Iurgium

Revista del Club Español e Iberoamericano del Arbitraje

N.° 56/2026

Presentación	*Luis Capiel*
Arbitraje para el Cambio Climático II	*Francisco González de Cossío*
De la controversia a la eficiencia: la IA en los *Dispute Boards* como escalón previo al arbitraje	*Inmaculada Posada Gil*
Privilegio y Secreto Profesional en el Arbitraje Internacional: Breve Sistematización y Recomendaciones Prácticas	*Pablo Jullian Valenzuela / Francisco Rodríguez*
Los daños punitivos en las controversias societarias: arbitrabilidad, límites y función en el derecho comparado	*Max Salazar Gallegos / Sergio García Long*
Reseña del libro "Swiss Contract Law in International Commercial Arbitration" del Prof. Christoph Müller	*Franz X. Stirnimann Fuentes*
Reseña: Construcción y Arbitraje por Juan Eduardo Figueroa Valdés	*Francisco González de Cossío*
Panorama de jurisprudencia francesa 2025. (Capítulo francés del Club Español e Iberoamericano del Arbitraje)	*Coordinación: Fannie Bruneau / Marcos Barradas*

CEIA

www.clubarbitraje.com

Cour de Cassation, Première Chambre Civile, 12 February 2025, *État de Libye v. Nurol Insaat Ve Ticaret Anonim Sirketi*, No. 22-11.436: On the Entry into Force of Bilateral Investment Treaties and the Temporal Scope of the Legality Requirement in Investment Arbitration

Jean M. Nogueroles Alberola*

Resumen: *El 12 de febrero de 2025, la Sala Primera de lo Civil de la Corte de Casación francesa desestimó la solicitud de anulación presentada por Libia contra un laudo parcial sobre jurisdicción dictado en el seno de un arbitraje de inversión promovido por una empresa constructora turca al amparo del Tratado Bilateral de Inversión celebrado entre Libia y Turquía en 2009. La Corte se pronunció sobre tres cuestiones de considerable importancia práctica: (i) las condiciones en las que un tratado bilateral de inversión entra en vigor y, en particular, si el conocimiento recíproco del cumplimiento de los requisitos constitucionales resulta suficiente en ausencia de una autoridad de notificación designada; (ii) la interpretación de la cláusula de nación más favorecida contenida en el Tratado; y (iii) el alcance temporal del requisito de legalidad que condiciona la protección de las inversiones prevista en el Tratado, y en especial si las alegaciones de corrupción deben referirse al momento de la celebración de los contratos de inversión o pueden extenderse a actos ocurridos durante la ejecución de la inversión. La decisión ilustra de manera valiosa el modo en que los tribunales franceses ejercen su control jurisdiccional sobre las decisiones de los tribunales arbitrales en materia de competencia en virtud del artículo 1520, numeral 1, del Código de Procedimiento Civil francés, reafirmando al mismo tiempo la primacía de la Convención de Viena sobre el Derecho de los Tratados como herramienta de interpretación de los tratados de inversión.*

1. Background of the Dispute

The dispute arose out of construction contracts between Nurol Insaat Ve Ticaret Anonim Sirketi ("Nurol"), a Turkish construction company, and the State of Libya. Following Libya's alleged failure to honour its contractual obligations, Nurol initiated investment arbitration proceedings against Libya under the Agreement on the Reciprocal Encouragement and Protection of Investments between Libya and Turkey, concluded on 25 November 2009 (the "BIT" or the "Treaty").

An arbitral tribunal rendered a partial award on jurisdiction, upholding its jurisdiction to hear Nurol's claims. Libya sought to set aside that award before the Paris Court of Appeal, arguing that the tribunal had incorrectly asserted jurisdiction. The Court of Appeal dismissed Libya's application on 28 September 2021. Libya then appealed to the Court of Cassation, raising four grounds (*moyens*) of cassation.

The Court of Cassation rejected all four grounds and dismissed the appeal, thereby confirming both the Paris Court of Appeal's reasoning and, indirectly, the arbitral tribunal's assumption of jurisdiction.

---

* Jean M. Nogueroles Alberola is a founding partner at Lexwell AARPI (admitted as Avocat in France, Abogado in Spain and Solicitor in England). He has developed a strong expertise in advising and representing companies in relation to cross-border M&A transactions, international structuring of companies and joint ventures. He has been involved in various complex international arbitration proceedings, notably related to investments and infrastructure projects in Southern Europe as well as in Northern and Western Africa.

This procedural trajectory is not uncommon in Paris-seated investment arbitrations. As the seat of many BIT proceedings, French courts have developed a substantial body of case law on the scope of their supervisory review. The decision adds to a line of authority that includes *République du Liban v. France Telecom* (Cass. 1re civ., 28 March 2013, No. 11-17.770) and *Gouvernement du Pakistan v. Société Dallah Real Estate* (Paris Court of Appeal, 17 February 2011), in which French courts asserted their power to conduct *de novo* review of arbitral tribunals' jurisdictional findings while respecting the line between jurisdictional review and review on the merits.

2. Issues Raised

The case raised three principal legal questions, each of which carries significant implications for international investment arbitration practice:

First, whether the BIT had validly entered into force under Article 12(1), which conditions entry into force on each party notifying the other in writing of the completion of its required constitutional formalities. Libya argued that no valid notification had been made to the appropriate authority within its territory and that the Treaty had therefore not entered into force when the arbitration was initiated.

Second, whether the MFN clause contained in the Treaty could be used by Nurol to extend the scope of the tribunal's jurisdiction beyond what was expressly provided for in the BIT's dispute resolution clause.

Third, whether the legality requirement—under which Treaty protections apply only to investments made "in accordance with the laws and regulations" of the host State—must be assessed at the time the investment contracts were concluded, or whether it extends to allegedly corrupt acts occurring during performance of those contracts.

Each question resonates with broader debates in the field. The entry-into-force question, though seemingly procedural, has arisen in several disputes-including *Mytilineos Holdings SA v. Serbia and Montenegro* (UNCITRAL, Partial Award on Jurisdiction, 8 September 2006), where the tribunal considered whether the relevant BIT had entered into force and what constituted adequate notification. The MFN question has famously divided tribunals since *Maffezini v. Spain* (ICSID Case No. ARB/97/7, Decision on Jurisdiction, 25 January 2000) and the contrasting decision in *Plama Consortium Limited v. Bulgaria* (ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005). The legality requirement has generated a rich, and sometimes contradictory, body of case law, discussed further below.

3. The Court's Rulings

3.1. Entry into Force of the Treaty

The first and second grounds of cassation both related to the entry into force of the BIT. Libya argued, in essence, that the Treaty had not entered into force because no proper notification had been addressed to the competent authority within Libya. The Court of Cassation rejected this argument.

The Court confirmed the Paris Court of Appeal's reading of Article 12(1), which provides that the Treaty enters into force on the date of the "last of the two notifications" by which each party informs the other of the completion of the constitutional formalities required for ratification. Crucially, Article 12(1) does not designate any specific authority to receive such notification. The Court concluded that it is therefore sufficient for each

State to be informed that the other has completed the required formalities, without any additional procedural step.

This approach is grounded in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 ("VCLT"), which requires treaty provisions to be interpreted in good faith, according to the ordinary meaning of their terms, in context, and in light of the treaty's object and purpose. By declining to impose a notification requirement that the text does not contain, the Court adhered to the principle that treaty interpretation must not add conditions that the parties chose not to include.

This is consistent with established ICJ interpretive principles. In its Advisory Opinion on the Competence of the General Assembly for the Admission of a State to the United Nations (ICJ Reports 1950, p. 8), the ICJ held that "the first duty of a tribunal is to endeavour to give effect to [treaty provisions] in their natural and ordinary meaning in the context in which they occur." The same principle underlies the ICJ's reasoning in the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (ICJ Reports 1994, p. 6), where it emphasised that interpretation must begin with the text and that the parties' intentions are expressed in the words they used.

BIT entry-into-force questions have occasionally given rise to complex jurisdictional debates. In *Mytilineos Holdings SA v. Serbia and Montenegro* (UNCITRAL, Partial Award on Jurisdiction, 8 September 2006), the tribunal examined whether the Serbia-Greece BIT had entered into force, considering evidence of ratification and notification. In *Strabag SE v. Libya* (ICSID Case No. ARB(AF)/15/1), the tribunal addressed analogous questions regarding the Austria-Libya BIT in a factually similar context. The common thread is that tribunals—and now French supervisory courts—adopt a pragmatic and purposive reading of entry-into-force clauses, consistent with the object and purpose of investment protection instruments.

The ruling has significant practical consequences. Courts and tribunals should not readily conclude that a BIT has failed to enter into force due to alleged procedural defects in the notification process, particularly where the treaty is silent on notification modalities. In investment arbitrations with sovereign States—where such jurisdictional objections have become increasingly common—this approach provides welcome predictability. It is consistent with a teleological reading of investment protection instruments, which exist precisely to ensure that investors benefit from treaty protections once contracting States have completed their domestic ratification processes.

This may be contrasted with the stricter approach adopted by some tribunals. In *Anatolie Stati et al. v. Kazakhstan* (SCC Case No. V 116/2010), for instance, the respondent raised objections relating to the modalities of treaty consent, though on different grounds. The ruling confirms that French courts will resist formalist objections where the treaty text does not mandate a particular notification procedure-a position consistent with the principle of *effet utile*, under which treaty provisions should be interpreted to give them practical effect rather than render them nugatory (see also Pulp Mills on the River Uruguay (*Argentina v. Uruguay*), ICJ Reports 2010, p. 14, at para. 65).

The second ground of cassation, which also related to the Treaty's entry into force but from a distinct angle, was equally dismissed on the same basis.

3.2. The MFN Clause

The third ground of cassation concerned the scope and effect of the BIT's MFN clause. Libya argued that the tribunal had erred in interpreting that clause, particularly on whether it could be used to import more favourable dispute resolution mechanisms from other treaties concluded by Libya.

The Court of Cassation upheld the Court of Appeal's analysis without extensive elaboration on the MFN issue, suggesting that Libya's argument did not raise a novel or sufficiently compelling point of law.

The question of the applicability of MFN clauses to dispute resolution provisions remains one of the most contested in investment arbitration. The debate was famously ignited by the decision in *Maffezini v. Spain* (ICSID Case No. ARB/97/7, Decision on Jurisdiction, 25 January 2000), where the tribunal held that an MFN clause in the Argentina-Spain BIT could be used to bypass the requirement to submit the dispute to local courts for 18 months before resorting to international arbitration, by importing more favourable procedural provisions from the Spain-Chile BIT. This expansive approach was subsequently endorsed, with variations, in *Siemens AG v. Argentina* (ICSID Case No. ARB/02/8, Decision on Jurisdiction, 3 August 2004), *Gas Natural SDG SA v. Argentina* (ICSID Case No. ARB/03/10, Decision on Jurisdiction, 17 June 2005), and *Suez, Sociedad General de Aguas de Barcelona SA and InterAguas Servicios Integrales del Agua SA v. Argentina* (ICSID Case No. ARB/03/17, Decision on Jurisdiction, 16 May 2006).

On the other side of the debate, the tribunal in *Plama Consortium Limited v. Bulgaria* (ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005) took the view that MFN clauses should not be read as extending to dispute resolution provisions unless there is clear and unambiguous language to that effect, given the importance of consent in international arbitration. This more restrictive view was followed in *Salini Costruttori SpA and Italstrade SpA v. Jordan* (ICSID Case No. ARB/02/13, Decision on Jurisdiction, 9 November 2004), *Telenor Mobile Communications AS v. Hungary* (ICSID Case No. ARB/04/15, Award, 13 September 2006), and more recently in *İçkale İnşaat Limited Şirketi v. Turkmenistan* (ICSID Case No. ARB/10/24, Award, 8 March 2016), where the tribunal conducted a particularly thorough analysis and rejected the use of the MFN clause to import substantive standards from other BITs.

In the French context, the Paris Court of Appeal addressed the MFN question in *République Arabe d'Égypte v. Unión Fenosa Gas* (Paris Court of Appeal, 16 January 2024), though on different facts and treaty language. The Court of Cassation's brief treatment of the issue in Nurol is perhaps explained by the fact that the lower court's reasoning was not fundamentally challenged: if the Court of Appeal correctly identified the MFN clause's scope, and the claimant was not seeking to import a different dispute resolution mechanism but merely to invoke broader substantive protections, the issue did not require the Court of Cassation to engage further.

The ruling confirms the lower court's approach but does not resolve the broader doctrinal debate definitively. Practitioners should continue to assess MFN issues on a case-by-case basis, with close attention to the specific wording of both the MFN clause and the relevant dispute resolution provision.

3.3. The Temporal Scope of the Legality Requirement

The fourth and final ground—described as subsidiary—is arguably the most doctrinally significant. Libya argued that the Court of Appeal erred in confining its legality analysis to the moment the investment contracts were concluded, thereby disregarding allegedly corrupt payments made after signing, during performance.

Libya advanced a broad conception of "investment" under the Treaty: since investment is a dynamic concept involving the ongoing commitment of assets and economic activity within the host State, the legality requirement should be assessed throughout the life of the investment, not only at the time the foundational contracts were signed. On this view, post-contractual corruption could taint the investment with illegality and deprive the investor of treaty protection.

The Court of Cassation rejected this argument. It confirmed the Court of Appeal's finding that the allegedly corrupt payments were made after the investment contracts were signed and could not have rendered those contracts unlawful at conclusion. The Court drew a clear temporal line: the legality condition goes to the lawfulness of the investment at the time it was made, not to the parties' conduct at every subsequent stage.

This is consistent with the dominant trend in investment arbitration. The seminal *Fraport AG Frankfurt Airport Services Worldwide v. Philippines* (ICSID Case No. ARB/03/25, Award, 16 August 2007) established that the legality requirement relates to the investment at the time of its establishment. The tribunal found that the investor's violation of Philippine law at the time of making the investment deprived it of jurisdiction. The annulment committee (Decision on Annulment, 23 December 2010) upheld this, confirming that the legality requirement is a jurisdictional condition going to the inception of the investment.

Subsequent tribunals have largely followed this approach. In *Metal-Tech Ltd v. Uzbekistan* (ICSID Case No. ARB/10/3, Award, 4 October 2013), the tribunal declined jurisdiction because the investment had been procured through corruption at the time of its establishment, finding that the legality requirement in the Israel-Uzbekistan BIT precluded protection for investments tainted by corruption *ab initio*. In *World Duty Free Company Limited v. Kenya* (ICSID Case No. ARB/00/7, Award, 4 October 2006), the tribunal dismissed the investor's claims after finding that the investment was procured through a bribe paid to the President of Kenya, holding such claims unenforceable as a matter of international public policy.

Both Metal-Tech and World Duty Free, however, involved corruption at the time the investment was made. The present case is distinguishable because Libya's allegations concerned payments made after the contracts were signed. The Court's approach aligns with *Hesham Talaat M. Al-Warraq v. Indonesia* (UNCITRAL, Final Award, 15 December 2014), which distinguished between illegality at the time of investment and subsequent misconduct, holding that the latter does not defeat jurisdiction, though it may affect the merits or quantum.

This distinction is further supported by *Copper Mesa Mining Corporation v. Ecuador* (PCA Case No. 2012-2, Award, 15 March 2016), where the tribunal held that post-establishment illegality is more appropriately addressed at the merits or damages stage than as a jurisdictional bar. The *Yukos Universal Limited (Isle of Man) v. The Russian Federation* (PCA Case No. 2005-04/AA227, Final Award, 18 July 2014) awards are also instructive: while investors' conduct during performance could be taken into account for contributory fault in damages, it did not defeat jurisdiction.

Academic commentary supports this temporal distinction. Professor Zachary Douglas has argued that the legality requirement functions as a condition *ratione materiae* that must be satisfied at the time the investment is made (The International Law of Investment Claims, Cambridge University Press, 2009). Professor Christoph Schreuer similarly takes the view that conditions attaching to the definition of "investment" must be assessed at the time of the investment's establishment, not on a continuing basis (The ICSID Convention: A Commentary, 2nd ed., Cambridge University Press, 2009). Professor Patrick Dumberry has characterised the legality requirement as a threshold condition for treaty protection, distinct from the substantive standards of treatment (The Formation and Identification of Customary International Law in International Investment Law, Cambridge University Press, 2016).

That said, the Court's temporal line does not immunise investors from all consequences of corrupt conduct. Post-contractual corruption may still affect the quantum of damages or give rise to counterclaims. In *Spentex Netherlands BV v. Uzbekistan* (ICSID

Case No. ARB/13/26, Award, 27 December 2016), the tribunal is reported to have addressed post-establishment corruption in the context of damages. In *Niko Resources (Bangladesh) Ltd v. Bangladesh Petroleum Exploration & Production Company Limited* (ICSID Case Nos. ARB/10/11 and ARB/10/18, Decision on Jurisdiction, 19 August 2013), the tribunal similarly considered post-investment misconduct without treating it as a jurisdictional bar.

There is a legitimate policy debate about whether confining the legality requirement to the inception of the investment creates perverse incentives. If an investor procures treaty protection by ensuring its initial investment is lawful, but then engages in corrupt practices during performance without forfeiting jurisdictional protection, the deterrent effect of the legality clause is arguably reduced. The dominant view—reinforced by the Court's ruling—is that this concern is better addressed through other mechanisms: the application of transnational public policy at the merits stage (as in World Duty Free), the assessment of contributory fault in damages (as in Yukos), or the doctrine of unclean hands (as discussed, though not ultimately applied, in Niko Resources and Hesham Al-Warraq).

Importantly, the Court of Cassation's analysis also illustrates the limits of the annulment court's supervisory role. Under Article 1520(1) of the French Code of Civil Procedure, the annulment court reviews the arbitral tribunal's jurisdictional decisions de novo, examining all relevant elements of law and fact. This was authoritatively stated in *Municipalité de Khoms El Mergeb v. Société Dalico* (Cass. 1re civ., 20 December 1993), confirmed in *Gouvernement du Pakistan v. Société Dallah Real Estate* (Cass. 1re civ., 7 June 2006, No. 01-15.912; and Paris Court of Appeal, 17 February 2011), and reiterated in *Société PT Putrabali Adyamulia v. Société Rena Holding* (Cass. 1re civ., 29 June 2007, No. 05-18.053). This review does not, however, extend to revision on the merits (*révision au fond*). The line between jurisdiction and merits is not always easy to draw, but the Court's treatment of the legality issue confirms that a question inextricably linked to the investment's legality at inception-such as whether post-contractual corruption affects jurisdiction-falls within the proper scope of jurisdictional review.

This may be contrasted with the more limited review exercised in ICSID annulment proceedings, where *ad hoc* committees are confined to the five grounds in Article 52 of the ICSID Convention and cannot conduct de novo review of jurisdictional findings (see, e.g., *Fraport*, Decision on Annulment, 23 December 2010, at para. 35). The French system's more in-depth jurisdictional review may offer greater protection to parties challenging awards, but at the cost of some uncertainty as to the finality of arbitral jurisdictional determinations.

4. Significance of the Ruling

The decision of 12 February 2025 merits attention on several levels.

On treaty interpretation, the ruling reaffirms the Vienna Convention as the primary instrument for construing BIT provisions before French courts. The Court's refusal to read additional procedural requirements into Article 12(1) is a textbook application of the principle *in claris non fit interpretatio*: where the text is clear in what it does not say, courts should not supplement it. This is consistent with the ICJ's dictum in Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania (ICJ Reports 1950, p. 65), that "*the duty of the Court is to interpret the Treaties, not to revise them.*" It also resonates with *Sanum Investments Ltd v. Laos* (PCA Case No. 2013-13, Award on Jurisdiction, 13 December 2013), where the tribunal applied a careful VCLT analysis to determine whether a BIT extended to the respondent State's territory, and with the Singapore Court of Appeal's subsequent review in *Government of the Lao People's*

Democratic Republic v. Sanum Investments Ltd, which likewise applied the VCLT framework.

On jurisdictional review, the ruling further illustrates the French courts' deferential but rigorous approach to supervising investment awards. The Court does not revisit the merits of arbitral decisions, but it does conduct a genuine review of jurisdictional questions, examining the treaty text and factual record with care. The rejection of all four grounds of cassation confirms that the Paris Court of Appeal's analysis was legally sound at every step. This places French courts between the highly deferential standard applied under the New York Convention in many common law jurisdictions-illustrated by the US Supreme Court's decision in *BG Group PLC v. Republic of Argentina*, 572 U.S. 25 (2014), where the majority held that pre-arbitration compliance requirements were for the arbitrator to assess-and the full de novo review conducted by Swiss courts under Article 190 of the Swiss Private International Law Act (see, e.g., Swiss Federal Tribunal, 4A_80/2018, 7 June 2018).

On substantive investment law, the temporal framing of the legality requirement has clear practical implications. Counsel for host States should be aware that allegations of corruption arising after the conclusion of investment contracts are unlikely, under French courts' analysis, to strip a tribunal of jurisdiction—though they may be relevant to other aspects of the case. Conversely, investors should note that the legality condition remains a live jurisdictional issue where corruption can be shown to have attended the very formation of the investment, as in *Metal-Tech v. Uzbekistan* and *World Duty Free v. Kenya*, where inception-level corruption was fatal to jurisdiction and admissibility respectively.

It bears noting that the International Centre for Settlement of Investment Disputes' recent caseload reflects a growing tendency among respondent States to raise legality-based jurisdictional objections. In *Churchill Mining PLC and Planet Mining Pty Ltd v. Indonesia* (ICSID Case No. ARB/12/14 and 12/40, Award, 6 December 2016), the tribunal dismissed the claims on the basis that the mining licences underlying the investment were forged, constituting fraud at the time of the investment's establishment. The Churchill Mining award illustrates the extreme end of the legality spectrum—outright forgery—but confirms the same temporal principle: it is the legality of the investment at inception that matters for jurisdictional purposes.

From an anti-corruption perspective, the ruling raises questions about the proper allocation of the corruption inquiry between the jurisdictional and merits phases. The emerging consensus is that corruption at inception is a jurisdictional impediment, while post-establishment corruption is better addressed at the merits or damages stage. This was articulated clearly *in Kim and others v. Uzbekistan* (ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017), where the tribunal held that the legality requirement must be distinguished from general principles of international public policy, which are relevant at the merits stage. The ILA Study Group on the Content of Investment Law (Final Report, 2022) has contributed to this framework, noting that the treatment of corruption must balance the policy imperative of deterrence against the need for consistent and predictable application of jurisdictional conditions.

Finally, the case is a further reminder of the particular challenges posed by investment arbitration involving Libya, a recurring respondent before arbitral tribunals and French courts alike. Alongside other French decisions in Libyan investment disputes—including Siba Plast v. Libya (Paris Court of Appeal, 1 October 2024), which addressed due process and notification requirements, and *Sorelec v. Libya* (Paris Court of Appeal, 21 February 2023, No. 21/15738), which dealt with the enforceability of an ICC award against Libya—the present judgment contributes to a growing body of French case law on the recognition, enforcement, and challenge of investment awards against Libya.

These cases collectively illustrate the difficulties arising when a politically turbulent host State raises procedural and substantive objections to treaty-based arbitration, and French courts' consistent willingness to scrutinise such objections while upholding the effectiveness of the arbitral process.

5. Conclusion

The Court of Cassation's judgment of 12 February 2025 in *État de Libye v. Nurol* is a concise but instructive contribution to French investment arbitration case law. By upholding the BIT's entry into force on a plain reading of its notification clause, confirming the scope of the MFN provision, and clarifying the temporal limits of the legality requirement, the First Civil Chamber has reinforced several principles of practical importance to investment treaty practitioners.

The ruling is particularly noteworthy for its treatment of the legality requirement, aligning French supervisory courts with the prevailing approach in investment arbitration: the legality condition is a jurisdictional threshold assessed at the time of the investment's establishment, not a continuing obligation whose breach at any later stage would deprive the tribunal of jurisdiction. While not without critics—some commentators argue that this approach may incentivise post-establishment corruption[108]—it strikes a sound balance between ensuring the integrity of the investment process and providing effective treaty protection.

The decision is welcome for the clarity it brings to an area where jurisdictional objections—whether grounded in treaty interpretation or allegations of illegality—have the potential to defeat otherwise meritorious investor claims. It confirms French courts' position as rigorous but fair supervisors of the international arbitral process, applying the VCLT and general principles of international law with precision and consistency.

* * *

108 Kevin Lim, "*Upholding Corrupt Investors' Claims Against Complicit or Compliant Host States—Where Angels Should Not Fear to Tread*", Yearbook on International Investment Law & Policy 2011-2012, (Oxford University Press, 2013).