Power in the International Investment Framework



Preface

To my parents, Carlos and Maria Antonia, for being the best example for me to follow...

This book is the result of interdisciplinary research in the areas of law and political science in different countries and institutions. I thank Prof. Dr. Maria Behrens, Chair of the Political Science Department, Bergische Universität Wuppertal, for many fruitful discussions and comments. I thank Prof. Ronald Brand, for making it possible to spend an academic year at the Center for International Legal Education of the University of Pittsburgh. I thank the members of the Faculty of Law, University of Oxford, especially Prof. Stephan Vogenauer and Prof. Konstanze von Papp for inspiring discussions, and the organizers of the Oxford Public International Law Discussions Groups held at All Souls College for convening regular meetings with world experts and wonderful discussions thereafter.

I would also like to thank the following institutions: Cusanuswerk Bischöfliche Studienförderung, US Trade Representative Office, the European Union Parliament, the International Institute for Sustainable Development and the United Nations Conference for Trade and Development (UNCTAD).

Last but not least, I thank my husband for his never-faltering support throughout the production of the book.

Maria A. Gwynn

Contents

| 1 | Introduction | 1 |
|---|--|-----|
| 2 | The Historical Developments of International Investments (Pre-BITs) | 23 |
| 3 | Relative Power in the Regulation of International Investments at the Multilateral Level | 43 |
| 4 | BITs in Practice: An Empirical and Comparative Analysis of South American Countries' BITs | 85 |
| 5 | Governments' Intentions and Reasons for Entering BITs into Force | 127 |
| 6 | Structural Power in the Regulation of International Investments at the Bilateral Level | 157 |
| 7 | Lessons for the US-EU Transatlantic Trade and Investment Partnership (TTIP) | 199 |

viii CONTENTS

| 8 Conclusion | 219 |
|--------------|-----|
| Bibliography | 225 |
| Index | 235 |

LIST OF TABLES

| Table 3.1 | Responses of South American countries at the WTO Singapore | |
|-----------|---|-----|
| | Ministerial Conference | 54 |
| Table 3.2 | Responses of South American Countries at the WTO Seattle | |
| | Ministerial Conference | 60 |
| Table 3.3 | Responses of South American countries at the WTO Doha | |
| | Ministerial Conference | 64 |
| Table 3.4 | Responses of South American countries at the Cancun | |
| | Ministerial Conference, WTO | 69 |
| Table 4.1 | BITs' dispute settlement clauses | 87 |
| Table 4.2 | Definition of investment in South American BITs | 95 |
| Table 4.3 | Purposes contained in US BITs with South American countries | 98 |
| Table 4.4 | Purposes contained in South American BITs with European | |
| | countries | 100 |
| Table 4.5 | Expropriation provisions in US BITs with South American | |
| | countries | 103 |
| Table 4.6 | Expropriation provisions in South American BITs with | |
| | European countries | 104 |
| Table 4.7 | Investment dispute settlement clauses in | |
| | South American BITs | 112 |
| Table 5.1 | FDIs increase due to BITs empirical studies | 134 |
| Table 6.1 | Year of ratification of South American countries' BITs | 162 |
| Table 6.2 | Ratification of the New York Convention and the ICSID | |
| | Convention | 164 |
| Table 6.3 | BITs of South American countries after WTO ministerial | |
| | conferences | 165 |