List of Contributors ix

Introduction 1
Wenhua Shan and Jinyuan Su

PART 1
Overarching Issues in International Investment Law

1 ICSID and International Investment Treaty Arbitration: Progress and Prospects 9
Meg Kinnear
1 Treaty Design 14
2 Dispute Avoidance 16
3 Application of Substantive Obligations 17
4 Procedure 19
5 Conclusion 22

2 The Past, Present and Future of the International Law on Foreign Investment 23
M. Sornarajah
1 The Past 23
2 The Present 30
3 The Future 40

3 Judicial Administration of Justice in Multilevel Commercial, Trade and Investment Adjudication? 56
Ernst-Ulrich Petersmann
1 Introduction and Methodological Premises 56
2 'Constitutional Justice' Protecting Human Rights: The European 'Kadi' and 'Solange' Jurisprudence 68
3 From 'Westphalian Justice' in the ICJ and the WTO to Multilevel Cosmopolitan Adjudication in HRL and IEL 70
5 Does HRL Require Protecting WTO Law and Dispute Settlement as Cosmopolitan Legal Systems? 89
6 Multilevel Judicial Protection of ‘Cosmopolitan Justice’ in Commercial and Investment Adjudication 97
7 Conclusions: HRL Justifies ‘Constitutional’ and ‘Cosmopolitan Approaches’ to IEL and Adjudication 105

4 The Development by States of Model Bilateral Investment Treaties 116
Chester Brown
1 Introduction 116
2 Introduction to BITs 118
3 Historical Predecessors to the BIT 125
4 Emergence of the (Model) Bilateral Investment Treaty 135
5 Concluding Remarks 140

5 Protection of the Investor’s Legitimate Expectations: Intersection of a Treaty Obligation and a General Principle of Law 141
Shotaro Hamamoto
1 Introduction 141
2 “Tour d’horizon” of Arbitral Jurisprudence 142
3 Legal Basis: A General Principle of Law 156
4 Conclusion 168

PART 2
Chinese Investment Treaties: Key Aspects

6 Factors to be Considered for China’s Future Investment Treaties 173
Yongjie Li
1 Introduction 173
2 China’s BIT Practice 173
3 Global Context 175
4 China’s Domestic Context 176
5 Improvement of Investor-State Dispute Settlement 177
6 Conclusion 179

7 China’s BIT’s and Arbitration Practice: Progress and Problems 180
Norah Gallagher
1 Introduction 180
2 China’s Changing Position on Investment Treaties 183
CONTENTS

3 China's Free Trade Agreement Policy 188
4 Interesting Developments since China Signed the ICSID Convention 190
5 China's Investment Treaty Arbitration Cases 208
6 Conclusion 212

8 China and International Investment Law: An Evolving Relationship 215
   Martin Endicott
   1 The Evolving Relationship 217
   2 Promotion of Inward FDI 221
   3 Driving Factors behind China's Investment Treaty Program 227
   4 Concluding Comments 233

9 The Chinese Investment Treaty Programme, Jurisdictional Challenges and Investment Planning: The Example of Chinese Outbound Investments in the Natural Resources Sector 235
   Nils Eliasson
   1 Introduction 235
   2 Chinese Outbound Natural Resources Investments 237
   3 Investment Treaty Protection of Chinese Natural Resources Investments 238
   4 To What Extent is Investment Protection Strategies Employed by Chinese Companies Investing in the Natural Resources Sector 254
   5 Discussion 258

PART 3
Chinese Investment Treaties: Key Negotiations

10 The Chinese Investment Regime and the US-China BIT Negotiations 263
   Eric Pekar
   1 Introduction 263
   2 The Evolution of China's Investment Treaty Regime 265
   3 BITs and the Chinese Legal System 271
   4 US Domestic Politics, National Security, and BITs 277
   5 Negotiating the US-China BIT 283
   6 Conclusion: Why Negotiate a BIT? 291
11 The Evolution of EU Investment Law and the Future of EU-China Investment Relations 297
   Marc Bungenberg and Catharine Titi
1 The Status Quo of Investment Policymaking in the EU before and after the Entry-into-Force of the Treaty of Lisbon 300
2 History of Chinese International Investment Law Policy and Practice 346
3 A Prospective EU-China IIA 357
4 China-EU Developments in a Broader Context 369
5 Conclusion 370

12 Instituting Investment Claims under the Trans-Pacific Partnership Agreement 372
   Leon E. Trakman
1 Sources of the Investment Chapter 374
2 Key Definitions 375
3 Standards of Treatment 386
4 Modelling Dispute Management under the TPPA 392
5 Australia's Objection to Investor-State Arbitration 402
6 Conclusion 406

13 Joint Interpretations under a Divided TPP Investment Chapter 408
   Mark Feldman
1 Introduction 408
2 Origin and Status of the TPP Negotiations 410
3 A TPP Investment Chapter should not Require Senior Political Level Participation for Joint Interpretations 413
4 Joint Interpretations and the Dispute Settlement Section of a TPP Investment Chapter 420
5 Conclusion 426

Index 429