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## THE INTERNATIONAL LAW ON FOREIGN INVESTMENT

This new edition of Professor Sornarajah's book, available for the first time in paperback, surveys the international law developed to protect foreign investment by multinational corporations. The area has always been one of controversy due to the different political and economic conflicts that exist in the field. The book assesses the role of multinational corporations in making foreign investments, and considers the ways in which misconduct on the part of such corporations in host states could be controlled.

Sornarajah focuses on the protection of foreign investment and the problems associated with such protection. He explores treaty-based methods, and examines several bilateral and regional investment treaties. The failure to agree on a multilateral treaty system and the inability to incorporate a discipline on investment within the WTO are also considered. He takes account not only of the law in this area, but also of the relevant literature in economics, political science and other associated disciplines.

M. SORNARAJAH LL.M (Yale) PhD LL.D (London) was Head of the Law School of the University of Tasmania prior to joining the National University of Singapore Law School, where he is a Professor of Law. He was Sterling Fellow at the Yale Law School, and Research Fellow at the Centre for International Law, Cambridge, and at the Max Planck Institut für Öffentliches Ausländisches Recht at Heidelberg, Germany. He was International Law Fellow and Visiting Professor at the American University at Washington, DC. He is a Professorial Fellow at the Centre for Petroleum and Natural Resources Law at the University of Dundee, Scotland.

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# THE INTERNATIONAL LAW ON FOREIGN INVESTMENT

Second edition

M. SORNARAJAH

*Professor of Law*

*National University of Singapore*



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## PREFACE TO THE SECOND EDITION

The international law on foreign investment has witnessed an explosive growth since the last edition. The decade had witnessed a proliferation of bilateral and regional investment treaties, and a dramatic rise in litigation under such treaties. The attempt to fashion a multilateral instrument on investment within the World Trade Organization has given the debate on issues in the area a wider focus. This edition seeks to capture such developments.

In the course of the decade, I have had the good fortune of being involved actively in many facets of the operation of this area of the law. During such activity, I have acquired many friends who work in the area. My association with UNCTAD has brought me in contact with Karl Sauvant, Anna Joubin-Brett, Victoria Aranda and James Chan. It has also given me the opportunity to work with Arghyrios Fatouros, Peter Muchlinksy and Kenneth Vandavelde, the academic leaders of this field. They have added much to my understanding of the law. The many hours of arguments with them, in various parts of the world, have added to the pleasure of studying this area of the law.

The first edition was written while I was a visiting fellow at the Lauterpacht Centre for International Law, University of Cambridge. The successive Directors of the Centre, Professor Sir Eli Lauterpacht and Professor James Crawford, have continued to encourage my efforts in this and other areas of international law.

My many students in Singapore and Dundee have always challenged me so that I was taught by them to know and remember that there are other ways in which the law could be looked at. To my critics, my answer would be that I am constantly made aware of their criticisms in the classroom. I have accommodated those criticisms in the text.

I thank Finola O'Sullivan, Alison Powell and Martin Gleeson for the care taken over the production of my book.

My research student, Lu Haitian, prepared the bibliography.

Thanga was there, as always. Ahila, Ramanan and Vaishnavi happily are now old enough to let their father alone.

## PREFACE TO THE FIRST EDITION

This book was written while I was on sabbatical leave from the National University of Singapore. I thank the Vice-Chancellor, the Council and Dean of the Faculty of Law for the generous terms on which I was granted the leave.

I spent the sabbatical year as a Visiting Fellow at the Research Centre for International Law of the University of Cambridge. I thank Eli Lauterpacht, the Director of the Centre, for many acts of kindness in making this year a happy and productive one.

I am grateful to Professor James Crawford, Whewell Professor of International Law at Cambridge, who read and commented on an early draft of this work, to Professor Detlev Vagts, Bemis Professor of International Law at Harvard, who enabled me to spend a month of research at the Harvard Law School and to Robin Pirrie, Fellow of Hughes Hall, Cambridge, who was helpful with his advice. I remain responsible for any errors and omissions.

As always, Thanga has been an unfailing source of strength. Ahila, Ramanan and Vaishnavi have given up time that should have been theirs.

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## ABBREVIATIONS

ABAJ	<i>American Bar Association Journal</i>
AC	<i>Appeal Cases</i>
AD	<i>Annual Digest of Public International Law Cases</i>
AJCL	<i>American Journal of Comparative Law</i>
AJIL	<i>American Journal of International Law</i>
All ER	<i>All England Reports</i>
ALR	<i>Australian Law Reports</i>
AMPLA Yearbook	<i>Yearbook of the Australian Mining and Petroleum Association</i>
<i>Ann Fr</i>	<i>Annuaire Française de Droit International</i>
<i>Arb Int</i>	<i>Arbitration International</i>
<i>ASIL Proceedings</i>	<i>American Society of International Law Proceedings</i>
<i>Buffalo LR</i>	<i>Buffalo Law Review</i>
<i>BYIL</i>	<i>British Yearbook of International Law</i>
<i>Calif. LR</i>	<i>California Law Review</i>
CLR	<i>Commonwealth Law Reports</i>
CMLR	<i>Common Market Law Review</i>
<i>Cornell ILJ</i>	<i>Cornell International Law Journal</i>
<i>Cornell LQ</i>	<i>Cornell Law Quarterly</i>
<i>Cornell LR</i>	<i>Cornell Law Review</i>
<i>Dalhousie LJ</i>	<i>Dalhousie Law Journal</i>
<i>Duke LJ</i>	<i>Duke Law Journal</i>
EHRH	<i>European Human Rights Reports</i>
<i>EJIL</i>	<i>European Journal of International Law</i>
F Supp	<i>Federal Supplement</i>
<i>Florida JIL</i>	<i>Florida Journal of International Law</i>
<i>Fordham ILJ</i>	<i>Fordham International Law Journal</i>
<i>Ga JIL</i>	<i>Georgia Journal of International Law</i>
<i>GYIL</i>	<i>German Yearbook of International Law</i>
<i>Hague Recueil</i>	<i>Hague Recueil des Cours</i>
<i>Harvard LR</i>	<i>Harvard Law Review</i>

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<i>Harvard ILJ</i>	<i>Harvard International Law Journal</i>
ICJ Rpts	<i>International Court of Justice Reports</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
ICSID Rev	<i>ICSID Review – Foreign Investment Law Journal</i>
<i>IJIL</i>	<i>Indian Journal of International Law</i>
ILM	<i>International Legal Materials</i>
<i>Int Conc</i>	<i>International Conciliation</i>
<i>Int Lawyer</i>	<i>International Lawyer</i>
<i>Int Org</i>	<i>International Organization</i>
Iran–US CTR	<i>Iran–United States Claims Tribunal Reports</i>
JIA	<i>Journal of International Arbitration</i>
<i>JWTL</i>	<i>Journal of World Trade Law</i>
KB	<i>Kings Bench Reports</i>
<i>Ky LJ</i>	<i>Kentucky Law Journal</i>
LQR	<i>Law Quarterly Review</i>
<i>Mich LR</i>	<i>Michigan Law Review</i>
<i>Michigan JIL</i>	<i>Michigan Journal of International Law</i>
<i>Minn LR</i>	<i>Minnesota Law Review</i>
MLR	<i>Modern Law Review</i>
<i>NYUJIL&amp;P</i>	<i>New York University Journal of International Law and Politics</i>
<i>NYULR</i>	<i>New York University Law Review</i>
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
PCIJ	<i>Permanent Court of International Justice</i>
<i>Pol Sci Qtrly</i>	<i>Political Science Quarterly</i>
SJ	<i>Solicitors Journal</i>
<i>Stanford LR</i>	<i>Stanford Law Review</i>
<i>Texas ILJ</i>	<i>Texas International Law Journal</i>
UNRIAA	<i>United Nations Reports of International Arbitral Awards</i>
<i>Virginia JIL</i>	<i>Virginia Journal of International Law</i>
WLR	<i>Weekly Law Reports</i>
<i>Yale LJ</i>	<i>Yale Law Journal</i>
YBECHR	<i>Yearbook of the European Commission on Human Rights</i>
YBWA	<i>Yearbook of World Affairs</i>
YCA	<i>Yearbook of Commercial Arbitration</i>