2010: A Practitioner's Guide* (JurisNet, LLC 2012)

Andrew Newcombe and Lluís Paradell, *Law and Practice of Investment Treaties* (Wolters Kluwer 2009)

Anna Riddell and Brendan Plant, *Evidence Before the Intl Court of Justice* (British Institute of International and Comparative Law 2011)

W Michael Reisman, *The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment* (Hague Academy of International Law 2012)

Durward V. Sandifer, *Evidence Before International Tribunals* (University of Virginia Press 1975)

Christoph Schreuer *et al*, The ICSID Convention: A Commentary (2nd edn, Cambridge University Press 2009)

Frédéric G. Sourgens, Kabir Duggal, Ian Laird, Evidence in International Investment Arbitration (Oxford University Press 2018)

M Sornarajah, *The International Law on Foreign Investment* (Cambridge University Press 2010)

Frédéric Gilles Sourgens, *A Nascent Common Law, The Process of Decision-making in Disputes Between States and Foreign Investors* (Brill Nijhoff 2015)

Anna Spain, 'Deciding to Intervene' (2014) Houston Law Review 847

Jeffrey Waincymer, *Procedure and Evidence in Intl Arbitration* (Wolters Kluwer 2012)

Todd Weiler, *The Interpretation of International Investment Law Equality Discrimination and Minimum Standards of Treatment in Historical Context* (Nijhoff 2013)

ARTICLES

CISG Advisory Council Opinion No 3: Parol Evidence Rule, Plain Meaning Rule, 'Contractual Merger Clause and the CISG' (2005) 17 Pace International Law Review 61

Ronald J. Allen, 'Burdens of Proof, Uncertainty, and Ambiguity in Modern Legal Discourse' (1994) 17 Harv J L & Pub Pol'y 627

Ronald J. Allen & Alan E. Guy, 'Conley as Special Case of Twombly and Iqbal: Exploring the Intersection of Evidence and Procedure and the Nature of Rules' (2010) 115 Penn State Law Review 35

Aron Broches, 'Observations on the Finality of ICSID Awards', 6 ICSID (1991) Rev 321

Charles N. Brower, 'Evidence Before International Tribunals: The Need for Some Standard Rules', 28 International Law 1994

David D. Caron, 'Reputation and Reality in the ICSID Annulment Process: Understanding the Distinction Between Annulment and Appeal' (1992) 7 ICSID Rev 21

A. Crivellaro, 'The Course of Action Available to International Arbitrators to Address Issues of Bribery and Corruption' (2013) 10(3) Transnational Dispute Management 15

Georges R. Delaume, 'ICSID Arbitration Proceedings', International Tax and Business Lawyer (1986, Vol. 4)

Zachary Douglas, 'The Plea of Illegality in Investment Treaty Arbitration' (ICSID Review, vol 29(1), 2014)

S. Dudas and N. Tsolakidis, ‘Host-State Corruption: A Remedy for Fraud or Corruption in Investment-Treaty Arbitration’ (2013) 10(3) Transnational Dispute Management 7

Kabir Duggal, ‘Evidentiary Principles in Investor-State Arbitration’ (2017) The American Review of International Arbitration (Vol. 28(1)) 3

Susan D Franck, ‘The Nature and Enforcement of Investor Rights Under Investment Traties: Do Investment Treaties Have a Bright Future’ (2005) 12 UC Davis J Int’l L & Pol’y 47

Yves Fortier, ‘Arbitrators, Corruption and the Poetic Experience’ (Kaplan Lecture, Hong Kong, 20 November 2014)

Harlan Grant Cohen, ‘International Law’s Eerie Moment’ (2013) 34 Michigan Journal of International Law 249

Linda Hamilton Krieger, ‘The Burdens of Equality: Burdens of Proof and Presumptions in Indian and American Law’ (1999) 47 American Journal of Comparative Law 89

Steven Hammond, Spoliation in International Arbitration: Is It Time to Reconsider the ‘Dirty Wars’ of the International Arbitral Process?, Dispute Resolution International (Vol. 3(1) 2009) 5

Karl-Heinz Böckstiegel, ‘Presenting Evidence in International Arbitration’ (2001) 16 (1) ICSID Review 1

Vera van Houtte, ‘Adverse Inferences in International Arbitration’ in Teresa Giovannini and Alexis Mourre (eds), *Written Evidence and Discovery in Intl Arbitration: New Issues and Tendencies* (Intl Chamber of Commerce 2009)

Vladimir Khvalei, *Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts that Disguise Corruption* [2013] ICC Bulletin Tackling Corruption in Arbitration 15

Kati Kulovesi, ‘Legality or Otherwise? Nuclear Weapons and the Strategy of Non Liquet’ (1999) 10 Finnish Yearbook of International Law 55

Carolyn B. Lamm, Brody K. Greenwald and Kristen M. Young, ‘From *World Duty Free* to *Metal-Tech*: A Review of International Investment Treaty Arbitration Cases Involving Allegations of Corruption’, (2014) 29(2) ICSID Review 342

Carolyn B. Lamm, Hansel T. Pham and Rahim Moloo, ‘Fraud and Corruption in International Arbitration’, in MÁ Fernández-Ballesteros and David Arias, *Liber Amicorum Bernardo Cremades* (Wolters Kluwer 2010)

Julian D. M. Lew, ‘Document Disclosure, Evidentiary Value of Documents and Burden of Evidence’ in Teresa Giovannini and Alexis Mourre (eds), *Written Evidence and Discovery in Intl Arbitration: New Issues and Tendencies* (Intl Chamber of Commerce 2009)

A. P. Llamzon, ‘State Responsibility for Corruption: The Attribution Asymmetry in International Investment Arbitration’ (2013) 10(3) Transnational Dispute Management

Richard L. Marcus, ‘The Revival of Fact Pleading Under the Federal Rules of Civil Procedure’ (1986) Colum L Rev 433

A. T. Martin, ‘International Arbitration and Corruption: An Evolving Standard’ (2004) Transnational Dispute Management 7

Thomas M. Mengler, ‘The Theory of Discretion in the Federal Rules of Evidence’ (1989) 74 Iowa L Rev 413

Myres S. McDougal & W. Michael Reisman, ‘“The Changing Structure of International Law” Unchanging Theory for Inquiry’ (1965) 65 Columbia Law Review 810

K. Mills, ‘Corruption and Other Illegality in the Formation and Performance of Contracts and in the Conduct of Arbitration Relating Thereto’ (2006) 3(2) Transnational Dispute Management 9

Dale A. Nance, ‘The Best Evidence Principle’ (1988) 73 Iowa Law Review 227

S. Nappert, ‘Nailing Corruption: Thoughts for a Gardener—A Comment on World Duty Free Company Ltd v The Republic of Kenya’(2013) 10(3) Transnational Dispute Management 6

Sacco R, ‘Legal Formants: A Dynamic Approach to Comparative Law II’, (1991) 39 American Journal of Comparative Law 343

Constantine Partasides, ‘Proving Corruption in International Arbitration: A Balanced Standard for the Real World’ (2010) 25(1) ICSID Review—Foreign Investment Law Journal

Joost Pauwelyn, ‘Evidence, Proof and Persuasion in WTO Dispute Settlement: Who Bears the Burden?’ (1998) 1 Journal of Intl Econ Law 227

Anne Peters, ‘International Dispute Settlement: A Network of Cooperational Duties’ (2003) 14 European Journal of International Law 1

W. Michael Reisman, ‘The Breakdown of the Control Mechanism in ICSID Arbitration’ (1989) Duke Law Journal 739

Cecily Rose, ‘Questioning the Role of International Arbitration in the Fight Against Corruption’ [2014] Journal of International Arbitration 199

Michael P. Scharf & Margaux Day, ‘The International Court of Justice’s Treatment of Circumstantial Evidence and Adverse Inferences’, (2012)13 Chicago Journal of International Law 123

Christoph Schreuer, *From ICSID Annulment to Appeal, Half Way Down the Slippery Slope* 11 (2011), available at http://www.univie.ac.at/intlaw/wordpress/pdf/icsid_annulment_appeal.pdf

Audley Sheppard, ‘The Jurisdictional Threshold of a Prima-Facie Case’ in Peter T. Muchlinski, Federico Ortino and Christoph Schreuer (eds), *The Oxford Handbook of Intl Investment Law* (Oxford University Press 2008)

James J. Saulino, ‘Corruption is Not Special: Evidence and Standards of Proof for International Claims Involving Claims’ in Ian Laird *et al* (eds), Investment Treaty Arbitration and International Law (Juris Vol. 9)

Michael P. Scharf and Margaux Day, ‘The International Court of Justice’s Treatment of Circumstantial Evidence and Adverse Inferences’ [2012] Chicago Journal of International Law 123

Stephan W. Schill, ‘Allocating Adjudicatory Authority: Most-Favoured-Nation Clauses as a Basis of Jurisdiction – A Reply to Zachary Douglas’ (2011) 2 JIDS 335

Hubert W. Smith, ‘Components of Proof in Legal Proceedings’ (1942) 51 Yale Law Journal 537

A. C. Smutny and P. Polášek, ‘Unlawful or Bad Faith Conduct as a Bar to Claims in Investment Arbitration’ (2012) 9(3) Transnational Dispute Management 296

Frédéric Gilles Sourgens, ‘Law’s Laboratory: Developing International Law on Investment Protection as Common Law’ (2014) 34 Northwestern Journal of International Law and Business 181

Frédéric Gilles Sourgens, ‘Reason and Reasonableness, the Necessary Diversity of the Common Law’(2014) 67 Maine L Rev 73

Gisele Stephens-Chu & Julie Spinelli, ‘The Gathering and Taking of Evidence under the IBA Guidelines on Party Representation in International Arbitration’ (2014) 8 Dispute Resolution International 37

Edna Sussman & Solomon Ebere, *All’s Fair in Love and War – Or Is It? Reflections on Ethical Standards for Counsel in International Arbitrations*, (2012) 22 The American Review of International Arbitration 611

George M. von Mehren and Claudia T. Salomon, ‘Submitting Evidence in International Arbitration: The Common Lawyer’s Guide’ (2003) Journal of International Arbitration 285

Thomas W. Wälde and Borzu Sabahi, ‘Compensation, Damages, and Valuation’ in Peter Muchlinski and others (eds), *The Oxford Handbook of Intl Investment Law* (Oxford University Press 2008)

Kenneth J. Vandevelde, ‘The Political Economy of a Bilateral Investment Treaty’ (1998) 92 American Journal of International Law 621

‘Profiting From Injustice: How Law Firms, Arbitrators And Financiers Are Fuelling An Investment Arbitration Boom’ (Corporate Europe Observatory and the Transnational Institute 2012)

2015 International Arbitration Survey: Improvements and Innovations in International Arbitration (2015), Queen Mary University of London

CASES

ADC Affiliate Ltd and ADC & ADMC Management Ltd v The Republic of Hungary, ICSID Case No ARB/03/16, Award of the Tribunal (2 October 2006)

ADF Group Inc. v United States of America, ICSID Case No. ARB (AF)/00/1, Procedural Order No. 3 (4 October 2001)

AES Corporation v The Argentine Republic, ICSID Case No ARB/02/17 (26 April 2005)

AES Summit Generation Ltd. v Hungary, ICSID Case No ARB/07/22, annulment (29 June 2012)

Alapli Elektrik BV v Republic of Turkey, ICSID Case No. ARB/08/13, Decision on Annulment (10 July 2014)

Alasdair Ross Anderson et al v Republic of Costa Rica, ICSID Case No ARB(AF)/07/3, Award (19 May 2010)

Alpha Projektholding Gmbh v Ukraine, ICSID Case No ARB/07/16, Award (8 November 2010)

Ambiente Ufficio SpA and others (Case formerly known as Giordano Alpi and others) v Argentine Republic, ICSID Case No ARB/08/9, Decision on Jurisdiction and Admissibility (8 February 2013)

AMTO LLC v Ukraine, SCC Case No 080/2005, Final Award (26 March 2008)

Antoine Goetz & Others and SA Affinage des Metaux v Republic of Burundi, ICSID Case No ARB/01/2, Award (21 June 2012)

Apotex Inc v United States, UNCITRAL, Award on Jurisdiction and Admissibility (14 June 2013)

Archer Daniels Midland Co and Tate & Lyle Ingredients Americas, Inc v United Mexican States, ICSID Case No ARB(AF)/04/05, Decision on the Requests for Correction, Supplementary Decision and Interpretation (10 July 2008)

Asian Agricultural Products Ltd v Republic of Sri Lanka, ICSID Case No ARB/87/3, Final Award (27 June 1990)

Azurix Corp v Argentine Republic, ICSID Case No ARB/01/12, Decision on the Application for Annulment of Argentine Republic (1 September 2009)

Bernhard von Pezold and others v Republic of Zimbabwe, ICSID Case No ARB/10/15, Award (28 July 2015)

Burlington Resources Inc. v Republic of Ecuador, ICSID Case No ARB/08/5, order (29 June 2009)

Brandes Investment Partners, LP v The Bolivarian Republic of Venezuela, ICSID Case No. ARB/08/3, award (August 2, 2011)

Caratube International Oil Company LLP v The Republic of Kazakhstan, ICSID Case No ARB/08/12, annulment (21 February 2014)

Cargill, Inc v United Mexican States, ICSID Case No ARB(AF)/05/2, Award (18 September 2009)

Case Concerning Avena and Other Mexican Nationals (*Mexico v USA*) (Judgment) [2004] ICJ Rep 12

Case Concerning Application of the Convention of the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*) (Judgment) [2007] ICJ Rep 43

Case Concerning Legality of Use of Force (*Yugoslavia v Italy*) (Request for the Indication of Provisional Measures) [1999] ICJ Rep 481

Case Concerning Military and Paramilitary Activities In and Against Nicaragua (*Nicaragua v USA*) (Jurisdiction and Admissibility, Judgment) [1984] ICJ Rep 392

Case Concerning Oil Platforms (*Iran v USA*) (Separate Opinion of Judge Higgins) [1996] ICJ Rep 847

Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v Malaysia) (Dissenting Opinion of Judge Franck) [2002] ICJ Rep 692

Case Concerning the Temple of Preah Vihear (*Cambodia v Thailand*) (Merits) [1962] ICJ Rep

Case of Velásquez-Rodríguez v Honduras [1988] Inter-American Court of Human Rights

CDC Group Public Ltd Co v Seychelles, ICSID Case No ARB/02/14, annulment (29 June 2005)

Cementownia 'Nowa Huta' SA v Turkey, ICSID Case No ARB(AF)/06/2, Award (17 September 2009)

Československá Obchondni Banka AS v Slovak Republic, ICSID Case No ARB/97/4, Award (29 December 2004)

Chevron Corp (U.S.A.) and Texaco Petroleum Corp (U.S.A.) v Republic of Ecuador, PCA Case No AA 277, Partial Award on the Merits (30 March 2010)

Churchill Mining and Planet Mining Pty Ltd v Republic of Indonesia, ICSID Case No ARB/12/14 and 12/40, Procedural Order No 9 (8 July 2014)

Churchill Mining PLC and Planet Mining Pty Ltd v Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40, Award (6 December 2016)

City Oriente Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) [I], ICSID Case No ARB/06/21, provisional measures (19 November 2007)

CME Czech Republic BV (The Netherlands) v The Czech Republic, UNCITRAL, Partial Award (13 September 2001)

CMS Gas Transmission Co v Republic of Argentina, ICSID Case No ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction (17 July 2003)

Compañía de Aguas del Aconquija SA and Vivendi Universal SA v Argentine Republic, ICSID Case No ARB/97/3, Award (20 August 2007)

ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v Bolivarian Republic of Venezuela, ICSID Case No ARB/07/30, Dissenting Opinion of Georges Abi-Saab on Reconsideration (March 10, 2014), IIC 643

Crystallex International Corporation v Bolivarian Republic of Venezuela, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016)

Daimler Financial Services AG v Argentina, ICSID Case No ARB/05/1, Decision on Annulment (7 January 2015)

Desert Line Projects LLC v Republic of Yemen, ICSID Case No ARB/05/17, Award (6 February 2008)

Duke Energy International Peru Investments No 1 Ltd v Peru, ICSID Case No ARB/03/28, Decision on Annulment (1 March 2011)

ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtundsechzigste Grundstücksgesellschaft mbH & Co v Czech Republic, PCA Case No. 2010-5, Award (19 September 2013)

El Paso Energy International Co v Argentina, ICSID Case No ARB/03/15, Decision on Annulment (22 September 2014)

Emilio Agustín Maffezini v The Kingdom of Spain, ICSID Case No ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 January 2000)

Emmis Intl Holding, BV, Emmis Radio Operating, BV, MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft v Hungary, ICSID Case No ARB/12/2, Award (16 April 2014)

Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v The Republic of Peru, ICSID Case No ARB/03/4, annulment (13 August 2007)

Europe Cement Investment & Trade SA v Republic of Turkey, ICSID Case No ARB(AF)/07/2, Award (11 August 2009)

European Media Ventures SA v Czech Republic, UNCITRAL, Partial Award on Liability (8 July 2009)

Fisheries Jurisdiction Case (*Spain v Canada*) (Judgment) [1998] ICJ Rep 432

Fraport AG Frankfurt Airport Services Worldwide v Philippines, ICSID Case No ARB/03/25, Decision on Annulment (23 December 2010), IIC 478 (2010)

Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines [II], ICSID Case No. ARB/11/12, Award (10 December 2014)

Garanti Koza LLP v Turkmenistan, ICSID Case No ARB/11/20, Decision on the Objection to Jurisdiction for Lack of Consent (3 July 2013)

Generation Ukraine, Inc. v Ukraine, ICSID Case No. ARB/00/9, Award (16 September 2003)

Glamis Gold, Ltd v United States of America, UNCITRAL, Award (8 June 2009)

Global Trading Resource Corp v Ukraine, ICSID Case No ARB/09/11, Award (23 November 2010)

Gold Reserve Inc v Bolivarian Republic of Venezuela, ICSID Case No ARB(AF)/09/1, Award (22 September 2014)

Gustav F W Hamester GmbH & Co KG v Republic of Ghana, ICSID Case No ARB/07/24, Award (18 June 2010)

Himpurna California Energy Ltd v PT (Persero) Perusahaan Listruik Negara, Final Award (1999)

Hussein Nuaman Soufraki v The United Arab Emirates, ICSID Case No ARB/02/7, Award (7 July 2004)

Hussein Nuaman Soufraki v United Arab Emirates, ICSID Case No ARB/02/7, Decision of the ad hoc Committee on the Application for Annulment of Mr Soufraki (5 June 2007)

Hrvatska Elektroprivreda dd v Republic of Slovenia, ICSID Case No. ARB/05/24, Award (17 December 2015)

Iberdrola Energia SA v Republic of Guatemala, ICSID Case No. ARB/09/5, Decision on Annulment (13 January 2015)

ICS Inspection and Control Services Ltd v Argentine Republic, PCA Case No 2010-9, Award on Jurisdiction (10 February 2012)

Impregilo SpA v Argentine Republic, ICSID Case No ARB/07/17, Concurring and Dissenting Opinion of Prof. Brigitte Stern (21 June 2011)

Impregilo SpA v Argentina, ICSID Case No ARB/07/17, Decision on Annulment (24 January 2014)

Inceysa Vallisoletane, SL v Republic El Salvador, ICSID Case No ARB/03/26, Award (2 August 2006)

Inmaris Perestroika Sailing Maritime Services GmbH v Ukraine, ICSID Case No ARB/08/8, Decision on Jurisdiction (8 March 2010), IIC 431 (2010)

International Thunderbird Gaming Corporation v United Mexican States, UNCITRAL/NAFTA Arbitral Award (26 January 2006)

Ioan Micula, Viorel Micula, SC European Food SA, SC Starmill SRL and SC Multipack SRL v Romania, ICSID Case No ARB/05/20, Decision on Jurisdiction and Admissibility (24 September 2008)

Ioannis Kardassopoulos and Ron Fuchs v The Republic of Georgia, ICSID Case Nos ARB/05/18 and ARB/07/15, Award (3 March 2010)

Iurii Bogdanov, Agurdino-Invest Ltd and Agurdino-Chimia JSC v Republic of Moldova, SCC, Arbitral Award (22 September 2005)

Maritime International Nominees Establishment v Republic of Guinea, ICSID Case No. ARB/84/4, Decision on Annulment (22 December 1989)

Mr Jan Oostergetel and Mrs Theodora Laurentius v The Slovak Republic, UNCITRAL, Final Award (23 April 2012)

Judgements of the Administrative Tribunal of the ILO upon Complaints made against the UNESCO, Advisory Opinion of (23 October 1956) ICJ

Joseph C. Lemire v Ukraine, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (21 January 2010)

Khan Resources Inc Khan Resources BV and CAUC Holding Company Ltd v Government of Mongolia, UNCTIRAL, Award on the Merits, 2 March 2015

Kilic Insaat Ithalat Ihracat Sanayi ve Ticaret Anonim Sirketi v Turkmenistan, ICSID Case No. ARB/10/1, Decision on Annulment(14 July 2015)

Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais, ICSID Case No. ARB/81/2, Annulment Decision (17 May 1990)

Lao Holdings N.V. v Lao People's Democratic Republic, ICSID Case No ARB(AF)/12/6, jurisdiction (21 February 2014)

Lao Holdings N.V. v Lao People's Democratic Republic, ICSID Case No ARB(AF)/12/6, Decision on the Merits (10 June 2015)

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion [1996] ICJ 226, 266 (8 July)

Libananco Holdings Co. Limited v Republic of Turkey, ICSID Case No. ARB/06/8, Decision on Preliminary Issues (23 June 2008)

Liman Caspian Oil BV and NCL Dutch Investment BV v Republic of Kazakhstan, ICSID Case No ARB/07/14, Award (22 June 2010)

Malicorp Limited v Arab Republic of Egypt, ICSID Case No ARB/08/18, annulment (3 July 2013)

Marion Unglaube v Republic of Costa Rica, ICSID Case No ARB/08/1, Award (16 May 2012)

Maritime International Nominees Establishment v Republic of Guinea, ICSID Case No ARB/84/4, annulment (22 December 1989)

Marvin Feldman v Mexico, ICSID Case No ARB(AF)/99/1, Award (16 December, 2002)

Mavromatis Palestine Concessions [1924] PCIJ Rep Series A No 2, 11; *Certain Property (Liechtenstein v Germany)* [2005] ICJ Rep 6

Metal-Tech Ltd v Uzbekistan, ICSID Case No ARB/10/3, Award (4 October 2013)

Middle East Cement Shipping and Handling Co SA v Arab Republic of Egypt, ICSID Case No ARB/99/6, Award (12 April 2002)

Mobil Corp, Venezuela Holdings, BV v Bolivarian Republic of Venezuela, ICSID Case No ARB/07/27, Decision on Jurisdiction (10 June 2010)

Mohammad Ammar Al-Bahloul v Republic of Tajikstan, SCC Case No V (064/2008), Partial Award On Jurisdiction And Liability (2 September 2009)

MTD Equity Sdn Bhd v Chile, ICSID Case No ARB/01/7, annulment (21 March 2007)

Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd Sti v Turkmenistan, ICSID Case No ARB/12/6, Decision On Respondent's Objection To Jurisdiction Under Article VII(2) Of The Turkey-Turkmenistan Bilateral Investment Treaty (13 February 2015)

Mytilineos Holdings SA v The State Union of Serbia and Montenegro and Republic of Serbia, UNCITRAL, Partial Award on Jurisdiction (8 September 2006)

Noble Ventures, Inc v Romania, ICSID Case No ARB/01/11, Award (12 October 2005)

Opic Karimum Corp.v Venezuela, ICSID Case No ARB/10/14, award (May 28, 2013)

Pac Rim Cayman LLC v El Salvador, ICSID Case No ARB/09/12, Decision on the Respondent's Jurisdictional Objections (1 June 2012)

Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador, ICSID Case No ARB/08/6, Decision on Jurisdiction (30 June 2011)

Petrobart Ltd v Kyrgyzstan, SCC Case No 126/2003, Arbitral Award (29 March 2005)

Phoenix Action, Ltd v Czech Republic, ICSID Case No ARB/06/5, Award (15 April 2009)

Plama Consortium Ltd v Republic of Bulgaria, ICSID Case No ARB/03/24, Decision on Jurisdiction (8 February 2005)

PSEG Global Inc, The North American Coal Corp, and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v Republic of Turkey, ICSID Case No ARB/02/5, Decision on Jurisdiction (4 June 2004)

Quasar de Valors SICAV S. A. et al. v Russian Federation, SCC Case No. 24/2007, Award (20 July 2012)

Pope & Talbot Inc. v Canada, award on costs (26 November 2002), IIC 196 (2002)

Railroad Development Corporation v Republic of Guatemala, ICSID Case No ARB/07/23, Decision on Provisional Measures (15 October 2008), IIC 352 (2008)

Reza Said Malek v Iran (1992) Iran-USCTR Award No 534-193-3

RSM Production Corp and others v Grenada [II], ICSID Case No ARB/10/6, Decision on Respondent's Application for Security for Cost (14 October 2010)

RSM Production Corp v Central African Republic, ICSID Case No ARB/07/2, Decision on Jurisdiction and Liability (7 December 2010)

Saipem SpA v People's Republic of Bangladesh, ICSID Case No ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures (21 March 2007)

Saipem SpA v The People's Republic of Bangladesh, ICSID Case No ARB/05/7, Award (30 June 2009)

Salini Construttori SpA and Italstrade SpA v Hashemite Kingdom of Jordan, ICSID Case No ARB/02/13, Decision on Jurisiction (9 November 2004)

Salini Construttori SpA and Italstrade SpA v Hashemite Kingdom of Jordan, ICSID Case No ARB/02/13, Award (31 January 2006)

Sergei Paushok, CJSC Golden East Co and CJSC Vostokneftegaz Co v Government of Mongolia, UNCITRAL, Order on Interim Measures (2 September 2008)

SGS Société Générale de Surveillance S.A. v Islamic Republic of Pakistan, ICSID Case No ARB/01/13, Decision on Claimant's Proposal to Disqualify Arbitrator (19 December 2002)

SGS Société Générale de Surveillance S.A. v The Republic of Paraguay, ICSID Case No ARB/07/29, Decision on Paraguay's Request for the Continued Stay of Enforcement of the Award (22 March 2013)

Société Générale de Surveillance SA v The Republic of Paraguay, ICSID Case No ARB/07/29, Award (10 February 2012)

SGS Société Générale de Surveillance SA v Republic of the Philippines, ICSID Case No ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction (29 January 2004)

Société Ouest Africaine des Bétons Industriels v Senegal, ICSID Case No ARB/82/1, Award (25 February 1988)

Southern Pacific Properties (Middle East) Ltd v Arab Republic of Egypt, ICSID Case No ARB/84/3, Award (20 May 1992)

Swisslion DOO Skopje v The Former Yugoslav Republic of Macedonia, ICSID Case No ARB/09/16, Award (6 July 2012)

TECO Guatemala Holdings LLC v Republic of Guatemala, ICSID Case No. ARB/10/23, Decision on Annulment (5 April 2016)

Teinver SA, Transportes de Cercanías SA and Autobuses Urbanos del Sur SA v Argentine Republic, ICSID Case No ARB/09/1, Decision on Jurisdiction (21 December 2012)

Total SA v Argentine Republic, ICSID Case No. ARB/04/1, Decision on Annulment (1 February 2016)

Tulip Real Estate Investment and Development Netherlands B.V. v Republic of Turkey, ICSID Case No. ARB/11/28, Award (10 March 2014)

Rachel S Grynberg, Stephen M Grynberg, Miriam Z Grynberg, and RSM Production Corp v Grenada, ICSID Case No ARB/10/6, Tribunal's Decision On Respondent's Application For Security For Costs (14 October 2010)

The Rompetrol Group NV v Romania, ICSID Case No ARB/06/3, Award (6 May 2013)

RosInvestCo UK Ltd v The Russian Federation, SCC Case No V079/2005, Final Award (12 September 2010)

Rumeli Telekom AS and Telsim Mobil Telekomunikasyon Hizmetleri AS v Republic of Kazakhstan, ICSID Case No. ARB/05/16, Award (29 July 2008)

Técnicas Medioambientales Tecmed SA v Mexico, ICSID Case No ARB(AF)/00/2, award (29 May 2003)

Tradex Hellas SA v Republic of Albania, ICSID Case No ARB/94/2, Award (29 April 1999)

Tokios Tokelės v Ukraine, ICSID Case No ARB/02/18, Award (26 July 2007)

Tza Yap Shum v Republic of Peru, ICSID Case No. ARB/07/6, Decision on Annulment (12 February 2015)

United States—Measure Affecting Imports of Woven Wool Shirts and Blouses from India (25 April 1997) WT/DS33/AB/R

Vannessa Ventures Ltd. v Bolivarian Republic of Venezuela, ICSID Case No ARB(AF)/04/6, Award (16 January 2013), IIC 572

Víctor Pey Casado and President Allende Foundation v Republic of Chile, ICSID Case No. ARB/98/2, Award (13 September 2016)

Victor Pey Casado v Chile, ICSID Case No ARB/98/2, annulment (11 September 2013)

Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC v Republic of Poland, ICSID Case No. ARB(AF)/11/3, Award (24 November 2015)

Vito G Gallo v The Government of Canada, UNCITRAL, PCA Case No 55798, Award (15 September 2011)

Vivendi Universal SA v Argentina, ICSID Case No ARB/97/3, annulment (3 July 2002)

Waguih Elie George Siag and Clorinda Vecchi v The Arab Republic of Egypt, ICSID Case No ARB/05/15, Award (1 June 2009)

Wena Hotels Ltd v Arab Republic of Egypt, ICSID Case No ARB/98/4, Award (8 December 2000)

Wena Hotels Ltd. v Arab Republic of Egypt, ICSID Case No ARB/98/4, annulment (5 February 2002)

William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon Delaware Inc. v Government of Canada, PCA Case No 2009-04, Procedural Order No 13 (11 July 2012)

World Duty Free Co Ltd v Kenya, ICSID Case No ARB/0/7, Award (4 October 2006)

Yukos Universal Limited (Isle of Man) v The Russian Federation, UNCITRAL, PCA Case No. AA 227, award (18 July 2014)

MISCELLANEOUS

The ICSID Convention and ICSID Arbitration Rules

The ICSID Additional Facility Rules

1976 and 2013 UNCITRAL Arbitration Rules

1998 and 2017 ICC Rules of Arbitration

2014 LCIA Arbitration Rules

2017 SCC Arbitration Rules

'Analytical Guide to the Work of the International Law Commission' International Law Commission, available at http://legal.un.org/ilc/guide/11_1.shtml

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (United Nations [UN]) 330 UNTS 3.

IBA Rules on the Taking of Evidence in International Arbitration IC-AR 029 (2010)

Indian Evidence Act (1872), available at

http://ncw.nic.in/Acts/THEINDIANEVIDENCEACT1872.pdf

German Code of Civil Procedure, available at https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html

Report on the work of the sixty-eighth session (2016), International Law Commission, ILC Annual Report

Report on the work of the sixty-ninth session (2017), A/72/10, International Law Commission

UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006, E08V4 (2008) 35

UNCITRAL Ninth Session, Summary Record of the 8th Meeting, A/CN.9/9/C.2/SR.8, 20 April 1976

UNIDROIT, Convention on Agency in the International Sale of Goods, article 9(2) Geneva 17 February 1983 http://www.unidroit.org/ol-agency/ol-agency-en

U.S. Federal Rules of Evidence, available at https://www.law.cornell.edu/rules/fre

World Bank, *Background Paper on Annulment for the Administrative Council of ICSID* (ICSID Secretariat 2016)

CURRICULUM VITAE

Kabir Duggal is a senior associate in Arnold and Porter's International Arbitration and Public International Law Practice Groups in New York focusing on international investment arbitration, international commercial arbitration and public international law matters. Kabir's experience includes complex disputes under numerous bilateral/multilateral investment treaties and contracts in South Asia, Latin America, Central Asia, Middle East, Europe and Africa. The total value of the disputes he has been involved in exceeds 80 billion dollars. He has facilitated the mediation and negotiation of complex disputes. He also acts as a Consultant for the United Nations Office of the High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS). He has also conducted training and capacity-building sessions for several Governments including Colombia, Saudi Arabia, Myanmar, India, among others on public international law and dispute resolution matters.

Kabir is a Lecturer-in-Law at the Columbia Law School, teaching "International Investment Law and Arbitration." He has also taught dispute resolution courses in educational institutions all over the world including Georgetown University Law Center, Fordham Law School, The Graduate Institute (Geneva, Switzerland), National Law University (Jodhpur, India), University of Carlos III (Madrid, Spain), National Research University Higher School of Economics (Moscow, Russia), Government Law College (Mumbai, India) among others.

Kabir has published several articles and books and is regularly invited to speak at conferences globally. He is the Managing Editor for Columbia Law School's "The American Review of International Arbitration" and is an editor for investmentclaims.com hosted by Oxford University Press. He has received the Burton "Law360 Distinguish Legal Writing Award" for his scholarly writings. He also serves on ICSID Review's Peer Review Board and is an Associate Editor for Brill-Nijhoff publisher's international law and arbitration section. He is also a co-chair of the Juris Conference on Investment Treaty Arbitration. He is a Fellow at Columbia Center on Sustainable Development.

Kabir is a graduate of the University of Mumbai (University Medal), University of Oxford (DHL-Times of India Scholar) and NYU School of Law (Hauser Global Scholar). He is admitted to practice law in England and Wales (Solicitor), New York, Washington D.C. and India. Kabir was named as a "Future Leader" in international arbitration by Who's Who Legal (2018, 2019). In 2019, he was ranked as the fourth "Most-Highly Regarded" younger arbitration practitioner in the Americas. He was also awarded the 40 under 40 award by Legal Era.