

INDEX

- abuse of rights, by domestic courts 435
- access
 - to counsel, for developing States 611–13
 - to investment arbitration
 - as public interest issue 307–8
 - and rule of law 142–3
 - for SWFs 177–9
 - waiver/‘no-U-turn’ model of 345–8
 - to markets
 - BIT provisions on 179–81
 - EPA provisions on 218
 - to patented technology, through compulsory licensing 487–8
- ACP (African, Caribbean and Pacific) States, and EU 209–15, 493
- ad hoc investment arbitrations
 - bias challenges in 30–1
 - versus institutional arbitration 383–4
- administrative law, global 148, 159
 - investment arbitration as 7, 145–7, 155–7, 159
- admissibility
 - of claims, and investor misconduct 196–7, 198, 199–200
 - of interpretative materials 73, 76–7
 - and jurisdiction 192–3, 198
 - powers of arbitration tribunals to rule on 193–6
- Africa
 - food security concerns in 542
 - foreign land leases in 542–4
- agency rights, in investor–State arbitration 81–2, 84
- Ago, Roberto 249, 250, 252, 270
- Ahdieh, Robert 299
- Albania, bilateral investment treaty with Greece, arbitration on 231–3
- Alexandrov, Stanimir A. 33–4
- Allee, T. L. 613
- Alvarez, José 93–4
- amici curiae* participation in arbitration 158–9, 299, 360–2, 581–2
 - by EU Commission 8, 310–14, 319–20, 330–3, 335–6
 - by EU Member States 314
 - ICSID rules on 303, 304–5
 - NAFTA rules on 305–6, 321–2, 357–8, 360–2
 - by NGOs 319, 327–30, 378–9, 380
 - by sub-national government units 303–5, 307, 314–15
 - practice 310–14
 - Quechan Indian tribe as 306–7, 310, 361–2
 - rules and impediments 308–10
 - in UNCITRAL arbitrations 380
 - see also* non-disputing parties’ participation
- Amnesty International, on negative impact of stabilisation clauses on human rights 525–6
- ‘amount of compensation’ clauses 409–11, 412
 - arbitration on 425, 428
 - limited to jurisdiction over quantum 412–16, 425–6
 - not limited to jurisdiction over quantum 416–25, 426–7

- Anaya, James 467–8
 annulment of awards
 in ICSID arbitrations 402, 403
 procedural rules on 401–3, 456–7
 apparent bias principle, in bias challenges against arbitrators 451
 appearance of bias test 32–4, 35–6
 arbitration tribunals
 on essential interests 249–50
 powers to rule on admissibility issues 193–6
 quality of 670–1
 see also commercial arbitration;
 international arbitration;
 investment arbitration;
 jurisdiction of courts/
 tribunals
 arbitrators
 appointment of, UNCITRAL rules on 385–8
 bias challenges against 12
 in commercial arbitration 445
 apparent bias principle in 451
 case law 452–4
 rules on 447–9
 tests for determination of 454–6
 in England, Wales and Northern Ireland 24–6
 and European Convention on Human Rights 27–9, 35–6
 IBA guidelines on 28–9, 447–8, 450–1
 application of 32–6
 in commercial arbitration 452–4, 456
 in investment arbitration 471, 472, 473
 in investment arbitration 28–9, 445–6, 481–2, 647–8
 case law 29–36, 390–1, 450, 461–78
 ICSID rules on 28, 389–90, 391–2, 457–9, 459–61
 UNCITRAL rules on 388–92
 outcome preferences 449
 case law 449
 party preferences 448–9
 tactical use of 450
 tests applied in
 appearance of bias test 32–4, 35–6
 in commercial arbitration 454–6
 justifiable doubts test 24, 29–30, 31, 390–1, 475
 manifest lack of capacity/
 independence test 28, 458–9, 464, 465–6, 469–70, 480–1
 real danger/risk test 24, 455–6, 465, 472
 in United States 26–7
 ICSID Panel of 385
 methodologies used by 115–16
 neutrality of 649
 revocation of authority of, by domestic courts 435, 438–9, 440
 role confusion issues/issue conflicts of 5, 20–1, 22–4, 159
 at Court of Arbitration for Sport (CAS) 37–9
 disclosure requirements 39
 ICJ on 36–7
 in investment arbitration 479–81
 restrictions 39–41
 roles of 102–3, 104, 115, 158–9, 478–9
- Argentina
 bilateral investment treaties of
 with Australia 146–7
 with China 595
 with Germany, arbitration on 601
 with Netherlands 373
 with United Kingdom 290–1, 374
 with United States, arbitration on 91–2, 93–4, 182–6
 foreign contract for privatised water supply in Buenos Aires, arbitration on 582–4
 investment arbitration cases
 concerning economic crisis 91–2, 93–4, 182–6, 228–30, 640, 652

- necessity defences in 246–7, 250–3, 254
 - and compensation claims 261
 - State's own contribution to crisis 258–60
- ASEAN Comprehensive Investment Agreement (2009) 281
- asymmetrical reciprocity 211–13, 217
- Australia
 - bilateral investment treaty with Argentina 146–7
 - free trade agreement with United States 492
- Austria, bilateral investment treaty with Slovak Republic, arbitration on 415–16
- authority of arbitrators, revocation by domestic courts of 435, 438–9, 440
- Baku–Tbilisi–Ceyhan (BTC) pipeline project
 - human rights criticism on 525
 - responses to 531–4
- Bangladesh
 - bilateral investment treaty with Italy arbitration on 418
 - ICSID tribunal's decision on 433–41
 - interference by domestic courts 431–3
- Beauvais, J. C. 616
- Been, V. 616
- Belgium
 - bilateral investment treaties of
 - with Czech Republic, arbitration on 418–20
 - with Ethiopia 562–4
 - with Soviet Union, arbitration on 413–14
 - with Zimbabwe 555–6
- beneficiary rights, in investor–State arbitration 81–2
- Berman, Franklin 15, 151, 153–4
- bias challenges against judges/arbitrators 12
 - in commercial arbitration 445
 - apparent bias principle in 451
 - case law 452–6
 - rules on 447–9
- in England, Wales and Northern Ireland 24–6
- and European Convention on Human Rights 27–9, 35–6
- IBA guidelines on 28–9, 447–8, 450–1
 - application of 32–3
 - in commercial arbitration 452–4, 456
 - in investment arbitration 471, 472, 473
- in investment arbitration 12, 28–9, 445–6, 481–2, 647–8
 - case law 29–36, 390–1, 450, 461–78
 - ICSID rules on 389–90, 391–2, 457–9, 459–61
 - merits prejudgments 446, 471–2
 - UNCITRAL rules on 388–92, 469
- outcome preferences 449
 - case law 449
- party preferences 448–9
- tactical use of 450
- tests applied in
 - appearance of bias test 32–4, 35–6
 - in commercial arbitration 454–6
 - justifiable doubts test 24, 29–30, 31, 390–1, 475
 - manifest lack of capacity/independence test 28, 458–9, 464, 465–6, 469–70, 480–1
 - real danger/risk tests 24, 455–6, 465, 472
- in United States 26–7
- BITs (bilateral investment treaties) 99–101
 - clauses/provisions in
 - on access to markets 179–81
 - on amount of compensation 409–11, 412
 - on denial of benefits 644
 - on dispute resolution 373–5, 636–7

- BITs (bilateral investment treaties)
 (cont.)
 on environmental protection
 and labour rights 562–4
 on expropriation 147, 276–9
 on intellectual property
 protection 486, 496–503
 and TRIPS flexibilities 504–8,
 510, 511–15
 on investment concept 57–8,
 60–1, 398–9
 on non-precluded measures
 533–4
 on public interest issues 554–7,
 562–8
 on recourse for protectionist
 measures against SWFs
 164, 178–81
 self-judging 181–2, 186
 umbrella 552–4
 customary international law created
 by 635–6
 of developing States 105–6, 634–5
 environmental protection and
 labour rights in 556, 567–8
 of European/EU countries 180, 203,
 204–7, 216
 foreign direct investments promoted
 by 131–3, 144
 objectives/goals of 105–6, 111, 291–3
 economic development 593–5
 and necessity doctrine use 256–7
 non-economic 290–4, 295
 as public law documents 146–7
 reappraisal of/new generation 9,
 273–4, 295, 529
 defences against expansionist
 views of investment law
 in 638–40, 656
 expropriation treatment standard
 276–9
 fair and equitable treatment
 standard 279–84
 general exceptions clauses 287–90
 interpretative language included
 in 275–6, 278
 non-discrimination standard
 285–6
 non-economic policy objectives
 in 290–4, 295
 public interest issues included in
 562–8
see also individual countries,
 bilateral investment
 treaties of
 Björk (musician) 265
 Bjorklund, Andrea 10, 253, 261, 343
 Bolivia, privatisation of water supply in
 Cochabamba, arbitration
 on 578
 Bonnitche, Jonathan 6–7
 breaches of fair and equitable treatment
 standard 226–7, 228–9
 Brower, Charles 32–3, 470–1
 Brownlie, Ian 44
 BTC *see* Baku–Tbilisi–Ceyhan (BTC)
 pipeline project
 Buenos Aires (province), privatised
 water supply contract in,
 arbitration on 582–4
 Buergenthal, Tom 40
 Bulgaria, bilateral investment treaty
 with Cyprus, arbitration
 on 412–13
 Burgstaller, Markus 7–8
 Burke-White, W. W. 261
 CAFTA (Central American Free Trade
 Agreement) 492–3
 Cameron, Peter 526
 Cameroon, pipeline project with Chad,
 human rights criticism on
 contract for 525–6
 Canada
 bilateral investment treaties of
 with Colombia 294
 with Costa Rica 626
 Model BIT (2004) 287–8
 with Venezuela 374
 capital-exporting States
 advantages of BITs to 106
 distinction with capital-importing
 States blurred 112–13
 public and private interests
 congruence in 112
see also home States

- Cardwell, Paul James 8
- CARIFORUM States, European Partnership Agreement with EU 215–21, 493–4
- Carroll, Lee 12
- Central American Free Trade Agreement *see* CAFTA
- Chad–Cameroon pipeline project, human rights criticism on contract for 525–6
- change in law, definitions of 521–2
- China
 - bilateral investment treaties of
 - with Argentina 595
 - with Germany 594–5
 - with New Zealand 409–10
 - with Peru, arbitration on 422–5, 426–7
 - public interest issues in 556
 - foreign investment policies of 167–8, 175
 - foreign land leases promoted by 545–6
 - free trade agreement with New Zealand 411–12
- China–Africa Development Fund 545
- claims in investment arbitration
 - admissibility of
 - and investor misconduct 196–7, 198, 199–200
 - powers of tribunals to rule on 193–6
 - consolidation of 348–55
 - frivolous, procedural rules on disposal of 393–5
- Cochabamba (Bolivia), privatisation of water supply in, arbitration on 578
- codes of conduct, for SWFs 173
- Coe, Jack 356–7, 610, 611
- coherence, in international investment law 340–3, 344, 365
- Colombia, bilateral investment treaty with Canada 294
- COMESA Common Investment Area Agreement (2007) 279, 286, 289
- commercial arbitration 159
 - bias challenges in 445
 - apparent bias principle in 451
 - case law 452–6
 - rules on 447–9
 - investment arbitration as 149, 649
 - commercial presence notion 217–18
 - commercial risks 62–3
 - compensation
 - ‘amount of compensation’ clauses 409–11, 412
 - arbitration on 425, 428
 - limited to jurisdiction over quantum 412–16, 425–6
 - not limited to jurisdiction over quantum 416–25, 426–7
 - in investment arbitration awards 12
 - adjusted to circumstances of host State 241–5
 - enforcement of 12
 - for justified actions under necessity doctrine 261–3
 - see also* damages assessment
- compliance
 - with investment arbitration awards 404–5
 - see also* enforcement of investment arbitration awards
 - with local laws, requirement for foreign direct investments 647
- compulsory licensing, of patented technology 487–8
- conduct
 - codes of, for SWFs 173
 - see also* misconduct
- confidentiality issues *see* disclosure, of documents/proceedings in investment arbitration
- conflicts of interest *see* issue conflicts/role confusion issues of arbitrators and counsels
- consequential evaluation method 118
- context, as element in treaty interpretation 668
- contracts between host States and investors
 - environmental protection provisions in 557–8

- contracts between host States and investors (cont.)
 - stabilisation clauses in 13, 516, 517–25, 558–62, 651–2
 - and BIT umbrella clauses 554
 - IBA seeking prohibition of 528–30
 - impact on sustainable
 - development of 516–17, 530, 537
 - on environmental protection 526
 - on human rights 525–6
 - investor responses to criticism/alternatives 531–7, 538
 - research into 527–8
- Costa Rica
 - bilateral investment treaties of
 - with Canada 626
 - with Netherlands 555
 - investment arbitration threats dealt by 618–26
- costs
 - of investment arbitration
 - decisions on 400
 - procedural rules on 399–401
 - of water supply 577–8
- Cotonou Agreement (EC–ACP States) 493
- counsel
 - access to, for developing States 611–13
 - bias challenges against 475–8
 - quality of arguments produced by 670
 - role confusion issues/issue conflicts of 5, 20–1, 22–4, 31
 - at Court of Arbitration for Sport 37–9
 - disclosure requirements 39
 - restrictions 39–41
- Court of Arbitration for Sport (CAS),
 - prohibition to switch roles between arbitrators and counsel at 37–9
- Crawford, James 81
- Cremades, Bernardo 198–9
- Crockett, Antony 13
- Cuba, bilateral investment treaty with United Kingdom 594
- customary international law
 - apparent bias principle in 451
 - applied in investment arbitration
 - 66–7, 89–92, 93–4, 95–6, 152, 154, 663–4
 - diplomatic protection rules
 - 80–6, 112
 - on interpretation of treaties 69, 70–80
 - and investment law 6, 65–6, 107–8, 665–6
 - BITs 635–6
 - historical developments 68–9, 94–5
 - interpretative approaches to
 - 67–8, 69–70, 95
 - primary investment obligations
 - 86–91
 - minimum standard of treatment in, and fair and equitable treatment standard
 - 240–1, 281–5, 363–5, 652–3
 - on necessity doctrine 248–9
- Cyprus, bilateral investment treaty with Bulgaria, arbitration on 412–13
- Czech Republic, bilateral investment treaty with Belgo-Luxembourg, arbitration on 418–20
- Daewoo corporation, land lease deal in Madagascar 539–40
- damages assessment
 - and investor misconduct 191–2
 - see also* compensation
- Dar es Salaam
 - foreign contract for privatised water supply in 577
 - arbitration on 580–2
- de minimis*, applied in investment arbitration 463
- Dealing in Virtue* (Dezalay) 39
- DeBoos, Jonathon 12
- definitions 43
 - of changes in law 521–2
 - of host State development needs 602–5
 - of investments 44–5, 47–8, 64
 - see also* investment concept

- denial of benefits, BIT provisions
 - on 644
- denial of justice, in application of fair and equitable treatment
 - standard 231–4, 284–5
- developing States
 - access to counsel in investment arbitration 611–13
 - bilateral investment treaties of
 - 105–6, 634–5
 - environmental protection and labour rights in 556, 567–8
 - foreign land leases in 539–41, 542–50 and international investment law 13–14, 541, 550, 568–9
 - host State–investor contracts of, and stabilisation clauses 559
 - privatisation of water supply by 577–9, 584–5
- development policies, of EU 221–2
- devolutionary sentiments, and federalism 314
- Dezalay, Yves 39
- diplomatic protections rules, applied in investment arbitration 80–6, 112
- disclosure
 - of documents/proceedings in investment arbitration 323–7
 - UNCITRAL rules on 378–80, 406–7
 - requirements in issue
 - conflicts/biases 39
 - see also* transparency
- dispute resolution clauses, in investment treaties 369, 373–5, 411–12, 636–7
- disputing parties, concerns over
 - non-disputing parties' participation 334
- distributive effects of investment treaty
 - protections 119, 123–4, 144
- egalitarian analysis of 121–2
- libertarian analysis of 120–1
- utilitarian analysis of 123
- distributive justice 119–20
 - egalitarian theories of 121–2
 - libertarian theories of 120–1
 - utilitarian theories of 122–3
- Doha Declaration on the TRIPS Agreement and Public Health (2001) 486–8
- Dolzer, R. 225, 382–3, 403
- domestic courts
 - authority of arbitrators revoked by 435, 438–9, 440
 - bias challenges against judges/arbitrators in 24
 - interference with enforcement of investment arbitration awards by 431, 441–3, 444
 - in Bangladesh 431–3
 - ICSID on 433–41, 444
 - merits reviews of investment arbitration awards by 429–30
- proceedings at
 - on privatised water supplies contracts 578
 - provisional measures 392–3
 - simultaneous with international arbitration 346–8
 - recognition of international arbitration awards by 404
- Dominican Republic, free trade agreement with United States 380–1
- Douglas, Zachary 80–1, 82–3, 239
- Driver, A. W. 403–4
- economic activities 46–7, 62–3
- economic analyses, of public–private dualities in international investment law 111–14
- economic crises
 - in Argentina
 - investment arbitrations resulting from 91–2, 93–4, 182–6, 228–30, 640, 652
 - necessity defences in 246–7, 250–3, 254
 - and compensation claims 261
 - State's own contribution to crisis 258–60
 - see also* financial crises

- economic development 111
 - in EPAs (EU) 211–13
 - foreign direct investments
 - contributing to 53–4, 63, 130–1, 144, 602–5
 - and international investment law
 - 13–14, 104–8, 605
 - in arbitrations 595–602, 605, 645–6
 - host State development needs
 - 13–14, 104–8, 586–8, 605
 - goals of investment treaties 590–5
 - see also* sustainable development
- economic rescue plans, investment treaties violated by 247–8
- economics, neo-classical 123, 125
- efficiency 124–5
 - effects of investment treaties 125–6, 129–30, 144
 - on government decisions 127–8, 129
 - on investor decisions 128–9
 - and neo-classical model of markets 125
- egalitarian theories, of distributive justice 121–2
- Eggertsson, Thráinn 266–7
- El Salvador, bilateral investment treaty with Peru 556–7
- El-Koshery, Ahmed 451
- emergency, determination of 487–8
- Energy Charter Treaty 592
 - Model Host Government Agreement of 535–6
- enforcement of investment arbitration
 - awards 12, 403–5
 - ICSID Convention on 403–4, 456–7
 - interference by domestic courts
 - 431–3, 441–3, 444
 - ICSID on 433–41, 444
 - New York Convention on 404, 429–31
 - interpretations of 443–4
 - violations of 435–6, 439–41
 - on stabilisation clauses 522–3
- England, Wales and Northern Ireland
 - see* United Kingdom
- environmental protection
 - in BITs 562–4
 - and foreign land leases 568–9
 - US Model BIT 564–5
- expropriation for purposes of, arbitration on 550–2
- in free trade agreements of United States 565–7
- impact of foreign land leases in developing countries on 547–9
- impact of stabilisation clauses on 526
 - responses to criticism/alternatives 531–7, 538
- investment treaties realising
 - promotion of 139–40, 144
- in investor–State contracts 557–8
- EPAs (economic partnership agreements, EU)
 - development focus of 8, 211–13
 - investment provisions of 202, 213–15
 - with CARIFORUM States 215–21, 493–4
- Epstein, Richard 120
- essential interests defences 249–50, 255–6
 - in investment arbitration 181–6
 - see also* necessity defences
- ethics, in investment arbitration 5
- Ethiopia
 - bilateral investment treaty with
 - Belgo-Luxembourg 562–4
 - foreign direct investment promoted in 539
 - foreign land leases in 544
 - social impact of 549–50
- Europe, BITs in 180
- European Convention on Human Rights, on fair trial rights, and arbitrator independence 27–8, 35–6
- European Court of Human Rights, on arbitrator independence 35–6

- European Union (EU)
 and ACP States 209–15, 493
amici curiae participation in
 investment arbitration
 by 8, 310–14, 319–20,
 330–3, 335–6
 development policies of 221–2
 EPAs/free trade agreements of
 development focus of 8, 211–13
 intellectual property protection
 in 493–4
 investment provisions of 8, 202,
 213–15, 495–6
 with CARIFORUM States
 215–21, 493–4
 FDI approaches of 201–4,
 221–2
 inclusion in Treaty framework
 204–9
 Member States, BITs of 203,
 204–7, 216
 evaluations, consequential method of 118
 evidence
 for regulatory chill effects of
 investment treaties 135–6,
 616–18
 rules of, in arbitration proceedings
 437–8, 439
 exceptions clauses, general, in
 investment treaties
 287–90, 554
 exhaustion, of patented rights 488
 expertise, of non-disputing parties 335
 expropriation
 arbitrations on 276–8, 655–6
 and ‘amount of compensation’
 clauses 425, 428
 jurisdiction limited to quantum
 412–16
 jurisdiction not limited to
 quantum 416–25, 426–7
 and environmental protection
 concerns 550–2
 at NAFTA 156–7
 of intellectual property rights
 496–503, 515
 provisions in BITs on 147, 276–9
see also indirect expropriation
 fair and equitable treatment standard
 109–10, 114–15, 147
 application of 87–8, 110–11, 115,
 223–4, 225–6, 231, 280–1
 and Argentinean financial crisis
 228–30
 breaches established 226–7, 228–9
 as denial of justice 231–4, 284–5
 developments in 650–5
 and host States uncertainty 8–9,
 236–7, 238–44, 245
 no breaches established 230
 in investment treaties 224–7, 279–84
 legitimate expectations concept as
 element of 234–6, 239,
 523–4, 651
 and minimum standard of treatment
 240–1, 281–2, 284–5, 363–5,
 652–3
 and stabilisation clauses 523, 537–8
Fedax/Salini criteria *see* *Salini* criteria/
 test for investments
 federalism 299, 314
 financial crises
 global
 invocation of necessity defences in
 264, 268, 269
 Icesave dispute 267–8
see also economic crises
 Fitzmaurice, G. 192
 Fleming, Ian 187–8
 food security concerns
 in Africa 542
 global 542
 Foote, Simon 5–6
 foreign direct investments (FDI)
 compliance with local laws
 requirement 647
 economic benefits of 53–4, 63,
 130–1, 144, 602–5
 EU approaches to 201–4,
 221–2
 in EPAs 8, 202, 213–15
 with CARIFORUM States
 215–21, 493–4
 in Treaty framework 204–9
 promotion of
 by BITs 131–3, 144

- foreign direct investments (FDI)
 - (cont.)
 - for development needs 586–8
 - by Ethiopia 539
 - screening of 170–1
 - in water supplies of developing States 579, 584–5
 - arbitration on 570–1, 578, 579–83
- foreign land leases
 - in developing States 539–41, 542–50
 - and international investment law 13–14, 541, 550, 568–9
- forum-shopping, in investment arbitration 343
- France, protectionist measures against SWFs in 170
- Frankfurter, Justice 156
- free trade agreements
 - intellectual property protection in 486, 491–5
 - and TRIPS flexibilities 504–8, 509–10, 511–15
 - see also* individual countries, free trade agreements of
- freezing clauses in host State–investor contracts 518, 520–1
 - see also* stabilisation clauses in host State–investor contracts
- French, Duncan 8
- frivolous claims, procedural rules on disposal of 393–5
- full protection and security standard 231–3, 363–5
- al-Gaddafi, Muammar 541
- Gaillard, Emmanuel 29–30
- Gallus, Nick 8–9
- García-Bolívar, Omar 14
- GATS (General Agreement on Trade in Services), investment dispute settlement by 175–6
- GATT (General Agreement on Tariffs and Trade), investment concept in 44
- Germany
 - bilateral investment treaties of
 - with Argentina, arbitration on 601
 - with China 594–5
 - with Israel 594
 - with Russia, arbitration on 416–17
 - with Saudi Arabia 178
 - protectionist measures against SWFs in 171
- Ginsburg, T. 142
- Gísladottir, Solrun 266
- global administrative law 148, 159
 - investment arbitration as 7, 145–7, 155–7, 159
- global financial crises
 - invocation of necessity defences in 264, 268, 269
 - Icesave dispute 267–8
- global food security concerns 542
- global law market, perceptions of 104–5
- good governance standards, and fair and equitable treatment standard 653
- Gottwald, E. J. 612
- governments
 - awareness of international investment law of 610–11
 - beliefs and expectations about investment arbitration of 614–16
 - bounded rationality of 614
 - changing roles of 165–6
 - decision-making by
 - efficiency of 127–8, 129
 - see also* regulatory chill
 - see also* host States; sub-national government entities
- grave and imminent peril, necessity defences for avoidance of 250–2
- Greece, bilateral investment treaty with Albania, arbitration on 231–3
- Gross, S. 138
- Guinea Savannah area (Africa)
 - foreign land leases in 542–4
 - environmental impact of 547–8
- Happ, R. 49
- Harrington, Alexandra 9

- Harten, Gus van 141–2, 145–6
 Heilberg, Philippe 546
 Hicks-Kaldor efficiency 124–5
 home States of SWF activities
 concerns over investment strategies 168–9
 see also capital-exporting States
 host States
 as capital-exporting States 112–13
 contracts with investors
 environmental protection in 557–8
 stabilisation clauses in 13, 516, 517–25, 558–62, 651–2
 and BIT umbrella clauses 554
 IBA seeking prohibition of 528–30
 impact on sustainable development 516–17, 525–6, 530, 537
 investment arbitration on 522–4, 537–8, 560, 561
 investor responses to criticism/alternatives 531–4, 538
 research into 527–8
 economic development needs of foreign direct investments contributing to 53–4, 63, 130–1, 144, 602–5
 and international investment law 13–14, 104–8, 586–8, 605
 in arbitrations 595–602, 605, 645–6
 goals of investment treaties 590–5
 intentions of, and investment treaty interpretation 588
 and investment arbitration
 circumstances taken into account 234–5, 237, 241–5
 negative impacts of 613
 and investors 8
 misconduct cases, defence on the merits 191
 necessity of negotiations between 536
 rule of law in, promoted by investment treaties 142–3, 144
 sovereignty of
 limitations in expropriation treatment standards 276–9
 limitations in fair and equitable treatment standard 280–1
 misuse of 188
 and SWF activities
 concerns over 168
 protectionist measures against 163–4
 in BITs 164, 178–81
 in ICSID Convention 177–9
 international law protection against 175–7, 186
 necessity and essential interests defences 181–6
 uncertainty of, in fair and equitable treatment standard application 8–9, 236–7, 238–44, 245
 human rights
 law/treaties 660–1
 and stabilisation clauses in host State–investor contracts 525–6, 530
 responses to criticism 531–4
 protection through investment treaties 139–40, 144
 to water 571–5
 and international investment law 14, 570, 584, 585
 investment arbitration on 570–1, 578, 579–83
 Hungary, bilateral investment treaty with Norway, arbitration on 417–18
 IBA (International Bar Association)
 Guidelines on Conflicts of Interest in International Arbitration 28–9, 447–8, 450–1
 application of 32–6

- IBA (International Bar Association)
 (cont.)
 in commercial arbitration
 452–4, 456
 in investment arbitration
 471, 472, 473
 response to OECD guidelines on
 multinational enterprises
 528–30
 on tactical use of bias challenges 450
- ICC (International Court of
 Arbitration), investment
 arbitrations by 431–3
- Icesave dispute 264–7
 and necessity doctrine 267–8
- ICSID Convention (Convention for the
 Settlement of Investment
 Disputes between States
 and Nationals of other
 States) 382–3
- arbitrations 84–5, 369–70, 473–5
 annulment decisions in 402, 403
 bias challenges in 31, 32–3, 35–6,
 390–1, 461–78
 on domestic court interference
 on enforcement of
 arbitration awards 433–41,
 444
 investment concept applied in
 48–58, 59–60, 396–7
 and economic development
 595–601, 645–6
 jurisdictional and prescriptive
 approaches to 50–7, 63
 nationality requirement applied in
 397–8
 non-disputing parties’
 participation in 323–9,
 330–3, 337–8
 on privatised water supplies
 contracts 579–83
 SWF access to 177–9
 transparency of 334–5
 goals/purposes of 590–2
 investment concept in 5–6, 44–5,
 47–8, 586
 application of 48–58, 59–60,
 396–7
- and economic development
 595–601, 645–6
 jurisdictional and prescriptive
 approaches to 50–7, 63
 and economic activities 46–7
 jurisdiction/scope of 42–3, 56–7,
 63, 64, 395–6
 on law applicable to investment
 arbitration 662, 663
 procedural rules of 11, 407–8
 on *amici curiae*/non-disputing
 parties’ participation
 303, 304–5, 319, 320–1,
 322, 378–9
 on annulment of awards 401
 on appointment of/standards for
 arbitrators 28, 385,
 389–92, 457–9,
 459–61
 on costs 399
 on disclosure of documents/
 proceedings 378, 379
 on disposal of frivolous claims
 393–5
 on enforcement of awards 403–4,
 456–7
 on jurisdictional limitations 395–6
 on provisional measures 392–3
 on sub-national government units
 as respondents 301
- IISD (International Institute for
 Sustainable Development),
 Model Agreement on
 International Investment
 595
- IMF (International Monetary Fund),
 voluntary code of conduct
 for SWFs (Santiago
 Principles, 2008) 173
- imports, parallel, of patented
 medicines 488
- India, bilateral investment treaty with
 Singapore 294
- indirect expropriation 276–8, 498–501
 and implementation of TRIPS
 flexibilities 501–4, 515
- individual rights
 in investment arbitration 113, 642–4

- in investment treaties/law 81, 108–9, 342, 660–1
 - ICJ on 83
- industrial flight, fears of 609
- inference, bias challenges based
 - on 466, 468–9, 473
- intellectual property protection
 - 485, 490
 - flexibilities on public health issues in 486–90
- in free trade agreements 486, 491–5
- and international investment law/
 - treaties 13, 485–6, 490–1, 508–14
 - in BITs 486, 496–503
 - and TRIPS flexibilities 504–8, 509–10, 511–15
- negative rights in 489–90
- interim measures *see* provisional measures
- international arbitration *see* arbitration
 - tribunals, commercial
 - arbitration, investment
 - arbitration
- international commercial law
 - apparent bias principle in 451
 - see also* commercial arbitration
- international community
 - soft law measures for regulation of SWF activities 171–3
 - responses to 173–5
- International Court of Justice (ICJ)
 - on customary international law references 78, 79
 - on individual rights in investment treaties 83
 - on invocation of necessity doctrine 250, 252
- Practice Directions (2001) on
 - appointment of ad hoc judges 36–7
- on relevant rules 74
- on self-judging clauses 181
- International Covenant on Economic, Social and Cultural Rights (ICESCR, UN), on right to water 573
- International Criminal Tribunal for the Former Yugoslavia, on
 - independence of judges 22
- international investment law 13, 99–101
 - applied in
 - historical developments 68–9, 94–5
 - interpretative approaches to 67–8, 69–70, 95
 - primary investment obligations 86–91
- awareness of, of regulators 610–11
- and customary international law 6, 65–6, 107–8, 665–6
- BITs 635–6
- case law *see* investment
 - arbitrations/investor–State
 - arbitration, customary
 - law rules
- development of 4–5, 15–16, 102, 343–4, 365, 631–2
- cross-fertilisation and
 - collaboration with other disciplines 627
- by investment arbitration 662–4
- neoliberal influences 648–50
- new actors in 7, 10
- and economic development needs of
 - host States 13–14, 104–8, 586–8, 605
- foreign land leases 13–14, 541, 550, 568–9
- and intellectual property protection
 - 13, 485–6, 490–1, 508–14
- norm conflicts in 511–14, 634–5, 657
- protection for SWFs in 175–7, 186
- as public international law 149–50, 152–4
- public–private dualities in 4–5, 6, 97–9, 108–11, 659–62
 - economic analysis of 111–14
 - impact of 114–16
- regime of
 - coherence of 340–3, 344, 365
 - expansionist views of 638–40, 656
 - holistic views of 7
 - interests served by 108–11
 - legitimacy of 296–7
 - normlessness in 633–4

- international investment law (cont.)
 - rights in
 - individual 81, 108–9, 342, 660–1
 - to water 14, 570, 584, 585
 - State obligations in 106–8
 - loss of control over 113–14
 - see also* investment arbitration; investment treaties
- international law
 - and host State–investor contracts 518–20
 - norm conflicts in 508–9, 510–11
 - private power role in construction of 653–4
 - see also* customary international law; international commercial law; international investment law; public international law
- International Law Commission (ILC)
 - on coherence in legal systems 344
 - on essential interests 249
 - on interpretation of treaties 151
 - and international customary law rules 75–7
 - on necessity doctrine 248–9, 252, 254, 256, 263
 - and compensation claims for justified actions 261–2
- interpretation of treaties *see* treaties, interpretation of, Vienna Convention on the Law of Treaties
- interpretative weight, given to customary law rules 74–7
- interveners 158–9
- investment arbitration/investor–State arbitration 81, 82–3, 101–4, 446
 - access to
 - as public interest issue 307–8
 - and rule of law 142–3
 - waiver/‘no-U-turn’ model of 345–8
 - ad hoc versus institutional 383–4
 - amici curiae*/non-disputing parties’ participation in 11, 158–9, 299, 314–15, 319, 337, 357–8, 360–2, 380, 581–2
 - dangers of 335–7
 - EU Commission 8, 310–14, 319–20, 330–3, 335–6
 - EU Member States 314
 - NGOs 319, 327–30, 380
 - practice 310–14, 323–9, 330–3, 337–8
 - procedural rules on 305–6, 308–10, 319, 320–2, 357–8, 378–9
 - Quechan Indian tribe as 306–7, 310, 361–2
 - reasons for 334–5
 - on ‘amount of compensation’
 - clauses 425, 428
 - limited to jurisdiction over quantum 412–16, 425–6
 - not limited to jurisdiction over quantum 416–25, 426–7
 - bias challenges in 12, 28–9, 445–6, 481–2, 647–8
 - case law 29–36, 390–1, 450, 461–78
 - merits prejudgments 446, 471–2
 - procedural rules on 388–92, 457–61
 - as commercial arbitration 149, 649
 - compensation awarded in 12
 - adjusted to circumstances of host State 241–5
 - enforcement of 12
 - customary law rules applied in 66–7, 89–91, 91–2, 93–4, 95–6, 152, 154, 663–4
 - diplomatic protection rules 80–6, 112
 - development of 6–7, 14–15, 19–20, 157–9, 296, 339–40, 343–4, 632–3, 637–8, 658–9
 - excesses in 641–2, 642–8
 - future 656–7
 - normlessness 15, 641
 - politicisation 335–6
 - professionalism needed in 672
 - uncertainty/legitimacy crisis 614
 - doctrine of precedent in 158, 462, 478–9

- economic development as
 - consideration in 595–602, 605, 645–6
- enforcement of awards in 12, 403–5
 - interference by domestic courts 431–3, 441–3, 444
 - ICSID on 433–41, 444
 - New York Convention on 404, 429–31
 - interpretations of 443–4
 - violations of 435–6, 439–41
- on expropriation 276–8, 655–6
 - for environmental protection purposes 550–2
- fair and equitable treatment
 - standard applied in 87–8, 110–11, 115, 223–4, 225–6, 231, 280–1
 - and Argentinean financial crisis 228–30
 - breaches established 226–7, 228–9
 - and denial of justice 231–4, 284–5
 - developments in 650–5
 - and host State uncertainty 8–9, 236–7, 238–44, 245
 - and minimum standard of treatment 282–4, 652–3
 - no breaches established 230
 - protection of legitimate expectations element in 234–6, 239
- forum-shopping in 343
- fragmented nature of 340–1, 365, 664
- as global administrative law 7, 145–7, 155–7, 159
- individual investors as party to 113, 642–4
 - see also* individual rights
- on intellectual property protection and TRIPS flexibilities 505–7
- international investment law
 - development by 662–4
- and investor misconduct 188–90, 199
 - admissibility of claims 196–198, 199–200
 - damages assessment and sanctions 191–2
 - host State defence on the merits 191
 - jurisdiction of tribunals 191, 198–9
 - law applicable to 662, 663
 - necessity defences in 9, 93–4, 152–3, 247–8, 269–70
 - Argentinean cases 246–7, 250–253, 254
 - and compensation claims 261
 - State's own contribution to crisis 258–60
 - in financial crises 264, 268, 269
 - Icesave dispute 267–8
 - of host States against SWFs 181–6
 - negative impacts for host States of 613
 - non-discrimination standard applied in 285
 - on privatised water supplies contracts 570–1, 578, 579–83
 - procedural rules in 10–12, 407–8
 - on *amici curiae*/non-disputing parties' participation 305–6, 308–10, 319, 320–2, 357–8, 378–9
 - on annulment of awards 401–3, 456–7
 - on bias challenges 388–92, 457–61
 - on consolidation of claims 348–55
 - on costs 399–401
 - on disposal of frivolous claims 393–5
 - on evidence 437–8, 439
 - on jurisdictional limitations 395–9
 - on provisional measures 392–3
 - on transparency/disclosure of documents 323–7, 334–5, 337–8, 406–7
 - on waiver/'no-U-turn' access model 345–8
 - proceedings, simultaneous proceedings at domestic courts 346–8
 - public interest issues in 14, 272–3
 - quality of 669–72

- investment arbitration/investor-State arbitration (cont.)
 - role confusion issues in 5, 479–81
 - and rule of law 141–2
 - on stabilisation clauses 522–4, 537–8, 560, 561
 - sub-national government units
 - participating in 10, 298–9, 300–1
 - as *amici curiae* 303–5, 307, 314–15
 - NAFTA criteria for 305–6
 - practice 310–14
 - Quechan Indian tribe as 306–7, 310, 361–2
 - rules and impediments 308–10
 - as respondents 301–3, 305
 - threats of 626–7
 - and regulatory chill 608–9, 617–18, 627
 - and awareness of international investment law 610–11
 - case studies 618–26
 - and government expectations of victory 611–15
 - treaty interpretation in 158, 359, 666–9
 - State Party submissions on 359
 - Vienna Convention on the Law of
 - Treaties applied to 69–70, 89–91, 95–6, 149–51, 291–3
 - on ‘amount of compensation’ clauses 412–16, 419–20, 423, 425
 - withdrawals from system of 640–1, 647
 - see also* ICSID Convention; NAFTA; UNCITRAL
- investment concept 5–6, 43–4, 64, 644–5
 - in BITs 57–8, 60–1, 398–9
 - in ICSID Convention 5–6, 44–5, 47–8, 586
 - application of 48–57, 58, 59–60, 396–7
 - and economic development 595–601
 - jurisdictional and prescriptive approaches to 50–7, 63
 - and economic activities 46–7
 - in PCA cases 61–2
 - risks related to 62–3
 - Salini* criteria for 48–50, 52–3, 596–7
 - application of 50–8, 645
 - continued relevance of 59, 63
 - in UNCITRAL arbitrations 398–9, 601–2
- investment treaties 223
 - clauses/provisions in
 - ‘amount of compensation clauses’ 409–11, 412
 - on dispute resolution 369, 373–5, 411–12, 636–7
 - on exceptions 287–90, 554
 - on fair and equitable treatment standard 224–7
 - on full protection and security standard 231–3
 - on host State misuse of sovereign powers 188
 - on individual rights 81, 660–1
 - ICJ on 83
 - on intellectual property protection 13, 485–6, 490–1
 - on non-precluded measures 91–4, 533–4
 - on public-interest issues 9, 271–2
 - environmental and human rights protection 139–40, 144
 - distributive effects of protections in 119, 123–4, 144
 - egalitarian analysis of 121–2
 - libertarian analysis of 120–1
 - utilitarian analysis of 123
 - economic analysis of 111–14
 - efficiency effects of 125–6, 129–30, 144
 - on government decisions 127–8, 129
 - on investor decisions 128–9
 - interpretation of 290, 589–90
 - and host State intentions 588
 - NAFTA on 113–14, 355–7, 362–5
 - normative analyses of 117–19, 143–4

- of safeguard clauses on TRIPS flexibilities 506–7
- objectives/goals of 291–3
 - economic development 590–5
- reappraisal of/new generation 273–4, 295
 - defences against expansionist views of investment law in 638–40, 656
- expropriation treatment standard 276–9
- fair and equitable treatment standard 279–84
- general exceptions clauses 287–90
- non-discrimination standard 285–6
- non-economic policy objectives in 290–4, 295
- regulatory chill effects caused by 133–5, 140, 607–10
 - evidence for 135–6, 616–18
 - liability issues 136–7
 - uncertainty issues 137–9, 614–16
- rule of law promoted in host States by 142–3, 144
- violations of, by economic rescue plans 247–8
- see also* BITs (bilateral investment treaties)
- Investment Treaty Arbitration and Public Law* (van Harten) 145–6
- investor–State arbitration
 - see* investment arbitration/ investor–State arbitration
- investors
 - efficiency of decisions of 128–9
 - and host States 8
 - necessity of negotiations between 536
- interests of, as essential interests of another State 255–6
- misconduct by 190–1
 - EPA provisions on 220
- implication for investment arbitration 188–90, 199
 - for admissibility of claims 196–7, 198, 199–200
- damages assessment and sanctions 191–2
- host State defence on the merits 191
- for jurisdiction of tribunals 191, 198–9
- widest possible scope of protection sought by 531
- see also* contracts between host States and investors
- Iran–United States Claims Tribunal, arbitrations 443
- Israel, bilateral investment treaty with Germany 594
- issue conflicts/role confusion issues of arbitrators and counsel 5, 20–1, 22–4, 159
- at Court of Arbitration for Sport (CAS) 37–9
- disclosure requirements in 39
- ICJ on 36–7
- in investment arbitration 479–81
- restrictions 39–41
- see also* bias challenges against judges/arbitrators
- Italy
 - bilateral investment treaties of with Bangladesh arbitration on 418
 - ICSID tribunal’s decision on 433–41
 - interference by Bangladeshi courts 431–3
 - with Lebanon, arbitration on 233–4
- ius cogens* principles, violations of, and investment arbitration 646–7
- Japan, bilateral investment treaty with South Korea 289
- Jordan, bilateral investment treaty with Kuwait 557
- judges
 - independence of 21–2
 - ICJ on 36–7
- jurisdiction of courts/tribunals 42, 192–3
 - and admissibility of claims 192–3, 198

- jurisdiction of courts/tribunals (cont.)
 - and ‘amount of compensation’
 - clauses 412–16, 425, 428
 - limited to quantum 412–16, 425–6
 - not limited to quantum 416–25, 426–7
 - expansionist theories of 642–8
 - of ICSID 42–3, 56–7, 63, 64, 395–6
 - and investor misconduct 191, 198–9
 - UNCITRAL rules on 395–9
- justice
 - denial of, in application of fair and equitable treatment standard 231–4, 284–5
 - distributive 119–20
 - egalitarian theories of 121–2
 - libertarian theories of 120–1
 - utilitarian theories of 122–3
- justifiable doubts tests 24, 455
 - application of 29–30, 31, 390–1, 467–8, 469, 470–1, 475
- Kalderimis, Daniel 7
- Kaufmann-Kohler, Gabrielle 468–9, 469–70
- Keith, Kenneth 151–2
- Kent, Avidan 9
- Khamsi, Kathryn 93–4
- Kill, Theodore 71, 74
- Kingsbury, Benedict 148, 155
- Knahr, Christina 8, 11
- Kronman, Dean 654
- Kuwait, bilateral investment treaty with Jordan 557
- labour standards/rights, in BITs 562–5
- Lamy, Pascal 485
- land leases in developing States 539–41, 542–50
 - and international investment law 13–14, 541, 550, 568–9
- Landau, Toby 420
- Landis, Floyd 37–9
- languages, and treaty interpretation 667–8
- law
 - applicable to investment arbitration 662, 663
 - changes in, definitions of 521–2
 - normative analyses of 117
 - rule of 140–1
 - and international arbitration 141–2
 - promoted by investment treaties in host States 142–3, 144
- least restrictive alternative tests 534
- Lebanon, bilateral investment treaty with Italy, arbitration on 233–4
- legitimacy
 - of international investment law regime 296–7
 - of investment arbitration 614
- legitimate expectations
 - concept 152, 651
 - as element of fair and equitable treatment standard 234–6, 239, 523–4, 651
 - in intellectual property protection 500–1
- Levine, Judith 11–12
- lex mercatoria*, apparent bias principle in 451
- liability, in regulatory chill effects of investment treaties 136–7
- libertarian theories, of distributive justice 120–1
- Libya, SWF activities from 175
- licensing, compulsory, of patented technology 487–8
- local government *see* sub-national government entities
- local law
 - foreign investments required to comply with 647
 - on SWF activities 169–71
- Lomé Conventions (EU–ACP States) 210
- ‘Lost lawyer’ 654
- Lowe, Vaughan 262
- Luttrell, Sam 12
- Luxembourg
 - bilateral investment treaties of with Czech Republic, arbitration on 418–20
 - with Ethiopia 562–4

- with Soviet Union, arbitration
 - on 413–14
- with Zimbabwe 555–6
- McLachlan, C. 76, 225, 226, 237, 471–2
- Madagascar, land lease deal with Daewoo Corporation 539–40
- Malaysia, bilateral investments treaty
 - with United Kingdom 54–6
- Malintoppi, L. 392
- manifest lack of capacity/independence
 - tests 28, 458–9
 - application of 464, 465–6, 469–70, 480–1
- market access
 - BIT provisions on 179–81
 - EPA provisions on 218
- Marshall, Chief Justice 155–6
- Mauritius, bilateral investment treaty
 - with Switzerland 290
- meaning, recognised 78
- Mehren, Robert von 32
- merits
 - defence of, by host States in investor-misconduct cases 191
 - prejudgments in bias challenges 446, 471–2
 - reviews of arbitration awards, by domestic courts 429–30
- methodologies
 - of arbitrators 115–16
 - consequential evaluation 118
 - for treaty interpretation 72–3
- Mexico, bilateral investment treaty
 - with Spain 282
- MFN (most-favoured nation)
 - obligations, in EPAs 218–19
- Middle East
 - foreign land leases by firms from
 - in Pakistan 546–7
 - in Sudan 544
- Mildon, David 31, 476–7
- Mills, Alex 6
- minimum standard of treatment
 - and fair and equitable treatment standard 240–1, 281–2, 284–5, 363–5, 652–3
 - in intellectual property protection 490
- misconduct by investors 190–1
 - EPA provisions on 220
- implications for investment
 - arbitration 188–90, 199
 - for admissibility of claims 196–7, 198, 199–200
 - damages assessment and sanctions 191–2
 - host State defence on the merits 191
 - for jurisdiction of tribunals 191, 198–9
- Multilateral Agreement on Investment (draft, OECD) 505
- multinational enterprises, OECD
 - guidelines for, IBA response to 528–30
- NAFTA (North American Free Trade Agreement)
 - arbitration 366–7
 - amici curiae* participation in 360–2
 - bias challenges in 34–5, 466
 - consolidation of claims in 350–3, 355
 - diplomatic protection rules
 - applied in 80–6
 - expropriation decisions 156–7
 - Free Trade Commission (FTC)
 - role in 362–5
 - legitimate expectations concept
 - in 152
 - minimum standard of treatment
 - applied in 240–1, 281–2, 283–4
 - simultaneous proceedings at domestic courts 346–8
 - State Party submissions on
 - interpretation in 359
 - goals/purposes of 592–3
 - intellectual property protection in 493
 - interpretative guidance to 113–14
 - procedural rules 11, 340, 344–5, 365–8
 - on *amici curiae*/non-disputing parties' participation 305–6, 321–2, 357–8

- NAFTA (North American Free Trade Agreement) (cont.)
 on consolidation of claims 348–55
 on State Party submissions on questions of interpretation 355–7
 on waiver/‘no-U-turn’ access to arbitration 345–8
 national emergency, determination of 487–8
 national legislation
 foreign investments required to comply with 647
 protection against SWF activities 163–4, 169–71
 nationality requirement, applied in ICSID arbitrations 397–8
 necessity defences (plea of necessity) 246, 262–3, 268–9, 534
 to avoid grave and imminent peril 250–2
 and compensation claims for actions justified under 261–3
 excuse interpretations of 263
 ILC on 248–9, 252, 254, 256, 261–2, 263
 in investment arbitration 9, 93–4, 152–3, 247–8, 269–70
 Argentinean cases 246–7, 250–3, 254
 in financial crises 264, 268, 269
 Icesave dispute 267–8
 of host States against SWFs 181–6
 only available means requirement for 252–5
 prohibitions/exceptions
 invoking State’s own contribution to crisis 257–60
 violated obligation in question prohibits use of 256–7
 to protect essential interests 249–50, 255–6
 negative rights, in intellectual property protection 489–90, 501
nemo iudex in sua causa rule 462–3
 neo-classical economics 123, 125
 neoliberalism, and international investment law 648–50
 Netherlands
 bilateral investment treaties of
 with Argentina 373
 with Costa Rica 555
 neutrality, of arbitrators 649
 New York Convention for Recognition and Enforcement of Awards 404, 429–31
 interpretations of 443–4
 violations of 435–6, 439–41
 New Zealand
 bilateral investment treaty with China 409–10
 free trade agreement with China 411–12
 Newcombe, Andrew 8
 NGOs
 amici curiae participation in investment arbitration 319, 327–30, 378–9, 380
 expertise of 335
 on implicit intentions of investment agreements 595
 ‘no-U-turn’/waiver model, of access to arbitration 345–8
 non-compensable regulations 154
 non-discrimination standard, in investment treaties 285–6
 non-disputing parties’ participation in arbitration 334–5
 dangers of 335–7
 in investment arbitration 11, 319, 337
 ICSID arbitrations 323–9, 330–3, 337–8
 ICSID rules on 319, 320–1, 322, 378–9
 NAFTA rules on 305–6, 321–2, 357–8
 UNCITRAL rules on 380
 in WTO arbitration 321
 see also amici curiae participation in arbitration
 non-economic policy objectives, in investment treaties 290–4, 295
 non-precluded measures clauses 91–4, 533–4

- norm conflicts in international law
 - 508–9, 510–11
 - in international investment law
 - 511–14, 634–5, 657
- normative analyses
 - of investment treaty interpretation
 - 117, 119, 143–4
 - legal 117
- normlessness in international
 - investment law/investment
 - arbitration 15, 633–4, 641
- North American Free Trade Agreement
 - see* NAFTA
- Norway
 - bilateral investment treaties of
 - draft model 286
 - with Hungary, arbitration on
 - 417–18
- Nozick, Robert 120
- objectives/goals of investment treaties
 - 111, 291–3
 - BITs 105–6, 111, 291–3
 - economic 590–5
 - non-economic 290–4, 295
- obligations
 - primary investment, interpretation
 - of 86–91
 - of States in international investment
 - law 106–8
 - loss of control over 113–14
- OECD (organisation for Economic
 - Cooperation and
 - Development)
 - guidelines for multinational
 - enterprises, IBA response
 - to 528–30
 - guidelines on regulation of SWF
 - activities 164, 172–3
 - Multilateral Agreement on
 - Investment (draft) 505
- only available means requirement,
 - in necessity defences
 - 252–5
- Orrego-Vicuña, Francisco 650–1
- outcome preferences
 - in bias challenges 449
 - case law 449
- Pacheco, Abel 620, 621
- Pakistan, foreign land leases promoted
 - in 546–7
- Paparinskis, Martins 6
- parallel imports, of patented
 - medicines 488
- Park, Rusty 23
- party preferences, in bias challenges
 - 448–9
- patented technology, compulsory
 - licensing of 487–8
- Paulsson, Jan 150, 192, 193, 196, 231–3
- PCA (Permanent Court of Arbitration)
 - 384–5
 - investment arbitrations
 - bias challenges assessed in 471, 473
 - investment concept in 61–2
 - UNCITRAL rules used for 383
 - disclosure of documents and
 - proceedings in 380–2
- Pearce, Clyde 356–7
- Peinhardt, C. 613
- Perera, A. R. 614–15
- performance standards, on public
 - interest issues in BITs 556–7
- Peru
 - bilateral investment treaties of
 - with China, arbitration on 422–5,
 - 426–7
 - with El Salvador 556–7
 - free trade agreement with United
 - States 565–7
- Pinochet proceedings at House of
 - Lords (UK) 21–2
- policy objectives, non-economic,
 - in investment treaties
 - 290–4, 295
- politicisation, of investment arbitration
 - 335–6
- preambles of investment treaties,
 - non-economic policy
 - objectives in 290–4, 295
- precedent doctrine, in investment
 - arbitration 158, 462,
 - 478–9
- prescriptive approaches, to investment
 - concept 50–7
- prices, of water 575–6

- primary investment obligations, interpretation of 86–91
- private interests in international investment law
 - see* public–private dualities
 - in international investment law
- privatisation of water supply in developing States 577–9, 584–5
 - arbitration on contracts for 570–1, 578, 579–83
- procedural rules in investment arbitration 10–12, 407–8
 - on *amici curiae*/non-disputing parties’ participation 305–6, 308–10, 319, 320–2, 357–8, 378–9
 - on annulment of awards 401–3
 - on bias challenges 388–390, 391–2, 457–61
 - on consolidation of claims 348–53, 353–5
 - on costs 399–401
 - on disposal of frivolous claims 393–5
 - on evidence 437–8, 439
 - on jurisdictional limitations 395–9
 - on provisional measures 392–3
 - on transparency/disclosure of documents 323–7, 337–8, 378–80, 406–7
 - on waiver/‘no-U-turn’ access model 345–8
 - see also* ICSID Convention; NAFTA; UNCITRAL
- professionalism, in investment arbitration 672
- promissory notes, as investments 48
- property protection law 120
 - and investment treaty protections 120–1
 - see also* intellectual property protection
- proportionality requirements, in essential interests defences 255–6
- protectionist measures against SWFs 163–4, 169–71
 - international investment law protection against 175–7, 186
 - in BITs 164, 178–81
 - host State necessity and essential interest defences 181–6
 - in ICSID Convention 177–9
- provincial government *see* sub-national government entities
- provisional measures in investment arbitration 392–3
- public-health issues
 - intellectual property protection flexibilities on 486–90
 - and indirect expropriation 501–4, 515
 - see also* TRIPS
 - in water supply contracts 584
- public-interest issues 541
 - access to proceedings as 307–8
 - in free trade agreements 565–7
 - in investment arbitration 14, 272–3
 - in investment treaties/law 9, 108–11, 271–2
 - BITs 554–7, 562–8
 - environmental and human rights protection 139–40, 144
 - and foreign land leases 568–9
 - in treaty interpretation 668
- public international law 159
 - international investment law as 149–50, 152–4
- public–private dualities in international investment law 4–5, 6, 97–9, 108–11, 659–62
 - economic analysis of 111–14
 - impact of 114–16
- publication of documents
 - see* disclosure, of documents/proceedings
 - in investment arbitration
- Puig, Sergio 11
- quality, of investment arbitration 669–72
- ‘quantum of solace’ theme 187–8

- Quechan Indian tribe (US), acting as
amici curiae in investment arbitration 306–7, 310, 361–2
- Rajoelina, Andry Nirina 539–40
- rationality, bounded, of regulators 614
- Rawls, John 121
- Raz, J. 140–1
- real danger/risk tests 24, 455–6, 465, 472
- real possibility tests 456
- reasonable apprehension tests
see justifiable doubts tests
- reasonable third persons, used in bias testing 472
- reciprocity, asymmetrical 211–13, 217
- recognised meaning 78
- regulators *see* governments
- regulatory chill 14, 606–7
 and awareness of international investment law 610–11
 and environmental and human rights protection 139–40
 investment treaties as causes of 133–5, 140, 607–10
 evidence for 135–6, 616–18
 liability issues 136–7
 uncertainty issues 137–9, 614–16
 and threats of arbitration 608–9, 617–18, 627
 case studies 618–26
 government expectations of victory in 611–15
see also government decision-making
- regulatory risks 110–11
- Reinisch, A. 392
- Reisman, W. Michael 229, 237, 655
- relevance, approaches to 71–2, 74
- respondents in investment arbitration, sub-national government unit as 301–3, 305
- responsibility of States, and investor–State arbitration 80–6
- rights
 abuse of, by domestic courts 435
 individual
 in international investment law 81, 108–9, 342, 660–1
 ICJ on 83
 in investment arbitration 113, 642–4
 negative, in intellectual property protection 489–90, 501
 patented, exhaustion of 488
see also human rights
- risks
 of investments 62–3
 regulatory 110–11
see also real danger/risk tests
- role issue conflicts *see* issue conflicts/
 role confusion issues of arbitrators
- Root, Elihu 240
- Roth, A. H. 244
- Rubins, N. 49, 610, 611
- Ruggie, John Gerald 271–2, 530, 536–7
- rule of law 140–1
 in host States, promoted by investments treaties 142–3, 144
 and international arbitration 141–2
- Ruse-Khan, Henning Grosse 13
- Russia
 bilateral investment treaty with Germany, arbitration on 416–17
 product sharing contracts of, environmental criticism of 526
 protectionist measures against SWFs in 170
see also Soviet Union
- safeguard clauses on TRIPS flexibilities/ TRIPS consistency clauses 504–8, 513–14
- Salgado, V. 611
- Salini* criteria/test for investments 48–50, 52–3, 596–7
 application of 50–8, 645
 continued relevance of 59, 63
- sanctions, and investor misconduct 191–2

- Sands, Philippe 19
 Saudi Arabia, bilateral investment
 treaty with Germany 178
 Schill, S. W. 616
 Schreuer, C. 48, 49, 51, 52–3, 225,
 382–3, 392, 403, 459
 Schwarzenberger, G. 237
 Schwebel, Stephen 30–1, 479–80
 screening, of foreign investments 170–1
 second best, economic theory of 126
 Sekolec, Mr 33–4
 self-judging clauses 181–2, 186
 Sen, A. 118
 Shahabuddeen, Mohamed 57, 597–8
 Shore, L. 225, 226, 237
 Simma, B. 71, 74
 Simon, Justice 419–20
 Sinclair, A. 392
 Singapore, bilateral investment treaty
 with India 294
 Sloane, Robert 655
 Slovak Republic, bilateral investment
 treaty with Austria,
 arbitration on 415–16
 social contacts, bias challenges based
 on 464
 social impact, of foreign land leases
 in developing States
 549–50
 social sciences, cross-fertilisation and
 collaboration with
 international investment
 law 627
 Soloway, J. 616
 Sornarajah, M. 15, 157
 South Korea
 bilateral investment treaty with
 Japan 289
 land-lease deal in Madagascar by
 firm from 539–40
 sovereign wealth funds (SWFs) 7–8,
 164–5, 166–8
 national protectionist measures
 against 163–4, 169–71
 international investment law
 protection against
 175–7, 186
 in BITs 164, 178–81
 host State necessity and
 essential interest defences
 181–6
 in ICSID Convention 177–8,
 179
 soft-law measures of international
 community for regulation
 of 171–3
 responses to 173–5
 Soviet Union
 bilateral investment treaties of
 with Belgo-Luxembourg,
 arbitration on 413–14
 with Spain, arbitration on 420–2
 with United Kingdom, arbitration
 on 414–15, 421
 see also Russia
 Spain
 bilateral investment treaties of
 with Mexico 282
 with Soviet Union, arbitration
 on 420–2
 Spears, Suzanne 9
 sports *see* Court of Arbitration for
 Sport (CAS)
 stabilisation clauses in host
 State–investor contracts
 13, 516, 517–25,
 558–62, 651–2
 and BIT umbrella clauses 554
 IBA seeking prohibition of 528–30
 impact on sustainable development
 516–17, 525–6, 530, 537
 investment arbitration on 522–524,
 537–8, 560, 561
 investor responses to criticism/
 alternatives 531–537,
 538
 research into 527–8
 standards
 of full protection and security 231–3
 of good governance, and fair and
 equitable treatment
 standard 653
 of minimum treatment in customary
 law 240–1, 281–2, 282–4,
 284–5
 of non-discrimination 285–6

- of performance, on public
 - interest issues in BITs 556–7
- references to, in stabilisation clauses 535
- universal, for treatment of investments 106–7
- see also* fair and equitable treatment standard
- States
 - obligations in international investment law 106–8
 - loss of control over 113–14
 - responsibility of, and investor–State arbitration 80–6
 - see also* host States
- Stephenson, Andrew 12
- sub-national government units’
 - participation in investment arbitration 10, 298–9, 300–1
- as *amici curiae* 303–5, 307, 314–15
- NAFTA criteria for 305–6
- practice 310–14
- Quechan Indian tribe 306–7, 310, 361–2
- rules and impediments 308–10
- as respondents 301–3, 305
- Sudan
 - arbitration with Sudanese People’s Liberation Movement/Army 381
 - foreign land leases in 544
- sustainable development
 - impact of stabilisation clauses on 516–17, 530, 537
 - responses to criticism/alternatives 531–7, 538
 - see also* economic development
- Sweden, bilateral investment treaty
 - with Venezuela 594
- SWFs *see* sovereign wealth funds
- Switzerland
 - bilateral investment treaties of
 - with Mauritius 290
 - with Uzbekistan, arbitration on 398–9, 601–2
- Sykes, Alan 363
- Tanzania
 - foreign contract for privatised water supply of Dar es Salaam 577
 - arbitration on 580–2
- Telesetsky, Anastasia 13–14
- terms of art, customary international law references as 79, 87
- A Theory of Justice* (Rawls) 121
- third-party situations, in international investment law
 - see* individual rights
- third persons, reasonable, used in bias testing 472
- Thomas, Christopher 34–5
- Tienhaara, Kyla 14, 137–8
- Tollefson, C. 616–17
- Toulmin, Stephen 43
- transparency
 - of investment arbitration
 - proceedings 323–7, 334–5, 337–8, 406–7
 - of SWF activities 174
- travaux préparatoires*, importance for treaty interpretation 153–4, 669
- treaties 660
 - interpretation of 149–52
 - customary international law rules on 69, 70–80
 - importance of *travaux préparatoires* in 153–4, 669
 - and intentions of parties 588, 589–90
 - in investment arbitration 158, 359, 666–9
 - methodologies 72–3
 - see also* investment treaties, interpretation of; Vienna Convention on the Law of Treaties
 - quality of 670
 - see also* investment treaties
- TRIPS Agreement (Trade Related Aspects of Property Rights, WTO) 485
- flexibilities in 486–90
- implementation of 501–4

- TRIPS Agreement (Trade Related Aspects of Property Rights, WTO) (cont.)
 and intellectual property protection in BITs and free trade agreements 504–8, 509–10, 514–15
- Truswell, Emma 14
- Tudor, L. 238
- Turkey, contract on
 Baku–Tbilisi–Ceyhan pipeline project, human rights criticism on 525
- umbrella clauses in BITs 552–4
- uncertainty
 for host States, in fair and equitable standard application 8–9, 236–7, 238–44, 245
 in investment arbitration 614
 and regulatory chill effects of investment treaties 137–9, 614–16
- UNCITRAL (United Nations Commission on International Trade Law)
 investment arbitrations 370–1, 372–3, 375–6, 405, 408, 460
 bias challenges in 29–30, 33–4, 34–5, 390–1
 costs decisions in 400
 disclosure of documents/proceedings in 380–2
 investment concept applied in 398–9, 601–2
 non-disputing parties’ participation in 380, 454–5
 see also PCA
- Model Law on International Commercial Arbitration 447–8
- procedural rules of 11–12, 371–2, 376–7, 407–8
 on annulment of awards 401–3
 on appointment of arbitrators 385–8
 on bias challenges against arbitrators 388–92, 469
 on costs 399–401
 on disclosure of documents/proceedings 378–80, 406–7
 on disposal of frivolous claims 393–5
 on institutional provisions 383, 385
 on jurisdictional limitations 395–9
 on provisional measures 392–3
 revision of 405–7
- United Kingdom
 bias challenges against judges/arbitrators in 24–6
 bilateral investment treaties of
 with Argentina 290–1, 374
 with Cuba 594
 with Malaysia 54–6
 with Soviet Union, arbitration on 414–15, 421
 Pinochet proceedings before House of Lords 21–2
 see also England, Wales and Northern Ireland
- United Nations
 on right to water 574
 on stabilisation clauses and sustainable development 530
- United States
 bias challenges against judges/arbitrators in 26–7
 bilateral investment treaties of
 with Argentina, arbitration on 91–2, 93–4, 182–6
 Model BIT (2004) 87, 107, 112–13, 180, 181
 economic development referred to in 593–4
 on environmental protection and labour rights 564–5
 on fair and equitable treatment standard 281, 284–5
 on indirect expropriation 498–501
 and implementation of TRIPS flexibilities 501–4
 interpretative language in 278–9
 objectives/goals of 293

- safeguard clause on TRIPS flexibilities in 504–5
- constitutional law in 155–6
- federalism in 299, 314
- foreign land leases by firms from 546
- free trade agreements of 492–3, 494–5
 - with Australia 492
 - with Dominican Republic 380–1
 - with Peru 565–7
 - public-interest issues in 565–7
 - on TRIPS flexibilities 507–8, 512
- Iran arbitrations (Iran–United States Claims Tribunal) 443
- Native American tribes in, position of 306–7
- protectionist measures against SWFs in 170–1
- universal standards, for treatment of investments 106–7
- utilitarian theories, of distributive justice 122–3
- Uzbekistan, bilateral investment treaty
 - with Switzerland, arbitration on 398–9, 601–2
- Venezuela
 - bilateral investment treaties of
 - with Canada 374
 - with Sweden 594
- Verhoosel, G. 402–3
- Vienna Convention on the Law of
 - Treaties 69, 70–80, 589–90, 666–9
 - application of 290
 - in investment arbitration 69–70, 89–91, 95–6, 149–51, 291–3
 - on ‘amount of compensation’ clauses 412–16, 419–20, 423, 425
 - on entering into agreements
 - modifying existing treaties 511–12
 - on third-party situations 660
- Villiger, Judge 71
- Volterra, Robert 236
- waiver/‘no-U-turn’ model, of access to arbitration 345–8
- water
 - pricing of 575–6
 - privatised supply of 577–9, 584–5
 - arbitration on foreign contracts for 570–1, 578, 579–83
 - rights to 571–5
 - and international investment law 14, 570, 584, 585
- wealth redistribution
 - in investment treaty protections 119
 - normative criteria for 118
- Weeramantry, J. Romesh 12
- weight, interpretative 74–5, 76–7
- Weiniger, M. 225, 226, 237
- WHO, on right to water 574–5
- Williams, David 5–6
- Wilson, Claire 12
- Wood, Michael 77
- Woolcock, S. 208
- World Bank
 - Guidelines for Treatment of Foreign Investors 604
 - and ICSID Convention 590–2
 - pressures on developing States to privatise water supply 577
- wrongfulness, necessity as
 - circumstance precluding 262–3
- WTO (World Trade Organization)
 - dispute settlement 175–6
 - least restrictive alternative test applied in 534
 - on negative rights 489
 - non-disputing parties’ participation in 321
 - see also* TRIPS Agreement
- Yaoundé Convention (EU–ACP States, 1963) 209–10
- Youssef, Karim 451
- Zimbabwe, bilateral investment treaty
 - with Belgo-Luxembourg 555–6