

Contents

Acknowledgments	xi
Preface	xiii
Contributors	xvii
Introduction	xxvii

Part I

The Adequacy of Existing Rules for Investor-State Arbitration	1
1 Confidentiality and Transparency in Commercial and Investor-State International Arbitration	5
<i>Gary B. Born and Ethan G. Shenkman</i>	
2 To Give or Not to Give Precedential Value to Investment Arbitration Awards?	43
<i>Catherine Kessedjian</i>	
3 Using Treaties to Define Rules of Procedure in Investor-State Arbitration: The CAFTA Example	69
<i>Ucheora O. Onwuamaegbu</i>	
4 Interim Measures and Dismissal under the 2006 ICSID Rules.	89
<i>Carolyn B. Lamm, Hansel T. Pham, and Chiara Giorgetti</i>	
5 An Examination of the Draft Award Circulation Provision of the US Model BIT of 2004	107
<i>Jack J. Coe, Jr.</i>	

Part II

The Future of BITs	125
6 Do BITs Benefit Developing Countries?	131
<i>Susan Rose-Ackerman and Jennifer L. Tobin</i>	

7	BITs of the Last Decade: A Ticking Bomb for States?	145
	<i>Anna Joubin-Bret</i>	
8	What the Explosion of Investor-State Arbitrations May Portend for the Future of BITs	157
	<i>Andrea J. Menaker</i>	
9	Investment Treaties between Developed States: The Dilemma of Dispute Resolution	165
	<i>William S. Dodge</i>	
10	Protection against Arbitrary and Discriminatory Measures	183
	<i>Christoph H. Schreuer</i>	
11	The Effect of BITs on the International Body of Investment Law: The Significance of Fair and Equitable Treatment Provisions . . .	199
	<i>Arif H. Ali and Kassi Tallent</i>	
 Part III		
The Public Functions of Investment Arbitration Decisionmaking . . .		223
12	Tax Arbitration and Investor Protection	227
	<i>William W. Park</i>	
13	The Arbitrator as Guardian of International Public Policy? Should Arbitrators Go Beyond Solving Legal Issues?	249
	<i>Stephan Wilske and Martin Raible</i>	
14	The Retreat of Neo-Liberalism in Investment Treaty Arbitration.	273
	<i>M. Sornarajah</i>	
15	Making Investor-State Arbitration More Accessible to Small and Medium-Sized Enterprises	297
	<i>Lee M. Caplan</i>	
16	Fact-Finding in the Fog: Determining the Facts of Upheavals and Wars in Inter-State Disputes	313
	<i>John R. Crook</i>	
17	Reflections on the Road Ahead: Living with Decentralization in Investment Treaty Arbitration	339
	<i>Charles H. Brower, II</i>	
 Appendixes		357
Index		365