

CONTENTS

<i>List of figures</i>	page xi
<i>List of tables</i>	xii
<i>List of contributors</i>	xiii
<i>Preface</i>	xv
<i>Acknowledgements</i>	xvii
<i>List of treaties, national legislation, cases and awards</i>	xix

PART I 1

- 1 The worm's view of history and the twailing machine by
C.L. Lim 3

Introduction 3

Muthucumaraswamy Sornarajah 6

Overview of Sornarajah's works 12

Essays for Muthucumaraswamy Sornarajah 33

- 2 The liberal vision of the international law on foreign
investment by Kenneth J. Vandavelde 43

Introduction 43

US postwar FCN treaties as a reflection of liberal
principles 44

Defining liberalism 47

Fashioning a liberal investment regime 51

The emergence of neoliberalism 56

Assessing the liberal vision today 60

Liberalism and its critics 64

Conclusion	67
3 Caveat investors – where do things stand now? by Leon Trakman and David Musayelyan	69
Introduction	69
The new wave of discontent against ISA	70
Arguments for and against ISA	78
Investment agreements of states dissatisfied with ISA	86
Why ISA has retained its resilience	96
Conclusion	98
 PART II	 101
4 Reforming the system of international investment dispute settlement by Gus Van Harten	103
Introduction	103
Professor Sornarajah's contribution	104
Flaws in the official reform model	106
European Commission's adoption of the official reform model	108
Conclusion	129
5 The paranoid style of investment lawyers and arbitrators: investment law norm entrepreneurs and their critics by David Schneiderman	131
Introduction	131
Irreversible?	133
When things fall apart	135
Crisis? What crisis?	145
Conclusion	154
6 The COMESA Common Investment Area: substantive standards and procedural problems in dispute settlement by Peter Muchlinski	156

Introduction	156
Current issues in investor-state dispute settlement	159
Investor-state dispute settlement procedures under the CCIA Agreement	166
Substantive rights of action under the CCIA Agreement	178
Concluding remarks	184
7 Lessons from the negotiations of the United Nations Code of Conduct on Transnational Corporations and related instruments by Karl P. Sauvant	186
 PART III	 195
8 India and investment protection by Aniruddha Rajput	197
Introduction	197
Foreign investment and India	199
Legal framework for foreign investment	203
Protection under international law	210
Protection under municipal law	213
Recent developments	219
Conclusion	221
9 China-US BIT negotiation and the emerging Chinese BIT 4.0 by Wenhua Shan and Hongrui Chen	223
Introduction	223
The background: why a BIT 4.0 now?	224
The issues: what has to be addressed?	232
The features: a model BIT with "Chinese Characteristics"	247
Conclusion	251

PART IV 253

- 10 Regulating foreign investment: *Methanex* revisited by Kyla Tienhaara and Todd Tucker 255
 - Introduction 255
 - The case: *Methanex v. United States of America* 259
 - Academic reaction to the decision 268
 - The legacy of *Methanex* 272
 - Beyond *Methanex*: treaty safeguards 278
 - Conclusions 287
- 11 The new frontier: economic rights of foreign investors versus government policy space for economic development by Howard Mann 289
 - Introduction 289
 - Sustainable development, economic development and income equity 292
 - FDI and economic development: from assumptions to policy action 297
 - Economic development and policy tools 299
 - Tracking the development of international law in respect to the economic development tools and economic rights of transboundary investors 301
 - Mapping the development tools and the trends 320
 - Additional factors in investment treaties 321
 - Conclusion 322
- 12 Giving arbitrators *carte blanche* – fair and equitable treatment in investment treaties by Nathalie Bernasconi-Osterwalder 324
 - Introduction 324
 - The fair and equitable treatment standard in treaties, their interpretation and state reaction 326

Fair and equitable treatment standard explicitly linked to customary international law	330
Looking for new approaches	340
Concluding remarks	344
 PART V	 347
13 Is the umbrella clause not just another treaty clause? by C.L. Lim	349
Introduction	349
The origin and definition of the umbrella clause	351
Sornarajah's scepticism	353
Observing the language of the umbrella clause	356
<i>El Paso</i> : the myth of the 'internationalised' contract lurks still	363
Distinguishing commercial from investment commitments	365
Acta jure imperii	367
Overlap with fair and equitable treatment and other substantive treaty standards	369
Problems with the contractual forum selection clause	369
The doctrine of privity of contract	372
The problem with elevating or internationalising the contractual terms under an umbrella clause	373
Conclusion	374
14 Internationalisation and State contracts: are State contracts the future or the past? by Jean Ho	377
Introduction	377
State contracts as treaties	378
Stabilisation clauses as tools of internationalisation	396

Investment protection and immutable contracts	399
Conclusion	401
PART VI	403
15 State capitalism and sovereign wealth funds: finding a "soft" location in international economic law by Jiangyu Wang	405
Introduction	405
Hard and soft law in international [economic] law	408
State capitalism under "hard" international economic law: WTO regulation of state enterprises	410
The Santiago Principles and their discontents: the developing soft law framework for SWFs	414
Concluding remarks: an "inclusive soft law approach"	425
PART VII	429
16 The many-headed hydra and laws that rage of gain, a chapter in conclusion by C.L. Lim	431
The privatisation of international state responsibility	431
Neo-conservatism	438
Need and greed	439
Sociology and legal doctrine	442
Power and justice	445
The many-headed hydra	449
Privateers bearing letters of marque	452
To spurn the rage of gain	455
<i>Index</i>	457
<i>Author Index</i>	493