CONTENTS

List of Figures viii
Acknowledgements ix
Table of Cases x
Table of Treaties xxvii
List of Abbreviations xxxviii

1 Introduction: Corporate Responsibility and the ‘One-Sidedness’ of Investment Law 1
  1.1 Introduction: Protection of Transnational Corporations in International Law 1
  1.2 Environmental and Human Rights Impact of TNC Activities 4
  1.3 IIA-Based Dispute Settlement as a Forum to Examine States’ Responsibility 8
  1.4 The Asymmetry Concern: Call for Reform of the Current IIA Regime 9
  1.5 Aims and Scope of This Study 12
  1.6 Structure of the Book 17
  1.7 Methodology 20
  1.8 Conclusion 21

2 Corporate Environmental and Human Rights Obligations in International Law: Outside and Inside the IIA Regime 23
  2.1 Introduction: Limitations in Domestic Legal Systems 23
  2.2 International Obligations and Responsibilities of TNCs Outside the IIA Regime 30
  2.3 International Obligations and Responsibilities of Investors in IIAs 48
  2.4 Conclusion 55

3 Counterclaims: Benefits, Normative Grounds, and Limits 57
  3.1 Introduction: Rise of the Notion of Counterclaims 57
## Table of Contents

### 3.2 Benefits of Counterclaims in Comparison with Domestic Remedies 60

### 3.3 Is the Host State the Right (Counter) Claimant? 65

### 3.4 Limits on the Use of Counterclaims 76

### 3.5 Conclusion 86

### 4 Counterclaims: Jurisdiction and Admissibility 87

#### 4.1 Introduction: The Unsettled Questions 87

#### 4.2 Conditions for Filing Counterclaims 88

#### 4.3 Jurisdictional Requirements 90

#### 4.4 Admissibility Requirements 104

#### 4.5 Conclusion 116

### 5 Counterclaims: Merits 117

#### 5.1 Introduction: Rare Success at the Merits Stage 117

#### 5.2 Counterclaims Based on Domestic Law 119

#### 5.3 Counterclaims Based on International Law 135

#### 5.4 CSR Commitments as a Source of Counterclaims 148

#### 5.5 Conclusion 156

### 6 Corporate Environmental Responsibility and the Investor’s Principal Claims 158

#### 6.1 Introduction: Focus on Investors’ Performance-Phase Misconduct 158

#### 6.2 Corporate Performance-Phase Environmental Responsibility Does Not Bar Jurisdiction 159

#### 6.3 Corporate Performance-Phase Environmental Responsibility at the Merits Phase: Impact on the Principle of ‘Legitimate Expectations’ 166

#### 6.4 Corporate Performance-Phase Environmental Responsibility in the Quantum Phase: Selected Questions of Contributory Fault 191

#### 6.5 Conclusion 198

### 7 Conclusion: Implications for Reform 200

#### 7.1 Protection of Responsible Investment: Limitations of the Current Regime 200

#### 7.2 Providing the Host State’s Right to Counterclaims 202

#### 7.3 Providing Investor Obligations in IIAs 203

#### 7.4 Requiring Exhaustion of Local Remedies as a Precondition for IIA-Based Dispute Settlement Mechanisms 205

#### 7.5 Making the IIA-Based Dispute Settlement Mechanism a Forum to Pursue Investors’ Responsibility 206
## CONTENTS

7.6 Promoting Third-Party Participation in Investor–State Mediation 209
7.7 Concluding Remarks 220

Appendix List of IIAs in the IIA Dataset 222
Bibliography 247
Index 300