

## Conclusion

The previous chapters of this book have examined how investor-state dispute settlement (ISDS) tribunals have interpreted most-favored-nation (MFN) clauses in various international investment agreements (IIAs). As a treaty-based obligation, the original objective of MFN treatment was to provide an equal footing for foreigners in international trade law. In this sense, it has become a cornerstone of the global economy, and the MFN clause has been heavily instrumental in shaping the trajectory of international economic law. The popularity of MFN clauses in international treaties, however, has ebbed and flowed during the course of history. That is to say, it has proved to be more popular in times when economies thrive and when the political situation of the day can be characterized as stable, while there has been significantly less reliance on the MFN clause during times of economic strife and military tension.<sup>1</sup>

In contemporary times, the MFN clause has become embroiled in a significant controversy in a world where international investment law has become quite fragmented. As discussed in Chapter 1, the development of the MFN clause in investment law went through several different stages, with each stage featuring distinct ways in which MFN clauses were drafted. In 1987, the first treaty-based investment arbitration under the United Kingdom-Sri Lanka bilateral investment treaty (BIT) affirmed the application of an MFN clause to substantive treatment obligations contained in other treaties. Since then, the number of ISDS cases brought have consistently been on the rise. In 2001, the *Maffezini* tribunal applied an MFN clause in order to incorporate better procedural treatment from a third-party treaty, which set in motion a lengthy period during which the *Maffezini* approach was both applied and rejected by a long line of tribunals.

In relation to both substantive and procedural treatment, the chapters 3 through 5 discussed ISDS tribunals' interpretation of the MFN clause according to the interpretive methods of international law, which were discussed in Chapter 2. Specifically, this book has studied the application of MFN clauses in relation to substantive treatment, where *de facto* MFN violations and the application of MFN clauses in pursuit of obtaining a higher standard of treatment

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<sup>1</sup> See Chapter 1 of this book.

from treaties other than the basic treaty of which the MFN clause forms a part were discussed. It has also studied the application of MFN clauses in relation to procedural treatment, including in relation to the extent to which procedural preconditions and jurisdictional issues can be overcome by applying an MFN clause in order to incorporate “more favorable” treatment from outside of the basic treaty. This exposé showed that tribunals have largely relied on their presumptions about the rationale of MFN clauses, which has led to inconsistent reasoning and outcomes on a number of issues in ISDS practice.

Given these inconsistencies, states, as treaty makers, have taken actions by employing clearer treaty language in modern BITs to fend against the possibility of expansive interpretations of MFN clauses. Countries have also adopted methods to either marginalize the MFN clause in their treaty practice or otherwise refine it. These shifts have been described as states’ movement to reclaim their regulatory power on the battlefield of investment law.<sup>2</sup>

## 1 Current Drafting Trends in Relation to MFN Clauses

The current movement in IIAs has been towards the adoption of more detailed and restrictive MFN clauses. In this regard, states have adopted different methods in view of ISDS practice concerning MFN treatment or contemporary investment policies. The methods adopted can be divided into two types: the first type sees the role of the MFN clause in IIAs being attenuated; the second type has seen the refinement of MFN clauses by way of more cautious drafting.

### 1.1 *Marginalization of the MFN Clause*

Some countries have concluded IIAs in which the weight of the MFN clause has been attenuated. The marginalization of the MFN clause as such has been undertaken in two main ways. Some recently concluded treaties with language such as to “endeavor to” accord MFN treatment, i.e., they have taken a soft commitment approach to MFN clauses.<sup>3</sup> While some countries, such as India, have decided to remove the MFN clause entirely from their new IIAs.

#### 1.1.1 Soft Commitments

Some modern IIAs have seen the MFN clause drafted not as a hardcore guarantee, but rather as a soft commitment whereby contracting parties promise

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<sup>2</sup> Tanjina Sharmin, *Application of Most-Favoured-Nation Clauses by Investor-State Arbitral Tribunals: Implications for the Developing Countries* (Springer 2020) 262.

<sup>3</sup> Sharmin (n 2).

to make efforts to accord MFN treatment. This type of drafting can be found in both pre- and post-*Maffezini* treaties to curb the unintended expansion of the scope of MFN clauses.<sup>4</sup>

A post-*Maffezini* treaty practice in this regard is visible in IIAs concluded by Japan. For example, Article 88 of the 2009 Japan-Switzerland EPA provides as follows:

If a Party accords more favourable treatment to investors of a non-Party and their investments by concluding or amending a free trade agreement, customs union or similar agreement that provides for substantial liberalisation of investment, it shall not be obliged to accord such treatment to investors of the other Party and their investments. Any such treatment accorded by a Party shall be notified to the other Party without delay and the former Party shall *endeavour to* accord to investors of the latter Party and their investments treatment no less favourable than that accorded under the concluded or amended agreement. The former Party, upon request by the latter Party, shall enter into negotiations with a view to incorporating into this Agreement treatment no less favourable than that accorded under such concluded or amended agreement.<sup>5</sup>

The above soft commitment allows a contracting state to retain the power to decide whether to include MFN treatment as a treaty promise towards foreign investors from the other contracting state. It also prevents tribunals from applying expansive interpretations since MFN treatment has not been granted in the basic treaty, which is left to contracting states' discretion.<sup>6</sup>

#### 1.1.2 The Total Absence of an MFN Clause

Some countries have taken a more radical approach and removed the MFN clause from their IIAs. For example, after the *White Industries* tribunal decided that the MFN clause in the 1998 India-Australia BIT could be used for higher treaty standards, India adopted its 2015 Model BIT and excluded the MFN clause as a direct response to the decision of the tribunal.<sup>7</sup> Subsequent to 2015

4 Sharmin (n 2).

5 Article 88 of the Japan-Switzerland EPA (2009). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2592/download>> accessed 20 April 2022.

6 Sharmin (n 2) 263.

7 India Model BIT (2015). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3560/download>> accessed 20

Model BIT, the three IIAs signed by India with Brazil, Kyrgyzstan and Balerus all exclude MFN clause from their texts.<sup>8</sup> Treaties adopting similar approach include the EU–Singapore FTA (2014)<sup>9</sup> and ASEAN–Australia–New Zealand FTA (2009),<sup>10</sup> amongst others.

Abandoning the MFN clause altogether was one of the five IIA reform options proposed by the United Nations Conference on Trade and Development (UNCTAD) for states to regain regulatory authority over their MFN clauses.<sup>11</sup> According to UNCTAD, the MFN clause is one of the treaty provisions that is “particularly implicated in delineating the balance between investment protection and the right to regulation in the public interest.”<sup>12</sup> Understandably, the IIAs mentioned above have decided to drop the MFN clause given the possible unintended consequences of interpretations by tribunals that apply the clause as a multilateralizing tool. However, taking such an approach also has the capacity to raise doubts.

The first such doubt goes to the extent to which systemic discrimination may occur in relation to investors from states that do not have IIAs that contain an MFN clause. Although it goes without saying that foreign investors will not be able to bring claims in relation to MFN treatment where no MFN clause exists, this issue relates to the more fundamental challenge of building a level playing field for foreign investors with various nationalities in host states. The MFN clause is included in most modern IIAs and has been the pillar of

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April 2022. More examples in this regard include South Africa Model BIT (2012) and EU–Singapore FTA (2014).

8 India – Brazil BIT (2020), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5912/download>> accessed 20 April 2022; India – Kyrgyzstan BIT (2019), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5993/download>> accessed 20 April 2022; India – Balerus BIT (2018), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5724/download>> accessed 20 April 2022.

9 EU – Singapore FTA (2014), a copy of which is available at: <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=961>> accessed 20 April 2022.

10 ASEAN–Australia–New Zealand FTA (2009), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2589/download>> accessed 20 April 2022.

11 UNCTAD, UNCTAD’s reform package for the International Investment Regime (2018). UNCTAD/DIAE/PCB/INF/2020/8 34. Available at: <[https://investmentpolicy.unctad.org/uploaded-files/document/UNCTAD\\_Reform\\_Package\\_2018.pdf](https://investmentpolicy.unctad.org/uploaded-files/document/UNCTAD_Reform_Package_2018.pdf)> accessed 20 April 2022.

12 UNCTAD, *Word Investment Report 2015: Reforming International Investment Governance* (United Nations 2015) 315, available at: <[https://unctad.org/system/files/official-document/wir2015\\_en.pdf](https://unctad.org/system/files/official-document/wir2015_en.pdf)> accessed 20 April 2022.

non-discrimination in international economic law. It is, therefore, a rather radical step for countries to delete the MFN clause from IIAs entirely.

## 1.2 *Refinement of the MFN Clause*

Countries have also concluded treaties with restrictively drafted MFN clauses to prevent tribunals from extending them in unanticipated ways. Treaty practice varies in this regard, including restricting the scope of MFN obligations to *de facto* treatment, according MFN obligations only in relation to substantive provisions of the basic treaty, and explicitly cutting out dispute settlement provisions and essential policy agendas from the scope of the MFN clause. Underscoring the element of likeness has also been a prominent method. Sometimes the above methods are employed together using clear treaty language to achieve a more restrictive and unambiguous MFN clause.

### 1.2.1 Retraining MFN Clause from Substantive Obligations

States have entered into treaties in which the MFN clause's scope has been limited to the actual treatment accorded to investors. For example, in the 2016 Comprehensive Economic Trade Agreement between the European Union and Canada (CETA), Article 8.7.4 of its investment chapter contains a clarification as follows:

Substantive obligations in other international investment treaties and other trade agreement do not in themselves constitute 'treatment', and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.<sup>13</sup>

Specifying that the MFN clause does not extend to substantive obligations in IIAs is one of the policy options provided by UNCTAD.<sup>14</sup> Such a formulation limits MFN treatment to only *de facto* treatment and excludes from its scope *de jure* treatment such as a higher standard of fair and equitable treatment contained in another treaty. It thus leaves the contracting parties more control over the operation of the MFN clause.<sup>15</sup>

13 EU – Canada FTA (CETA, 2017). A copy of which is available at: <<https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>> accessed on 20 April 2022.

14 UNCTAD (n 11).

15 Sharmin (n 2) 269.

### 1.2.2 Clarifying “in Like Circumstances”

Another appropriate method is for states to elaborate on the “in like circumstances” requirement. For example, in Indonesia-Australia Comprehensive Economic Partnership Agreement (CEPA) concluded in 2019, the contracting parties decided to add a footnote to clarify the term “like circumstances” in Articles 14.4 (National Treatment) and 14.5 (MFN treatment):

For greater certainty, whether treatment is accorded in “like circumstances” under Article 14.4 or Article 14.5 depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives, that treatment is not inconsistent with Article 14.4 or Article 14.5.<sup>16</sup>

A more specific elucidation on the likeness requirement is visible in Article 6 of the 2019 BLEU (Belgium-Luxembourg Economic Union) Model BIT, where after according MFN treatment to foreign investors in like circumstances, the following clarification was provided:

For greater certainty, a determination of whether an investment or an investor is in comparable situations for the purposes of paragraphs 1 and 2 of this Article shall be made based on an assessment of the totality of circumstances related to the investor or the investment, including:

- a) the effect of the investment on
  - (i) the local community where investment is located;
  - (ii) the environment, including effects that relate to the cumulative impact of all investments within a jurisdiction;
- b) the character of the measure, including its nature, purpose, duration and rationale; and
- c) the regulations that apply to investments or investors.<sup>17</sup>

<sup>16</sup> Australia-Indonesia CEPA (2019). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5991/download>> accessed 20 April 2022.

<sup>17</sup> BLEU Model BIT (2019). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5854/download>> accessed 20 April 2022. For another example, see Article 4 of the Azerbaijan – Croatia BIT (2007),

As discussed in above Chapter 3, legitimate public welfare objectives have been included as an indicator in this regard. For example, the recently concluded Australia-Indonesia Comprehensive Economic Partnership Agreement (CEPA) contains in the footnote of Article 14.4 (National Treatment) clarifying that the decision of “in like circumstances” under MFN treatment and National Treatment of the treaty:

... depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between investors or investments on the basis of *legitimate public welfare objectives*, that treatment is not inconsistent with Article 14.4 or Article 14.5.<sup>18</sup>

However, the definition of a legitimate public welfare objective might confuse and leave doubts for future tribunals. Moreover, treaty practice as such leaves doubts as to whether the MFN clause could still be extended to substantive treatment in addition to *de facto* treatment. As has been analyzed in Chapter 3, tribunals seldom examine whether a third-party investor is in “in like circumstances” vis-à-vis the claimant before incorporating a higher standard of substantive treatment via an MFN clause.<sup>19</sup> How future tribunals interpret MFN clauses like this is still open to question.

In a similar vein, with the objective to reserve contracting parties’ regulatory space, the 2021 Italy Model BIT explicitly carves out essential domestic policies from the scope of the MFN clause. After providing MFN treatment to foreign investors, Article 5 of the document stipulates that:

Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, paragraphs 1 and 2 shall not

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a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/229/download>> accessed 20 April 2022.

18 Australia-Indonesia CEPA (2019), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5991/download>> accessed 20 April 2022.

19 In this regard, see Jürgen Kurtz, “The Most Favoured Nation Standard and Foreign Investment: An Uneasy Fit?” (2005) 5 *The Journal of World Investment & Trade* 861, 874, 883.

be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect public morals or public order;
- (b) to protect human, animal or plant life or health;
- (c) to ensure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of persona data and the protection of confidentiality of individual records and accounts;
  - (iii) safety.<sup>20</sup>

Although the above treaty language does not serve to clarify the concept of “in like circumstances,” it may nonetheless provide useful guidance to tribunals in determining whether certain government measures were taken on the basis of legitimate policy considerations and therefore should not be subject to MFN treatment and should not be considered discriminatory.

In conclusion, the above formulations set detailed elaboration on the meaning of “in like circumstances.” Although the “in like circumstances” requirement is implicit in the *ejusdem generis* principle, an explicit reference of this kind serves to remind tribunals of their obligation to undertake a reasonable and proper comparison of foreign investors in proper comparative context when assessing an alleged breach.<sup>21</sup>

1.2.3 Excluding Investor-State Dispute Mechanism from MFN Treatment Countries have taken different strategies to avoid application of the MFN clause to dispute settlement mechanisms. Some countries have concluded treaties whereby the MFN clause was included in the substantive chapter of a

20 Italy Model BIT (2021). A copy of which is available at: <<https://investmentpolicy.uncad.org/international-investment-agreements/treaty-files/6390/download>> accessed 20 April 2022.

21 Some treaties have placed direct emphasis on the *ejusdem generis* principle instead of on “in like circumstances”. See, for example, Article 2.4.6 of the EU – Vietnam FTA (2019), which provides that “[t]his Article shall be interpreted in accordance with the principle of *ejusdem generis*.” EU – Vietnam FTA (2019), a copy of which is available at: <<https://investmentpolicy.uncad.org/international-investment-agreements/treaty-files/5868/download>> accessed 20 April 2022.

purposefully fragmented treaty system. For example, the 2021 Canada Model BIT is structurally divided into several parts. Section A provides definitions, Section B substantive obligations, and Section E for ISDS. Article 6 on MFN treatment is located in Section B on substantive investment protections.<sup>22</sup> However, including the MFN clause in the specific section reserved for substantive treatment alone could raise doubts and allows tribunals to adopt a broad interpretation. As such, a more straightforward approach for contracting states might be to explicitly exclude dispute settlement from the scope of their MFN clauses.<sup>23</sup>

Additionally, as analyzed above, tribunals have adopted opposite views in relation to the expression “*expressio unius est exclusio alterius*,” especially given the absence of dispute settlement issues in the exceptions to a given MFN clause. Therefore, a clear exclusion of the dispute settlement provisions from the scope of an MFN clause will undoubtedly solve the problem caused by the *expressio unius* principle.

In order to provide direct evidence of contracting parties’ intention and reduce confusion, some recent IIAs have chosen to explicitly exclude dispute settlement from the scope of the MFN clause. Such provisions have been formulated by adding a paragraph at the end of the MFN clause. For example, Article 9.5.3 in the investment chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) provides that:

For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B (Investor-State Dispute Settlement).<sup>24</sup>

A similar formulation is visible in the newly signed Regional Comprehensive Economic Partnership (RCEP), Article 10.4.3 of which provides that “[f]or greater certainty, the treatment referred to in paragraphs 1 and 2 does not

<sup>22</sup> Canada Model BIT (2021). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/6341/download>> accessed 20 April 2022.

<sup>23</sup> Sharmin (n 2) 264. An example on point is the Canada – Burkina Faso BIT (2015). Besides locating MFN clause in the substantive treatment section, Annex III (3) of the BIT explicitly cut out dispute settlement mechanism from the scope of MFN clause. A copy of the treaty is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3460/download>> accessed 20 April 2022.

<sup>24</sup> Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018). A copy of which is available at: <<https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents>> accessed 20 April 2022.

encompass any international dispute resolution procedures or mechanisms under other existing or future international agreements.”<sup>25</sup>

Explicit terms to exclude dispute settlement from the MFN clause’s scope have also been formulated as the so-called floating footnote, a method to document the negotiating history over contracting parties’ intention.<sup>26</sup> Such formulation is visible in the interpretive declaration in the Dominican Republic-Central America FTA (CAFTA-DR), although it was later deleted. Footnotes like this should be regarded as part of the *travaux préparatoires* of treaties and should be viewed as part of supplementary methods of interpretation.<sup>27</sup> Nevertheless, the subsequent deletion of such a footnote by contracting parties could be perceived by tribunals as a change of the intention of contracting parties to include dispute settlement.

Instead of striking the footnote from the final document, some treaties have included it in the MFN clause’s footnote to avoid unanticipated expansive interpretations by tribunals. For example, in the 2018 Central America-Korea FTA, the contracting states inserted a footnote underneath the MFN clause. It states that “[f]or greater certainty, Article 9.4 (MFN clause) shall not apply to investor-state dispute settlement mechanisms such as those set out in Section B or that are provided for in an international treaty or trade agreement.”<sup>28</sup>

To better illustrate contracting parties’ intention, some IIAs have adopted the above formulations in combination. For example, Article 10.4 of the recently signed RCEP provides in clear language that:

25 Regional Comprehensive Economic Partnership (RCEP, 2020). A copy of which is available at: <<https://rcepsec.org/legal-text/>> accessed 20 April 2022. See also: Article 4.5 of the Hong Kong – Mexico BIT, which provides that: for greater certainty, the obligation in this Article does not encompass a requirement to extend to investors of the other Contracting Party dispute resolution procedures other than those set out in Chapter 3. Hong Kong, China SAR – Mexico BIT (2020). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/6129/download>> accessed 20 April 2022; Article 4 of the Italy Model BIT (2020), a copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/6389/download>> accessed 20 April 2022.

26 Andreas Ziegler, ‘Most-Favoured-Nation (MFN) Treatment’ in Reinisch August (ed), *Standards of Investment Protection* (Oxford University Press 2008) 82.

27 Y Radi, ‘The Application of the Most-Favoured-Nation Clause to the Dispute Settlement Provisions of Bilateral Investment Treaties: Domesticating the “Trojan Horse”’ (2007) 18 *European Journal of International Law* 757, 769.

28 South Korea – Central America FTA (2018). A copy of which is available at: <<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5670/download>> accessed 20 April 2022.

1. Each Party shall accord to investors of another Party treatment no less [favorable] than that it accords, in like circumstances, to investors of any other Party or non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less [favorable] than that it accords, in like circumstances, to investments in its territory of investors of any other Party or non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not encompass any international dispute resolution procedures or mechanisms under other existing or future international agreements.<sup>29</sup>

A footnote in the clause made clear that –

[f]or greater certainty, whether the treatment is accorded in “like circumstances” under this Article depends on the totality of the circumstances. Those include whether the relevant treatment distinguishes between investors or investments based on legitimate public welfare objectives.<sup>30</sup>

## 2 A More Balanced Approach to MFN Interpretation

In summary, there is a clear trend in the direction of narrower formulation of MFN clauses in modern IIAs. As stated in above Chapter 1, the MFN clause plays a key role in the current Rebalancing Era for states’ effective investment policies. Accordingly, the MFN clause has increasingly been formulated in a more cautious, specific, and detailed manner in more recent IIAs.<sup>31</sup> The most effective manner in which to achieve this may be to exclude the dispute settlement mechanism from the scope of the MFN clause with direct and explicit language.

The emphasis placed on the term “in like circumstances” is helpful, but only in relation to alleged *de facto* violations of MFN obligations. Therefore, it will

<sup>29</sup> RCEP (n 25).

<sup>30</sup> RCEP (n 25).

<sup>31</sup> See, for example, UNCTAD, “The Changing IIA Landscape: New Treaties and Recent Policy Developments” IIA Issues Note No. 1 (2020). UNCTAD/DIAE/PCB/INF/2020/4.

be more helpful when combined with a paragraph that constrains MFN treatment to discriminatory measures that have actually taken place.

Replacing the MFN clause with a soft commitment using terms such as “endeavor to” helps to retrieve States’ regulatory power, but a total omission of the MFN clause perhaps goes too far to do so.

In any event, a restrictive formulation of MFN clauses implies an effort by contracting states to exercise state power as treaty makers and to limit the discretion of tribunals in an attempt to strike a new balance between the regulatory interests of host states and the interests of foreign investors.

Overall, responsible interpretation by tribunals and courts is required. Specifically, tribunals should decide cases according to the treaty text, and interpret MFN clauses based on a proper application of the interpretive principles of international law instead of through reliance on presumptions. In this regard, a case-by-case examination of the specific texts of an MFN clause is necessary. In addition, other essential parameters should also be given due consideration by tribunals. These include the role of state consent as the foundation for the jurisdiction of international adjudication, the current Rebalancing Era that calls for a more balanced investor-state prospect, and finally, as has been emphasized throughout this book, it is essential that interpretive principles such as *ejusdem generis* be respected by tribunals.

