Part I	Introduction		25
Chapter I	search of proceedir	of arms: a vague notion in legal precision in State-to-State ngs, international investment mercial arbitration	25
	Section I	Familiarity, vagueness and confusion	25
	Section II	Absence in rules and statutes, evidence in pleadings and decisions	27
	Section III	Research goals, methodology and scope	32
	Section IV	Equality of arms and near concepts	40
Chapter	jurisprud of Humai	ribution made by the ence of the European Court n Rights and by the German of Waffengleichheit	47
	Section I	Equality of arms in the jurisprudence of the European Court of Human Rights	48
		 Equality of Arms as part of the right to a fair trial Proceedings that must guarantee a fair trial and thus 	48
		respect equality of arms	49



3.	Definition of equality of arms	53
4.	The implementation of the	
	definition by the ECtHR: (i)	
	equality of arms and the right to	
	an adversarial proceeding	59
5.	The implementation of the	
	definition by the ECtHR:	
	(ii) types of violations of equality	
	of arms	61
	a. Equality of arms as a	
	procedural guarantee – Cases	
	regarding court appointed	
	experts	62
	b. Equality of arms as a	
	procedural guarantee – Cases	
	regarding access to the case	
	file	68
	c. Equality of arms as a	
	procedural guarantee – Cases	
	regarding the taking of and	
	the examination of evidence	70
	d. Equality of arms as a	
	substantive guarantee	73
6.	The implementation of the	
	definition by the ECtHR: (iii)	
	Equality of arms and the	
	concept of 'party'	79
7.	Types of review by the ECtHR:	
	reviewing the legitimacy of a	
	law; reviewing the conduct of a	
	party; reviewing the discretion	
	of the national courts in	
	conducting the procedure	84
8.	Equality of arms: between	
	a strict standard and the	
	temptation of appearances –	·
	the appeal to a higher sense	
	of justice	87

		Section II	<i>Waffengleichheit</i> in German Civil Procedure	90
		Section III	Conclusion	97
Part II	and	•	ns in State-To-State Proceedings nal Investment and Commercial	99
Chapte	r III	Equality o	of arms as between the parties	101
		Section I	Parties in State-to-State dispute settlement 1. Equality of arms and jurisdiction	102
			ratione paersonae of the ICJ 2. 'Party' status — non-appearance and intervention in ICJ	102
			proceedings 3. 'Party' status in ICJ Advisory	105
			Opinion cases	112
			4. Parties before the ITLOS	115
		Section II	Parties in international commercial arbitration	119
			 Jurisdiction ratione personae – the capacity of entering into an arbitration agreement 	119
			Equality of the parties in international commercial	
			arbitrations 3. 'Party' status – default, intervention, joinder and	123
			consolidation	124
		Section III	Parties in international investment arbitration	128
			 Inequality of the parties in international investment 	
			arbitration	128
			2. Jurisdiction ratione personae	131

		'Party' status – intervention and non-participating Party	135
Chapter IV	Equality of the pro	of arms in the institution ceedings	139
	Section I	Initiation of a case as an arm	139
	Section II	Equality of arms in the principle of consent	139
	Section III	Equality of arms and the requirements of mutuality and reciprocity in the Compulsory	444
		Jurisdiction system of the ICJ	144
		1. Mutuality	145 150
	C = =1! = == 1\ /	2. Reciprocity	130
	Section IV	Equality of arms in the compulsory jurisdiction system of UNCLOS	152
	Section V	Equality of arms in international commercial arbitration agreements	154
		1. "Bilateral" arbitration	
		agreements 2 "Unilatoral" arbitration	155
		"Unilateral" arbitration agreements	156
		a. Russkaya Telephonnaya	130
		Kompaniya v. Sony Ericsson Mobile Communications	
		Rus LLC	159
		b. Rothschild v. Mme X	161
		c. Pittalis v. Sherefettin	163
		d. NB Three Shipping v. Harebell Shipping	164
		e. Debenture Trust v. Elektrim	104
		Finance and others	166
	Section VI	Equality of arms and asymmetry in the initiation of international	ı
		investment arbitration proceedings	166
		1. The difficulty for a State to bring	
		a claim or a counterclaim	168

		 The investor's right to unilaterally bring a claim as required by equality of arms 	172
Chapter V	Equality of arms in the composition of the Court and Tribunals		
	Section I	Appointing <i>ad hoc</i> judges and arbitrators as an <i>arm</i>	177
	Section II	Equality of arms and the appointment of ad hoc judges	181
	Section III	Equality of arms and party- appointed arbitrators	187
	Section IV	Equality of arms in the appointment of <i>ad hoc</i> judges and arbitrators in multiparty cases	195
		 Multiparty ICJ cases The ITLOS Rules on ad hoc judges when the EU is a party Multiparty arbitration cases 	195206207
	Section V	Equality of arms and the impartiality of judges and arbitrators – The <i>Croatia/Slovenia</i> arbitration example	210
Chapter VI	Equality o	f arms during the proceedings	215
•	Section I	The <i>arms</i> at the disposal of the parties during the proceedings	215
	Section II	Equality of arms and the power of the Court and Tribunals to conduct	
		the proceedings	230
	Section III	The conduct of arbitral proceedings1. Equal treatment of the parties2. Parties must be granted an opportunity to present	236 239
		their case	242

	 Guaranteeing the parties a relatively equal opportunity of presenting their case – 	
	particular issues a. The "two hats" worn by the State in investment treaty	247
	arbitration b. Selected issues regarding the	247
	taking of evidence c. The determination of the	253
	standard of privilege 4. Ensuring cost effective and expeditious proceedings — guaranteeing the parties a reasonable and relatively equal opportunity of presenting	257
	their case 5. Guaranteeing the parties a reasonable and relatively equal opportunity of presenting their case is the core content of	267
	equality of arms 6. Remedies in case of violations by arbitral tribunals of the duty of guaranteeing equality of arms	275276
Section IV	The conduct of the proceedings before the ICJ and the ITLOS	
	 Equal treatment of the parties Parties must be granted an opportunity to present 	294 296
	their case 3. Ensuring a cost effective and expeditious proceeding — guaranteeing the parties a reasonable and relatively equal opportunity of presenting their case	300

	 The exemplary saga of the "Appeals" against judgments of International Administrative Tribunals 	337
Section V	Equality of arms and the timing for raising jurisdictional objections	352
Section VI	Equality of arms and the duty of the parties to participate in the proceedings in good faith 1. Sources of the duty of the	364
	parties to participate in the proceedings in good faith 2. Definition and limits of the parties' good faith obligation:	365
	a typology of actions a. The <i>Qatar v. Bahrain</i> ICJ Case	368
	 Forged Documents The Croatia v. Serbia ICJ Case 	376
	 Intimidation of Witnesses The M/V Louisa ITLOS Case — Withholding a fundamental 	382
	Document d. <i>Methanex v. USA</i> NAFTA Arbitration – Documents	384
	obtained Illegally e. <i>Pope & Talbot v. Canada</i> NAFTA Arbitration — Refusal	389
	to disclose Documents	391
	f. Abuse of Police Power	392
	i. Libananco v. Turkey ii. Caratube v. Kazakhstan	394
	(Caratube I)	397
	iii. Quiborax v. Bolivia	400
	iv. Caratube v. Kazakhstan	
	(Caratube II)	407
	v. Lao Hodings v. Laos vi. Churchill Mining v.	410
	Indonesia	415

	vii. Teinver v. Argentina viii. Timor Leste v. Australia (Provisional Measures	419
	ordered by the ICJ)	423
	ix. Conclusion	426
	g. Conclusion	428
Section VII	Equality of Arms and Non- Appearance	430
	 Non-appearance as an arm Procedural rules on non-appearance and the aim of 	430
	maintaining equality of arms 3. Risks of violating equality of arms while complying with	434
	•	459
	4. Conclusion	465
Equality of arms and inequality		
Euuaiity O	i arms and meduality	
of resourc	·	467
,	·	467 467
of resourc	es	
of resourc	es Resources as <i>arms</i>	
of resourc	es Resources as <i>arms</i> Establishment and use of funding	467
of resourc	Resources as <i>arms</i> Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples)	467
of resourc	Resources as <i>arms</i> Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the	467 472
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice	467 472
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court	467 472 473
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court of Arbitration Financial	467 472 473
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court of Arbitration Financial Assistance Fund for	467 472 473
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court of Arbitration Financial Assistance Fund for Settlement of International	467 472 473
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court of Arbitration Financial Assistance Fund for Settlement of International Disputes	467 472 473
of resourc	Resources as arms Establishment and use of funding mechanisms and equality of arms 1. Financial Assistance Funds (the ICJ; PCA and ITLOS examples) a. The Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice b. The Permanent Court of Arbitration Financial Assistance Fund for Settlement of International	467 472 473
		(Provisional Measures ordered by the ICJ) ix. Conclusion g. Conclusion Section VII Equality of Arms and Non-Appearance 1. Non-appearance as an arm 2. Procedural rules on non-appearance and the aim of maintaining equality of arms 3. Risks of violating equality of arms while complying with the procedural rules on non-appearance 4. Conclusion

	Third Party Funding	487
Section III	Powers of the Court or Tribunal to level the playing field when no funding mechanism is available	504
Section IV	Allocation of costs in ICJ and ITLOS proceedings as evidence of equality of arms	522
Section V	Rules on advance on costs in arbitral proceedings and the levelling and un-levelling of the playing field 1. Payment of advance on costs — an equal responsibility	526
	bestowed on all the parties to the proceedings 2. Rules on the final apportionment of costs in the	527
	award – a final opportunity to level the playing field 3. Rules tackling default by one	529
	party in the payment of advance on costs and equality of arms 4. The risks arising from the claimant being unable to pay	533
	the entirety of the advance on costs and how to remedy them a. Seeking an award or order requesting the non-paying	535
	party to pay or reimburse its share of advance on costs b. Arguing that impecuniosity and the consequent inability of paying the advance on costs has rendered inapplicable or inoperable the	535
	arbitration agreement	544

	 c. Requesting a national court to order the arbitral tribunal and institution to reinstate the arbitration and the arbitral tribunal to decide 	
	on the merits d. Seeking to set aside an award that did not address certain claims because the advance on cost pertaining to such	556
	claims had not been paid e. Techniques for arbitral tribunals and institutions to conduct a case with an impecunious party and avoid dismissing the case	561 563
Section VI	Security for costs and equality	F.70
	of arms	570
	 Reasons for requesting security for costs – a shield or a sword? Granting security for costs and guaranteeing equality 	570
	of arms a. A decision on security for costs presupposes the "costs follow the event" rule on final	571
	apportionment of costs b. The power of the tribunal to	572
	order security for costs	573
	c. A <i>prima facie</i> case on the	
	merits d. Proving a risk of irreparable harm and urgency – proving exceptional circumstances or a fundamental change in	579
	circumstances	580

Part III	Gove	erning the F	e. The role played by the presence of third-party funders in qualifying impecuniosity as "exceptional circumstances" f. Proving proportionality uality of Arms as a Principle Proceedings – Legal Nature,	586 593
	Norr	native Impl	ications and Remedies	597
Chapte	r VIII	Legal Natu	ıre	599
		Section I	Equality of arms as a general principle of law recognized by civilized nations	602
		Section II	The emergence of international procedural law: a product of crosspollination due to the multiplication of international courts and tribunals	609
		Section III	Equality of arms as a general principle of international procedural law	617
Chapter	'IX	Normative	e Implications	623
		Section I	Equality of Arms as a source of powers of the Court or Tribunals	624
		Section II	Equality of arms as a source of rights and duties of the Parties	625
Chapter	·X	Remedies		627
		Section I	Remedy: levelling the playing field during the course	
			of the proceedings	628

Section II	Sanctions at the end of the proceedings: between ex-post levelling of the playing field and sanctioning misconduct	631
Section III	Extrema Ratio: Damages for breach of duty to maintain equality of arms, annulment, nonenforcement and regulatory action	632
Section IV	Six steps for arguing a violation of equality of arms	636
Section V	An example of the application of the principle of equality of arms to the issue of unilateral initiation of a case before the ICJ by a State immediately after the deposit of its	
	unilateral declaration	637
	1. The issue	637
	2. Application of the six steps to	
	the issue	641
	a. First Step: Identifying the armb. Second Step: Identifying the	642
	unbalance c. Third Step: Identifying the source causing the unbalancing effect	642
	on the <i>arm</i> d. Fourth Step: Identifying the effect and consequence of	643
	the inequality of <i>arms</i>	644
	e. Fifth Step: Identifying the	
	actual disadvantage	645
	f. Sixth Step: Identifying the	
	remedies that should be	
	applied	648

Abstract in German	653
Table of Cases	663
List of Abbreviations	683
Bibliography	685