Preface

In the spring of 2007, the Institute for Transnational Arbitration and the American Society of International Law co-sponsored a Conference on the future of investment arbitration. The Conference was Co-Chaired by Professor Roger Alford of Pepperdine University and Professor Catherine Rogers of Pennsylvania State University. A range of perspectives, from legal scholars to U.S. Government officials to arbitrators to ICSID institution staff, was represented at the Conference. These distinguished scholars and lawyers presented papers and engaged one another as to the significance of the explosion of Bilateral Investment Treaties (BITs) and of investment arbitration over the past fifteen years. This volume takes that substantial foundation, adds other commissioned chapters, and coherently and thoughtfully examines in detail how investment arbitration works today, suggests what future arbitrations will look like, and proposes a framework for understanding how investment arbitration may evolve in the years ahead.

We are delighted that ASIL and ITA have jointly sponsored conferences for the past four years, with each year bringing larger audiences and more praise. The commitment of both the ITA and ASIL to exploring the most pressing law questions of the day for their members is furthered by conferences such as the ITA-ASIL series and by publications. We thus are particularly pleased that the Fourth ITA-ASIL conference has resulted in this volume, the second book to come out of the ITA-ASIL conferences. Indeed, we are particularly pleased with this book, as it provides a cutting edge discussion of one of the fastest-growing areas of international arbitration today – international investment disputes.

The area of investment disputes is extraordinarily fertile ground in the development of international arbitration, with the number of investment arbitrations initiated each month continuing to mount at the rapid pace of the last decade. . This book comes at a timely moment in the history of arbitration in general and investment arbitration in particular, with the potential to shape our role
as practitioners, scholars, and institutional actors. Investment arbitration arising out of BITs resides at the cusp of public and private interest; of what we think of as necessarily a quasi-public judicial process and what the parties may have chosen to be a distinctly private arbitral mechanism. Some of the contributors to this volume envision the arbitrator in investment arbitration as someone akin to a judge in municipal law who must weigh public policy concerns in deciding the specific dispute between the parties. Others argue that such an extended role for the arbitrator can undermine the private consensual foundation of the international arbitration system. This divide animates one of the major themes in international investment arbitration today, and this volume sets out the positions of both sides as various issues are explored.

This book is particularly exciting to us because we predict it will shape the discussion about investment arbitration that inevitably will occur over the next few years. The study is relevant and important to scholars and practitioners alike, and will prove useful both to those who want to understand the past development of investment arbitration and those who are interested in its evolution.

Our goal, as sponsoring institutions, is to initiate and encourage discussion of emerging and continuing trends in international law. We congratulate Professors Roger Alford and Catherine Rogers, the Editors of this volume, and the many distinguished contributors they have brought together, for so ably furthering that goal.

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