

# CONTENTS

<i>Table of Cases</i>	xvii
<i>Table of Legal Instruments</i>	xxxix
<i>List of Abbreviations</i>	xxxvii
<b>1. Introduction and Delimitation of the Subject</b>	1
A. Introduction	1.01
B. Terminology	1.14
1. The notions of claim and cause of action	1.15
2. The notion of multiple proceedings	1.19
3. The notion of investment treaty arbitration and related notions	1.24
C. Problems Associated with Uncoordinated Multiple Proceedings	1.31
D. Methodology and Scope	1.43
1. Overview of the different chapters	1.44
2. Issues not addressed	1.52
<b>2. Characteristics of the International Investment Framework Leading to Multiple Proceedings</b>	17
A. Multiple Sources of Claims of Investors	2.04
1. The different relevant sources	2.06
2. Contract and treaty claims	2.11
B. Multiple Participants in an Investment Operation	2.32
1. Multiple entities involved on the side of the investor	2.33
2. Multiple entities involved on the side of the host state	2.63
C. Multiple Forums for Investor-state Disputes	2.65
1. Jurisdictional competition	2.67
2. Jurisdictional fragmentation	2.69
3. Consequences	2.73
D. Summary of Key Findings	2.76
<b>3. Determining the Jurisdictions of Competing Forums in the Context of Investment Disputes</b>	45
A. The Need to Differentiate Between Different Types of Claims when Determining the Jurisdictions of Competing Forums	3.04
B. Integrationist and Disintegrationist Approaches to Jurisdiction	3.12
C. Jurisdiction-conferring Mechanisms Under IIAs	3.20
1. Acceptance of the arbitration mechanism under the treaty	3.25
2. Acceptance or confirmation of the jurisdiction of the host state's domestic courts	3.27
3. Confirmation of a previously agreed mechanism	3.31

D. Jurisdiction-conferring Mechanisms Under Domestic Investment Laws	3.33
E. The Notion of Forum Selection Options	3.35
1. Original jurisdiction preceding the exercise of a forum selection option	3.40
2. Scope of jurisdiction of the selected forum	3.54
3. Transfer of jurisdiction through the exercise of a forum selection option	3.83
F. General Waiver of Forum Selection Options	3.86
1. Can an investor waive a forum selection option under a treaty?	3.88
2. Is a forum selection agreement meant to waive a forum selection option?	3.108
G. Extinction and Limitation of Forum Selection Options with Regard to Specific Disputes	3.117
1. Fork in the road provisions	3.119
2. Waiver provisions	3.159
3. General limitation of forum selection options	3.164
H. Conclusion	3.180
I. Summary of Key Findings	3.184
<b>4. Mechanisms for the Coordination of Multiple Investment Proceedings</b>	<b>107</b>
A. Coordination of Proceedings Based on an Explicit Agreement Between the Parties: Consolidation and Quasi-consolidation	4.08
1. Coordination of proceedings through an explicit ad hoc agreement between the parties	4.12
2. Consolidation in case of express consolidation provisions in the relevant rules	4.16
3. Possibility of consolidation in the absence of an explicit agreement?	4.20
B. Coordination of Proceedings in the Absence of an Explicit Agreement Between the Parties: Vertical, Horizontal, and Overarching Mechanisms	4.41
1. Vertical coordination of proceedings where the relationship between two forums is hierarchical	4.49
2. Horizontal mechanisms for the coordination of proceedings in the absence of hierarchy: <i>lis pendens</i> and <i>res judicata</i>	4.51
3. General coordination mechanisms with overarching application to both hierarchical and non-hierarchical situations	4.94
C. The Link Between Agreed Coordination and Default Coordination Mechanisms	4.96
D. Summary of Key Findings	4.102
<b>5. Hierarchy as a Coordinative Mechanism in Investment Treaty Arbitration</b>	<b>141</b>
A. Hierarchy of Forums Based on the Mechanism Establishing Them	5.03
1. Assumption of superiority of ICSID tribunals or investor-state tribunals in general	5.04
2. Assumption of superiority of tribunals established under a treaty mechanism	5.08
3. Assessment	5.10



B. Hierarchy of Forums Based on the Claims on Which They Decide	5.21
1. The standard of review in treaty proceedings with regard to decisions of domestic courts	5.22
2. The standard of review in treaty proceedings with regard to decisions of non-treaty tribunals	5.67
C. Consequences Regarding the Appropriateness of the Different Mechanisms for the Coordination of Proceedings Before Treaty Tribunals	5.72
D. Summary of Key Findings	5.81
<b>6. The Application of <i>Lis Pendens</i> and <i>Res Judicata</i> in Investment Treaty Arbitration</b>	167
A. The Law Applicable to the Coordination of Proceedings Through Principles of <i>Lis Pendens</i> and <i>Res Judicata</i> Before a Treaty Tribunal	6.02
1. The law applicable to the coordination of proceedings through the principle of <i>res judicata</i>	6.03
2. The law applicable to the coordination of proceedings through the principle of <i>lis pendens</i>	6.37
B. <i>Lis Pendens</i> and <i>Res Judicata</i> Under Public International Law	6.40
1. <i>Res judicata</i>	6.41
2. <i>Lis pendens</i>	6.95
C. Consequences for the Application of <i>Lis Pendens</i> and <i>Res Judicata</i> in Investment Treaty Arbitration	6.100
1. The non-application of a strict <i>lis pendens</i> rule	6.101
2. The application of the concept of <i>res judicata</i> in investment treaty arbitration	6.103
D. Summary of Key Findings	6.135
<b>7. Overarching Principles for the Coordination of Multiple Proceedings</b>	208
A. The Principle of Comity	7.02
1. The power of a tribunal to stay proceedings	7.03
2. The precedential value of decisions in related cases	7.24
B. The Prohibition of Abuse of Process	7.29
1. Requirements for a finding of abuse of process in proceedings involving identical parties	7.40
2. Requirements for a finding of abuse of process in proceedings involving different parties	7.44
3. Consequences of an abuse of process	7.52
C. Summary of Key Findings	7.53
<b>8. Summary of Results and Outlook</b>	227
<i>Bibliography</i>	231
<i>Index</i>	253