

Sudhanshu Swaroop QC

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Overview

Sudhanshu practices arbitration, commercial and public international law.

Sudhanshu's commercial practice encompasses shipping, international trade, energy, natural resources, banking and insurance. For example, recent reported cases have concerned oil trading under cif contracts and alleged carousel fraud (*Euro Asian SA v Credit Suisse AG and others*) and the application of arbitration clauses to bills of exchange (*Uttam Galva Steels Ltd v Gunvor Singapore PTE Ltd*). His work includes challenges to the jurisdiction of the English courts, applications for freezing orders and other urgent relief, enforcement and sanctions. He has particular experience of group and tort claims against multinational corporations, having acted in several of the important English cases. These include *Chandler v Cape*, on the duty of care owed by a parent company.

His public international practice has included some of the leading cases of recent times and covers immunities, investment treaties, law of the sea, international environmental law and human rights. Recent work includes: *Re Al M* (proceedings concerning the children of His Highness Sheikh Mohammed bin Rashid Al Maktoum and Her Royal Highness Princess Haya bint Al Hussein); *Reyes v Al-Malki* (diplomatic immunity, Supreme Court); *R v Reeves Taylor* (the meaning of "torture" under international law, Supreme Court); *Freedom and Justice Party v FCO* (immunity and customary international law, Court of Appeal); The Enrica Lexie Incident, *Italy v India* (high-profile law of the sea dispute, Permanent Court of Arbitration and International Tribunal for the Law of the Sea, acting for Italy). His investment treaty work involves acting for states and

Publications

- 'State Immunity in proceedings relating to arbitration (England and Wales)' (LexisNexis Practice Note).
- 'Interventions in Arbitration Awards by the English Courts' in *Arbitration Resource Book* (LexisNexis 2016) (co-author with Belinda McRae).
- 'The Role of the Judiciary in International Arbitration' *IBA Business Law International* (September 2009) (co-author with William Rowley QC).
- 'Genocide and Universal Jurisdiction: A Proposal' in *The Enforcement of International Criminal Law* (Aegis Trust 2009).

Professional memberships

- Commercial Bar Association
- Commercial Bar Association, India Committee
- International Law Association, British Branch
- International Law Association. Study Group on Business and Human Rights
- British Institute of International and

investors, both in arbitration and in related court proceedings.

Drawing on his background in public international and commercial law, Sudhanshu has developed expertise in climate change. He is currently acting for the United Kingdom in *Duarte Agostinho v Portugal and others*, the first case on climate change in the European Court of Human Rights. He is also acting in the United Nations Human Rights Committee in *Torres Strait Islanders v Australia*, which concerns a complaint about Australia's record on fossil fuel emissions and its failure to protect the islands from rising sea levels. Both cases have attracted worldwide media coverage.

Sudhanshu has been recognised as one of The Lawyer magazine's "Hot 100" lawyers and is described as "A superb strategist and technician, one to keep on speed-dial for important cases" (The Legal 500 UK Bar 2020).

Sudhanshu accepts appointments as an arbitrator.

Education

- University of Oxford, Exeter College: Bachelor of Civil Law
- University of Cambridge, Magdalene College: BA (later MA) in law

Arbitration

A substantial part of Sudhanshu's practice involves international arbitration, both ad hoc and under institutional rules (eg ICC, LCIA, UNCITRAL, LMAA, FOSFA, FCC, GAFTA and LME). His work encompasses international commercial arbitration; investment treaty arbitration; inter-state arbitration; and related court applications (including for enforcement, challenges to awards under s67, s68 and s69 of the Arbitration Act 1996 and applications for interim relief under s44).

Examples of his arbitration work are set out below. Further examples are set out in the sections on "Energy and natural resources" and "Shipping and international trade."

Arbitration applications to court

- *Uttam Galva Steels Ltd v Gunvor Singapore PTE Ltd* [2019] 1 All ER (Comm) 68; [2018] 2 Lloyd's Rep 152 – jurisdiction challenge under s67 of the Arbitration Act 1996, raising issues as to whether an arbitration clause in the "Master Sales Contract" between the parties covered claims under related bills of exchange.
- *PT Thiess Contractors Indonesia v PT Kaltim Prima Coal* [2011] EWHC 1842; [2011] Arb LR 26 – application under s9 of the Arbitration Act 1996 for a stay of English High Court proceedings brought under a "Cash Distribution Agreement" in circumstances where there was an overlapping arbitration in Singapore under a mining services agreement.
- *Razcom CI v Barry Callebaut Sourcing AG* [2010] EWHC 2598 – application under s66 of the Arbitration Act 1996 to enforce arbitration award, raising issues as to whether "payment" had already been made and/or that payment had been "accepted".
- *STX Pan Ocean Co Ltd v Ugland Bulk Transport A.S. (The "LIVANITA")* [2008] 1 Lloyd's Rep 86 – application under s69 of the Arbitration Act 1996 to appeal on a point of law in a dispute under a charterparty.
- *Bluewater Energy Services BV v Technip Offshore International* [2006] EWHC 2879 (Commercial Court) – application under s68 of the Arbitration Act 1996 to set aside an LCIA award for "serious irregularity" in a dispute about the operation of an FPSO.

Investment treaty arbitration

Sudhanshu has lectured extensively on investment treaties. He acts for states and investors, both in arbitration and in related court proceedings. His cases include the following:

Comparative Law, Human Rights Due Diligence Forum

Lectures / talks

- 'State Immunity in Arbitration and Commercial Litigation': delivered on various occasions (2017–2019).
- 'Bilateral Investment Treaties and Brexit': CDR Arbitration Symposium (April 2018).
- 'Spotlight on Sovereign Wealth Funds: litigating banking and investment disputes under the spectre of corruption and bribery': joint seminar with HKIAC (June 2017).
- Lectured in public international law at King's College London

- *Bechtel and others v Government of India* –bilateral investment treaty arbitration relating to the Dabhol Power Station, acted for the Government of India.
- *BIT claim v Central Asian State* –relating to mining investments, acted for investors.
- *BIT claim v Middle Eastern State* – relating to property investments, advised investors.
- *BIT claim v African State* –relating to energy investments, advised investors.
- *City of London v Sancheti* [2009] 1 Lloyd’s Rep 117 (Court of Appeal) – the first case about the power of the court to stay English Court proceedings where a related bilateral investment treaty arbitration is taking place. The case also concerned the relationship between “contract claims” and “treaty claims”.

Inter-State arbitration

- *The Enrica Lexie Incident (Italy v India)* PCA Case No. 2015-28 – proceedings at the Permanent Court of Arbitration under Annex VII of the “UN Convention on the Law of the Sea” (see e.g. Order, Request for the Prescription of Provisional Measures, 29 April 2016), acted for the Italian Republic.

Banking and finance

Sudhanshu has broad experience of banking and finance cases, including a string of claims for alleged misselling by banks and claims of alleged fraud. He was also seconded to the Financial Services Authority (Spring 2000), where he advised on aspects of the Financial Services and Markets Bill (as it then was) and acted in regulatory matters. His cases include the following:

- *Euro-Asian SA v Credit Suisse AG and others* [2019] 1 All ER (Comm) 706; [2019] 1 Lloyd’s Rep 444 (Court of Appeal); [2017] 1 Lloyd’s Rep 287 (High Court) – claims against an oil trader and a bank for non-delivery of cargo under a CIF contract of sale and letter of indemnity, which formed part of a series of carousel transactions, raising issues of alleged fraud.
- *Uttam Galva Steels Ltd v Gunvor Singapore PTE Ltd* [2019] 1 All ER (Comm) 68; [2018] 2 Lloyd’s Rep 152 – jurisdiction challenge under s67 of the Arbitration Act 1996, raising issues as to whether an arbitration clause in the “Master Sales Contract” between the parties covered claims under related bills of exchange.
- *Vik v United Kingdom* – application in the European Court of Human Rights under Article 6 ECHR (right to a fair hearing) challenging the largest non-party costs order ever made by the English Courts, arising from the litigation in *Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik*.
- *Sherdley v Nordea Life and Pensions SA (Societe Anonyme)* [2012] EWCA Civ 88; [2012] 2 All ER (Comm) 725; [2013] ILPr 26; [2012] Lloyd’s Rep IR 437 (Court of Appeal) – challenge to the jurisdiction of the English Courts to try misselling claims relating to two “Managed Capital Plan” contracts, raising issues as to the provisions of the Brussels Regulation that govern jurisdiction “in matters relating to insurance” and whether there was a jurisdiction agreement for the purposes of Article 23 of the Regulation.
- *Hill Street Services Company Ltd v National Westminster Bank plc* EWHC 2379 (Ch) (Judgment of Peter Smith J) – claim by the company that the bank had made unauthorised transfers from a current account to the account held by the company’s sole director and shareholder.
- *Stax Litigation* – claims against banks and IFAs in relation to allegedly fraudulent pension fund transfer scheme, see e.g. [2007] EWHC 143 (Ch) 01 Feb 2007 (Judgment of Warren J).
- *FSA v Sean Fradley and 147 Racing Limited (t/a Top Bet Placement Services)* [2004] EWHC 3008 (Ch); [2005] 1 BCLC 479; Times Law Reports, 8 November 2004 – proceedings brought by the FSA, raising issues under the Financial Services and Markets Act 2000, including the meaning of “collective investment scheme”.
- *Amalgamated Metal Trading v City of London Police Financial Investigation Unit and others* [2003] 1 WLR 2711 – a leading case on s93A to F Criminal Justice Act 1993 regarding alleged money laundering and the steps that a bank must take where there is suspicion that a customer’s account represents “the proceeds of crime” within the meaning of the 1993 Act.

Commercial law

Sudhanshu has acted in a variety of commercial disputes, covering matters such as claims for civil fraud, transnational tort claims and group claims against multi-national corporations, jurisdiction challenges and applications for freezing orders.

Examples are as follows:

- *Euro-Asian SA v Credit Suisse AG and others* [2019] 1 All ER (Comm) 706; [2019] 1 Lloyd's Rep 444 (Court of Appeal) [2017] 1 Lloyd's Rep 287 (High Court) – claims against an oil trader and a bank for non-delivery of cargo under a CIF contract of sale and letter of indemnity, which formed part of a series of carousel transactions, raising issues of alleged fraud.
- *Uttam Galva Steels Ltd v Gunvor Singapore PTE Ltd* [2019] 1 All ER (Comm) 68; [2018] 2 Lloyd's Rep 152 – jurisdiction challenge under s67 of the Arbitration Act 1996, raising issues as to whether an arbitration clause in the “Master Sales Contract” between the parties covered claims under related bills of exchange.
- *Barlow and others v BP plc and others* – civil claims arising from the 2013 terrorist attacks at the “In Amenas” oil facility in Algeria.
- *Vik v United Kingdom* – application in the European Court of Human Rights under Article 6 ECHR (right to a fair hearing) challenging the largest non-party costs order ever made by the English Courts, arising from the litigation in *Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik*.
- *Florez and others v Equion Energia Ltd* (formerly BP Exploration Company (Colombia) Ltd) [2016] EWHC 1699 (TCC) – represented a group of Colombian farmers claiming for environmental damage caused by the installation of an oil pipeline. The trial, in the Technology and Construction Court, lasted 5 months and involved multiple expert and factual witnesses. Described in the media as “one of the largest cases in environmental legal history”.
- *Young v Anglo American South Africa Ltd and others (No 2)* [2014] Bus LR 1434; [2014] ILPr 40 (Court of Appeal); *Vava and others v Anglo American South Africa Ltd (No 2)*; *Young v Anglo American South Africa Ltd and others (No 2)* [2013] Bus LR D65 (Judgment of Andrew Smith J) – personal injury claims by a large group of South African gold miners, raising an important question of jurisdiction as to whether (under the Brussels Regulation) a South African subsidiary had its “domicile” in England due to the relationship with its English parent company.
- *Sherdley v Nordea Life and Pensions SA (Societe Anonyme)* [2012] EWCA Civ 88; [2012] 2 All ER (Comm) 725; [2013] ILPr 26; [2012] Lloyd's Rep IR 437 (Court of Appeal) – challenge to the jurisdiction of the English Courts to try misselling claims relating to “Managed Capital Plan” contracts, raising issues as to the provisions of the Brussels Regulation that govern jurisdiction “in matters relating to insurance” and whether there was a jurisdiction agreement for the purposes of Article 23 of the Regulation.
- *Breffka & Hehnke GmbH Co KG v Navire Shipping Co Ltd and others* [2013] 1 Lloyd's Rep 401 – claim for fraud in relation to the signature of clean B/Ls for steel cargoes, raising issues as to the meaning and effect of a “RETLA” clause.
- *Chandler v Cape Plc* [2012] 1 WLR 3111 (Court of Appeal) – landmark case in which the claimant sued a parent company for asbestosis caused whilst he had been an employee of a subsidiary company, which was no longer in existence. The court held that the parent owed a duty of care in tort directly to the employee of its subsidiary. Lady Justice Arden described the case as being “...of some importance not only to the parties but to other cases”.
- *PT Thiess Contractors Indonesia v PT Kaltim Prima Coal* (Judgment of Teare J) [2012] EWCA Civ 525 – claim about the proper construction of a “Cash Distribution Agreement” for mining services and whether substantial sums of money, which had not been approved by an arbitral tribunal, had to be transferred into a “Dispute Account” by way of security.
- LCIA arbitration – acted in an LCIA arbitration concerning allegations of professional negligence against an international management consultancy firm.
- *Dynastic Maritime Inc v Al Dawood Shipping Lines Ltd* [2010] All ER (D) 224 (Feb) (Court of Appeal) – claim under a time charter, raising issues as to the nature of Owners' obligations in relation to the Vessel's “Oil Pollution Prevention Certificate” and procedural issues as to the principles that apply where a party fails to comply with an “unless order” and then seeks to set aside the resulting judgment.
- *Congentra AG v Sixteen Thirteen Marine SA* [2008] EWHC 1615 (Comm); [2009] 1 All ER (Comm) 479; [2008] 2 Lloyd's Rep 602 – application to set aside a Freezing Order, raising issues as to applicable law, whether a Freezing Order requires an “accrued” cause of action, whether English law recognises the tort of “wrongful attachment” (in relation to a “Rule B” attachment which had been obtained in New York) and the correct procedure for continuing a freezing order where a substantive arbitration is taking place.
- *Hill Street Services Company Ltd v National Westminster Bank plc* [2007] EWHC 2379 (Ch) (Judgment of Peter Smith J) – claim by a company that the bank had made unauthorised transfers from a current account to the account held by the company's sole director and shareholder.
- Stax Litigation – claims against banks and IFAs in relation to allegedly fraudulent pension fund transfer scheme, see e.g. [2007] EWHC 143 (Ch) 01 Feb 2007 (Judgment of Warren J).
- *Bluewater Energy Services BV v Technip Offshore International* – acted in substantial arbitration and in subsequent court proceedings (*Bluewater Energy Services BV v Technip Offshore International* [2006] EWHC 2879) concerning the delivery and installation of an FPSO to the Sable Field, off the coast of South Africa.
- *Bechtel and Others v Government of India* – represented the Government of India in the massive Bilateral Investment Treaty Arbitration (under UNCITRAL rules) relating to the Dabhol Power Station.
- *Texuna International Ltd v Cairn Energy Plc* – claim for over US\$100million arising from unsuccessful bid for oil

exploration rights in Turkmenistan.

- *Texuna International Ltd v Cairn Energy Plc* [2005] 1 BCLC 579 – a leading case on the principles applicable to security for costs applications.
- *FSA v Sean Fradley (t/a Top Bet Placement Services)* [2004] EWHC 3008 (Ch); [2005] 1 BCLC 479; Times Law Reports, 8 November 2004 – proceedings brought by the FSA, raising issues under the Financial Services and Markets Act 2000, including the meaning of “collective investment scheme”.
- *Royal Bank of Canada v Maurice Howell and others; Filmline International v Etheridge and others* – represented insurers in film finance litigation concerning the proper construction of a TVC insurance policy and allegations of non-disclosure and misrepresentation.
- *Trident Fashions plc (In Administration) (No 2), Re* [2004] EWHC 293 (Ch); [2004] 2 BCLC 35; Times, April 23, 2004
Trident Fashions plc (In Administration) (No. 1), Re [2004] EWHC 351 (Ch); [2004] 2 BCLC 28 – shareholders challenging a Company Voluntary Arrangement relating to the retailers “Ciro Citterio” for alleged misrepresentation at the creditors’ meeting.
- *Amalgamated Metal Trading v City of London Police Financial Investigation Unit and others* [2003] 1 WLR 2711 – a leading case on s93A to F Criminal Justice Act 1993 regarding alleged money laundering and the steps that a bank must take where there is suspicion that a customer’s account represents “the proceeds of crime” within the meaning of the 1993 Act.
- LCIA Arbitration – acted in an LCIA arbitration concerning a dispute over shares in an oil facility in Kazakhstan.
- *Jindal Iron and Steel Co Ltd and others v Islamic Solidarity Shipping Company* [2005] 1 Lloyd’s Rep 57 (House of Lords); [2003] 2 Lloyd’s Rep 87 (Court of Appeal and High Court) – a leading case on the law on cargo claims, raising issues as to the construction of “FIOS” clauses in charterparties and bill of lading contracts and the extent to which The Hague Convention abrogates freedom of contract.
- *Schimon Schestowitz Ltd v Security (North West) Ltd* [2001] All ER (D) 350 (May) – a tort claim for damages in circumstances where cargo was stolen from a warehouse, raising issues as to vicarious liability for fraud.
- *Macieo Shipping Ltd v Clipper Shipping Lines Ltd* [2000] 1 Lloyd’s Rep 645 – claim under a time charter for damage caused by fire, raising issues as to liability for allegedly incompetent stevedores.
- Varg Topsides – acted in long running LCIA arbitration concerning the design and construction of the topsides of the Varg FPSO.

Energy and natural resources

Sudhanshu has a wide-ranging practice in the field of Energy and Natural Resources. He has acted in court (including the Technology and Construction Court) and in arbitration on claims relating to, inter alia: EPC Contracts; delay and disruption; variations to work scope; construction and operation of FPSOs; shipbuilding contracts; installation of oil pipelines; operation of power stations; mining services agreements; environmental protection measures; transnational tort litigation; group claims against multinational corporations; claims for personal injury and death; and investment treaties. He has also developed expertise in relation to climate change.

His cases include the following:

- *Duarte Agostinho v Portugal and Others* (European Court of Human Rights) – the first case on climate change in the European Court of Human Rights, acting for the United Kingdom.
- *Torres Strait Islanders v Australia* (United Nations Human Rights Committee) – claim under the International Covenant on Civil and Political Rights, challenging Australia’s record on fossil fuel emissions and its failure to protect the islands from rising sea levels. The case has gained worldwide media attention and has been described by CNN as a “landmark.”
- *Barlow and others v BP plc and others* – civil claims arising from the 2013 terrorist attacks at the “In Amenas” oil facility in Algeria.
- *Florez and others v Equion Energia Ltd* (formerly BP Exploration Company (Colombia) Ltd) [2016] EWHC 1699 (TCC) – represented a group of Colombian farmers claiming for environmental damage caused by the installation of an oil pipeline. The trial, in the Technology and Construction Court, lasted five months and involved multiple expert and factual witnesses. Described in the media as “one of the largest cases in environmental legal history”.
- *Young v Anglo American South Africa Ltd and others* (No 2) [2014] Bus LR 1434; [2014] ILPr 40 (Court of Appeal); *Vava and others v Anglo American South Africa Ltd* (No 2); *Young v Anglo American South Africa Ltd and others* (No 2) [2013] Bus LR D65 (Judgment of Andrew Smith J) – personal injury claims by a large group of South African gold miners, raising an important question of jurisdiction as to whether (under the Brussels Regulation) a South African subsidiary had its “domicile” in England due to the relationship with its English parent company.
- *Chandler v Cape Plc* [2012] 1 WLR 3111 (Court of Appeal) – landmark case in which the claimant sued a parent company

for asbestosis caused whilst he had been an employee of a subsidiary company, which was no longer in existence. The court held that the parent owed a duty of care in tort directly to the employee of its subsidiary. Lady Justice Arden described the case as being "...of some importance not only to the parties but to other cases".

- *PT Thiess Contractors Indonesia v PT Kaltim Prima Coal* (Judgment of Teare J) [2012] EWCA Civ 525 – claim about the proper construction of a "Cash Distribution Agreement" for mining services and whether substantial sums of money, which had not been approved by an arbitral tribunal, had to be transferred into a "Dispute Account" by way of security.
- *BIT claim v Central Asian State* – bilateral investment treaty claim relating to mining investments in a Central Asian State, acted for investors.
- *Bluewater Energy Services BV v Technip Offshore International* – acted in substantial arbitration and in subsequent court proceedings (*Bluewater Energy Services BV v Technip Offshore International* [2006] EWHC 2879) concerning the delivery and installation of an FPSO to the Sable Field, off the coast of South Africa.
- *Bechtel and others v Government of India* – bilateral investment treaty arbitration (under UNCITRAL rules) relating to the Dabhol Power Station, acted for the Government of India.
- *Texuna International Ltd v Cairn Energy Plc* – claim for over US\$100million arising from unsuccessful bid for oil exploration rights in Turkmenistan.
- LCIA Arbitration – acted in an LCIA arbitration concerning a dispute over shares in an oil facility in Kazakhstan.
- Varg Topsides – acted in long running LCIA arbitration concerning the design and construction of the topsides of the Varg FPSO.

Insurance

- *Sherdley v Nordea Life and Pensions SA (Societe Anonyme)* [2012] EWCA Civ 88; [2012] 2 All ER (Comm) 725; [2013] ILPr 26; [2012] Lloyd's Rep IR 437 (Court of Appeal) – challenge to the jurisdiction of the English Courts to try misselling claims relating to "Managed Capital Plan" contracts, raising issues as to the provisions of the Brussels Regulation that govern jurisdiction "in matters relating to insurance" and whether there was a jurisdiction agreement for the purposes of Article 23 of the Regulation.
- *Royal Bank of Canada v Maurice Howell and others; Filmline International v Etheridge and others* – represented insurers in film finance litigation concerning the proper construction of a TVC insurance policy and allegations of non-disclosure and misrepresentation.

Private international law

Most of Sudhanshu's cases have an international element and many raise issues of private international law relating to jurisdiction, applicable law, injunctions and enforcement. His cases include the following:

- *Young v Anglo American South Africa Ltd and others (No 2)* [2014] Bus LR 1434; [2014] ILPr 40 (Court of Appeal); *Vava and others v Anglo American South Africa Ltd (No 2)*; *Young v Anglo American South Africa Ltd and others (No 2)* [2013] Bus LR D65 (Judgment of Andrew Smith J) – personal injury claims by a large group of South African gold miners, raising an important question of jurisdiction as to whether (under the Brussels Regulation) a South African subsidiary had its "domicile" in England due to its relationship with its English parent company.
- *Sherdley v Nordea Life and Pensions SA (Societe Anonyme)* [2012] EWCA Civ 88; [2012] 2 All ER (Comm) 725; [2013] ILPr 26; [2012] Lloyd's Rep IR 437 (Court of Appeal) – challenge to the jurisdiction of the English Courts to try claims relating to two "Managed Capital Plan" contracts, raising issues as to the provisions of the Brussels Regulation that govern jurisdiction "in matters relating to insurance" and whether there was a jurisdiction agreement for the purposes of Article 23 of the Regulation.
- *Congentra AG v Sixteen Thirteen Marine SA* [2008] EWHC 1615 (Comm); [2009] 1 All ER (Comm) 479; [2008] 2 Lloyd's Rep 602 – application to set aside a freezing order, raising issues as to applicable law, whether a freezing order requires an "accrued" cause of action, whether English law recognises the tort of "wrongful attachment" (in relation to a "Rule B" attachment which had been obtained in New York) and the correct procedure for continuing a freezing order where a substantive arbitration is taking place.

Public international law

Sudhanshu has acted in domestic and international courts and tribunals on a range of public international law issues, including immunities; investment treaties; law of the sea; international environmental law; international organisations; international humanitarian law and human rights law. He has acted in some of the leading cases of recent times. His work includes the following:

UK courts

- *Re Al M* –proceedings relating to the children of His Highness Sheikh Mohammed bin Rashid Al Maktoum and Her Royal Highness Princess Haya bint Al Hussein, acting on the public international law issues.
- *R v Reeves Taylor* [2019] UKSC 51; [2019] 3 WLR 1073 (Supreme Court) – landmark case on whether “torture” under Article 1 of the United Nations Convention against Torture and s134 of the Criminal Justice Act 1988 can be committed by non-state actors, such as armed rebel groups. The case arose from the prosecution of the former wife of Charles Taylor and events during the first Liberian civil war.
- *Freedom and Justice Party and others v Secretary of State for Foreign and Commonwealth Affairs and others* [2019] QB 1075; [2019] 2 WLR 578 (Court of Appeal); [2016] EWHC 2010 (Admin) – a challenge to the assertion of “special missions immunity” in relation to the attempted arrest of the Chief of Egyptian Armed Forces for torture. Raised questions , including the principles for establishing a rule of customary international law and the relationship between international law and the common law.
- *Reyes v Al-Malki* [2017] UKSC 61; [2019] AC 735 (Supreme Court); [2016] 1 WLR 1785 (Court of Appeal) – a leading case on diplomatic immunity, concerning the application of the “Vienna Convention on Diplomatic Relations”.
- *R (Campaign Against Arms Trade) v Secretary of State for Business, Innovation and Skills* [2017] HRLR. 8; [2017] ACD 103 – judicial review of UK licences for arms sales to Saudi Arabia, concerning the risk of arms being used to commit breaches of international humanitarian law during the conflict in Yemen.
- *Al-Juffali v Estrada* [2016] 3 WLR 243; [2017] 1 All ER 790 (Court of Appeal) – proceedings concerning the immunity of a permanent representative to an international organization, counsel to an interested party.
- *A v Secretary of State for the Home Secretary* [2006] 2 AC 221 (House of Lords) – the landmark case on whether evidence alleged to have been obtained by torture is admissible to detain terrorist suspects.

International courts and tribunals

- *Duarte Agostinho v Portugal and Others* (European Court of Human Rights) –the first case on climate change in the European Court of Human Rights, acting for the United Kingdom.
- *The Enrica Lexie Incident (Italy v India)* PCA Case No. 2015-28 (Permanent Court of Arbitration) – proceedings under Annex VII of the “UN Convention on the Law of the Sea”, represented the Italian Republic.
- *The Enrica Lexie Incident (Italy v India)* Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p182 (International Tribunal for the Law of the Sea) – provisional measures proceedings in the International Tribunal for the Law of the Sea, acted for the Italian Republic.
- *Torres Strait Islanders v Australia* (United Nations Human Rights Committee) – representing the Islanders in claim under the International Covenant on Civil and Political Rights, challenging Australia’s record on fossil fuel emissions and its failure to protect the islands from rising sea levels, representing the Islanders.
- *Chiragov and others v Armenia* (2016) 63 EHRR 9 (Grand Chamber of the European Court of Human Rights) – test case relating to the ethnic conflict in the Ngorno-Karabakh region of Azerbaijan, raising issues as to the jurisdictional scope of the ECHR (under Article 1) and whether Armenia exercised “effective control” outside of its territory.
- *Del Rio Prada v Spain* (2014) 58 EHRR 37 (Grand Chamber of the European Court of Human Rights) – test case challenging prison sentences imposed by Spain on members of ETA, raising issues as to retrospectivity (under Article 7 ECHR) and lawfulness (under Article 5 ECHR).
- *Vik v United Kingdom* – (European Court of Human Rights) challenge (under Article 6 ECHR) to the largest non-party costs order ever made by the English Courts, arising from the litigation in *Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik*.
- *X v United Kingdom* (European Court of Human Rights) – challenge to the “Regulation of Investigatory Powers Act 2000” (which governs surveillance operations by the UK authorities), based on the right to privacy (Article 8 ECHR) and the right to an effective remedy (Article 13 ECHR).
- *Consolidated Contractors International Company SAL and Consolidated Contractors (Oil and Gas) Company SAL v United Kingdom (European Court of Human Rights)* – challenge to actions of the English courts in imposing conditions on the right to pursue appeals in the context of high value commercial litigation, based on the right to a fair hearing (Article 6 ECHR).

Investment treaty arbitration

Sudhanshu has lectured extensively on investment treaties. He acts for states and investors, both in arbitration and in related court proceedings. His cases include the following:

- *Bechtel and others v Government of India* – bilateral investment treaty arbitration relating to the Dabhol Power Station, acted for the Government of India.

- *BIT claim v Central Asian State* – relating to mining investments, acted for investors.
- *BIT claim v Middle Eastern State* – relating to property investments, advised investors.
- *BIT claim v African State* – relating to energy investments, advised investors.
- *City of London v Sancheti* [2009] 1 Lloyd’s Rep 117 (Court of Appeal) – the first case about the power of the court to stay English Court proceedings where a related bilateral investment treaty arbitration is taking place. The case also concerned the relationship between “contract claims” and “treaty claims”.

Foreign courts

- *Minister of Justice and Constitutional Development and others v South African Litigation Centre and another*, Case No: CCT 75/2016 (South African Constitutional Court) – concerned the alleged immunity of President Bashir of Sudan from the International Criminal Court arrest warrant for the crime of genocide, led the international counsel team for Amnesty International in amicus curiae intervention.
- *Maher Arar v John D Ashcroft, Former Attorney General of the United States, et al* (United States Supreme Court) – damages claim by a Canadian citizen against US federal officials who allegedly delivered him to Syria for torture and arbitrary detention under the practice known as “extraordinary rendition”, drafted amicus brief.
- *Hamdan v Rumsfeld et al* (United States Supreme Court, March to April 2006) – test case challenging the legality of Military Commissions established by the United States to try the detainees at Guantanamo Bay, assisted in drafting amicus brief.
- *Chief Justice of Pakistan v President of Pakistan and others* (Pakistan Supreme Court, July 2007) – challenge to the suspension from office of the Chief Justice of Pakistan, drafted amicus brief on the principles relating to independence and impartiality of judges.
- Challenge to Law 975/2005 (Colombian Constitutional Court) – challenge to Colombian law regulating the demobilization of paramilitaries, drafted amicus brief on whether under international law the State has a “duty to investigate” widespread human rights abuses.

Shipping and international trade

Sudhanshu has substantial experience of shipping and international trade cases in court proceedings and arbitration (including but not limited to GAFTA, FOSFA, FCC, LMAA). His shipping work includes claims relating to Bills of Lading, Charterparties and COAs and has covered issues such as: a hire dispute following an alleged hijacking off the coast of Somalia; damage caused by contaminated bunkers; wrongful arrest; and claims for alleged fraud in relation to the signature of clean B/Ls for steel cargoes. His recent commodities/international trade work has included a trial of claims for non-delivery under a cif contract, claims under bills of exchange and a GAFTA arbitration concerning alleged late-delivery of cargo.

His cases include the following:

- *Euro-Asian SA v Credit Suisse AG and others* [2019] 1 All ER (Comm) 706; [2019] 1 Lloyd’s Rep 444 (Court of Appeal) [2017] 1 Lloyd’s Rep 287 (High Court) – claims against an oil trader and a bank for non-delivery of cargo under a CIF contract of sale and letter of indemnity, which formed part of a series of carousel transactions, raising issues of alleged fraud.
- *Uttam Galva Steels Ltd v Gunvor Singapore PTE Ltd* [2019] 1 All ER (Comm) 68; [2018] 2 Lloyd’s Rep 152 – jurisdiction challenge under s67 of the Arbitration Act 1996, raising issues as to whether an arbitration clause in the “Master Sales Contract” between the parties covered claims under related bills of exchange.
- *Breffka & Hehnke GmbH Co KG v Navire Shipping Co Ltd and others* [2013] 1 Lloyd’s Rep 401 – claim for fraud in relation to the signature of clean B/Ls for steel cargoes, raising issues as to the meaning and effect of a “RETLA” clause.
- *Dynastic Maritime Inc v Al Dawood Shipping Lines Ltd* [2010] All ER (D) 224 (Feb) (Court of Appeal) – claim under a time charter, raising issues as to the nature of Owners’ obligations in relation to the Vessel’s “Oil Pollution Prevention Certificate” and procedural issues as to the principles that apply where a party fails to comply with an “unless order” and then seeks to set aside the resulting judgment.
- *STX Pan Ocean Co Ltd v Ugland Bulk Transport A.S. (The “LIVANITA”)* [2008] 1 Lloyd’s Rep 86 – an unsafe port claim raising an issue as to whether an express safe port warranty in a charterparty applies to a port named in the charter.
- *Jindal Iron and Steel Co Ltd and Others v Islamic Solidarity Shipping Company* [2005] 1 Lloyd’s Rep 57 (House of Lords); [2003] 2 Lloyd’s Rep 87 (Court of Appeal and High Court) – a leading case on the law on cargo claims, raising issues as to the construction of “FIOS” clauses in charterparties and bill of lading contracts and the extent to which The Hague Convention abrogates freedom of contract.
- *Schimon Schestowitz Ltd v Security (North West) Ltd* [2001] All ER (D) 350 (May) – a tort claim for damages in

circumstances where cargo was stolen from a warehouse, raising issues as to vicarious liability for fraud.

- *Macieo Shipping Ltd v Clipper Shipping Lines Ltd* [2000] 1 Lloyd's Rep 645 – claim under a time charter for damage caused by fire, raising issues as to liability for allegedly incompetent stevedores.

Recommendations

He reads the lay of the land and assists to build a case from the very outset. [The Legal 500 UK Bar 2021](#)

A superb strategist and technician, one to keep on speed-dial for important cases. [The Legal 500 UK Bar 2020](#)

Well regarded in the field of public international law. [The Legal 500 UK Bar 2018](#)

A highly rated barrister. [The Legal 500 UK Bar 2017](#)

He prepares advice that is very easy to read and gets to the crux of the issues. [The Legal 500 UK Bar 2017](#)