

# Introduction

In the last 20 years we have been (and still are) witnessing the emergence of more global crises than in the prior decades. Economically, politically, and socially, it appears as if the world's systems are going through deep transformation. Examples of such crises or transformation include the annexation of Crimea by the Russian Federation in 2014; the secession of Timor-East from Indonesia in 2002 and South Sudan from Sudan in 2011; civil unrest (such as Syria's decade-long civil war) sometimes resulting in regime change (such as in Egypt and Libya in 2011) or in competing governments (such as in the Republic of Yemen and the Bolivarian Republic of Venezuela); competing claims over maritime zones rich in natural resources in the South China Sea and East Mediterranean; and the widespread use of economic sanctions in interstate disputes (Iran, North Korea).

All these risks not only manifest themselves in the realm of international relations or politics but also have significant legal consequences on the investments made in jurisdictions affected by each one of these eventualities. The central issue of this book is what happens when foreign investments or contractual relationships are caught in the crossfire of an armed conflict, sanctions imposed by one state against another, allegations of corruption, or state dislocation. This book examines and discusses how investments impacted by these highly risky situations have been dealt with by international arbitration tribunals (adjudicating disputes within the context of pure commercial or investor-state arbitrations) or national courts (in the context of their role as supervisory courts) of a number of capital exporting states, such as the United States, United Kingdom, France, and Switzerland,<sup>1</sup> by focusing on a select number of cases and materials for each selected situation.

This book will be most useful for (1) general counsel who needs to advise or provide an opinion to their company's board as part of an investment decision or (2) external lawyers advising their clients either at the contract negotiation phase or once a dispute is brought before an arbitral tribunal.

---

1. These jurisdictions are also home to the most common choices of seat in international arbitration proceedings. See, 2018 International Arbitration Survey: The Evolution of International Arbitration, By White & Case and Queen Mary University of London, p. 9. Available at: <http://www.arbitration.qmul.ac.uk/research/2018/>

In Chapter 1, we examine and discuss how arbitral tribunals deal with a parties' allegations of corruption and the complexity in proving corruption before such tribunals.

In Chapter 2, we discuss the impact of trade and economic sanctions on the conduct of arbitration proceedings.

In Chapter 3, we consider the status and protection of foreign investments in contested maritime areas and how international courts have adjudicated disputes between states in relation to the commercial exploitation of undelimited maritime areas.

In Chapter 4, we explore the protection of foreign investments in times of civil unrest and armed conflict (whether because of an internal unrest or occupation by a foreign military power).

In Chapter 5, we investigate the impact of state transformation (by taking the example of secession) on contractual rights and obligations and the status of foreign investments located in the impacted territorial areas.

In Chapter 6, we review the instances of third-party interference with existing contractual relationship and how the impacted foreign investors have enforced their contractual rights.

Finally, in Chapter 7, we take a *tour d'horizon* of unusual procedural issues that arise in disputes with states experiencing legal instability or with states that are recalcitrant to comply with an unfavorable award, trying to evade the successful investor's enforcement efforts.

The author, who trained and practiced in civil and common law jurisdictions (France and England & Wales) draws on more than ten years of private practice at world-leading law firms specializing in international disputes and having advised multinationals and states in relation to disputes arising out of investments situated in jurisdictions that at some point faced complex and unusual legal issues such as the ones discussed in this book.