

Stephan W. Schill (ed.). ***International Investment Law and Comparative Public Law***. Oxford: Oxford University Press, 2010. Pp. 836, £145. ISBN: 9780199589104.

1 International Investment Law as Public Law?

The science of international law can no longer be content with the analogous application of private law categories. It must search the entire body of the 'general principles of law recognized by civilized nations' for proper analogies. With the growing importance of international legal relations between public authorities and private legal subjects, public law will be an increasingly fertile source of international law.¹

Wolfgang Friedmann's famous assessment of the role of public law as a source of (general) public international law in 1963 holds even truer *vis-à-vis* international investment law in 2011. The kind of disputes investment arbitration tribunals have to deal with and the substantive issues they have to decide are widely perceived as matters of public concern, and thus by far transgress the rather isolated bilateral relationship that is the typical characteristic of a private dispute.² Whether a state may adopt a general regulatory scheme banning toxic waste³ or whether it may, in order to prevent an economic collapse, amend laws formerly guaranteeing a fixed exchange rate and unlimited convertibility into a foreign currency⁴ genuinely touches upon its

¹ Friedmann, 'The Use of "General Principles" in the Development of International Law', 57 *AJIL* (1963) 279, at 295.

² Albeit, naturally, this is a rather ideal-type categorization, since many disputes that are indisputably private in nature inhere direct and indirect consequences that may affect third parties, if not to say entire communities.

³ Cf. *S.D. Myers, Inc. v. Canada*, UNCITRAL (NAFTA), Partial Award, 13 Nov 2000.

⁴ As in the disputes regarding the Argentine crisis. For an overview of the facts and the unfolding of the crisis also consult *BG Group PLC v. Argentine Republic*, UNCITRAL, Final Award, 24 Dec 2007, at paras 16–82. Also see Alvarez and Khamsi, 'The Argentine Crisis and Foreign Investors – A Glimpse into the Heart of the Investment Regime', in K.P. Sauvant (ed.), *Yearbook on International Investment Law & Policy 2008–2009* (2009), at 379.

sovereignty and indirectly affects a myriad of stakeholders. Gus van Harten deserves credit for pointing the international investment community to the public nature of investment disputes.⁵ The recently published volume, *International Investment Law and Comparative Public Law* edited by Stephan W. Schill, seeks to profit from such view by assessing various issues of international investment law through the public law lens.

As this large collection of essays premises,⁶ international investment law may be considered a form of public law because it involves the adjudicatory control of the exercise of public authority, providing non-state entities with direct rights of action against the host state. Moreover, this public law system operates on the global level by drawing on both domestic and international law and creating a legal regime granting primacy to the former. Since most international investment agreements, despite their usual bilateral nature, set similar standards for the protection of investors,⁷ these standards harmonize the way investors must be treated on a global level. Hence one might consider terming the public law system that international investment law creates ‘global’.

However, some critical voices do not agree with the conceptualization of international investment law as public law.⁸ Indeed, its procedural frame borrows from international commercial arbitration, i.e., a regime created to decide private disputes. Additionally, investment claims are targeted at monetary compensation, and arbitral awards as such cannot amend national law or overhaul a policy. Moreover, in many investment disputes the investor had previously concluded an investment contract with the host government laying down the basic framework and terms of the rights and obligations the investor enjoys regarding its investment in the host state. Usually, those contracts are of a private law nature, comparable with a private law contract between private entities or between a domestic economic actor and the government acting *de iure gestionis*. Thus, one might argue, investment disputes being based partially or in some instances even exclusively on investment contracts do not substantially differ from ordinary contract law claims under domestic law, for they root in a relative, i.e., private relationship.⁹ So, too much fuss about the public law character?

To tackle the last argument first, such view neglects the fact that the role of investment contracts is shrinking radically. While, nowadays, instances are very rare in which there is an investment contract but no international investment agreement, the reverse situation occurs rather frequently. Moreover, if both investment contract and international investment agreement exist – given that international law trumps domestic law in case of conflict – the tribunal will apply the former only to those issues that are not addressed in the international investment agreement. What is more, to derive international investment law’s alleged private law character from the existence of (private law) investment contracts conflates the factors determining the public or private law character of a legal system. Assume the equation in a purely domestic system: the government concludes a private law contract with a domestic private entity. Indisputably, the contract itself is of a private law nature, and if either side defaults on its obligations the dispute arising is equally of a private law character. However, what if the state does not act

⁵ G. van Harten, *International Investment Treaty Arbitration and Public Law* (2007); also see van Harten and Loughlin, ‘Investment Treaty Arbitration as a Species of Global Administrative Law’, 17 *EJIL* (2006) 121.

⁶ Only cf. Schill, ‘International Investment Law and Comparative Public Law – An Introduction’, in the vol. under review, at 3, 10 ff.

⁷ See on this S.W. Schill, *The Multilateralization of International Investment Law* (2009).

⁸ See, e.g., Hirsch, ‘Investment Tribunals and Human Rights: Divergent Paths’, in P.M. Dupuy, F. Francioni, and E.-U. Petersmann (eds), *Human Rights in International Investment Law and Arbitration* (2009), at 97, 107 ff.

⁹ *Ibid.*, at 108 f.

as a private entity, but in its capacity as a public entity bestowed with public authority, i.e., seizing the other side's assets, arresting its employees, or adopting legislation effectively eradicating the rights enshrined in the contract? In this case we no longer observe a coordinative relationship of legal peers. Rather, the relationship is hierarchical and thus vertical rather than horizontal, for the state does not act in a private capacity but employs instruments of *puissance publique*. Such disputes, whether predominantly administrative or constitutional in character, involve individual rights the private entity can raise against the exercise of public authority by the government and are thus undoubtedly of a public law character. This situation parallels the usual situation at issue in an investment dispute.

Moreover, claimants in investment disputes often aim eventually to achieve a certain policy change that could not be attained otherwise. While monetary compensation is the usual remedy, it is often rather a tool than the ultimate goal. The larger the amount of potential compensation, the more likely that the state amends its laws or changes its policies and that other states with similar laws or policies follow suit or abstain from adopting them in the first place – in order to avoid further claims by similarly-situated foreign investors. Simply put, a country the annual GDP of which stands at US\$ 54 billion can hardly afford to pay about US\$ 500 million in compensation.¹⁰

Finally, despite all parallels with commercial arbitration (procedural) investment arbitration is intertwined with and hence unthinkable without (substantive) investment law. Therefore, procedural mechanisms, such as particularly the enforcement of arbitral awards, while also existing within the clearly private law realm of international commercial arbitration, attain a completely different character for, combined with the public law features of substantive investment law, they turn into public law sanctions for illicit exercises of public authority.

2 International Investment Law and Comparative Public Law

A *Public Law and Public Interest*

So, if international investment law is understood as public law, what conclusions are to be drawn and what is the suitable methodology to interpret international investment law through the public law lens? *International Investment Law and Comparative Public Law* engages in, as the title suggests, a comparative analysis comparing certain features of international investment law with other (domestic and international) public law regimes to answer the above question. This book, to say as much from the outset, is without doubt an intriguing and to date the most comprehensive¹¹ study adopting a public law approach to international investment law. Hence, it provides a major contribution to the investment law debate. Not without flaws – which will be mentioned below – but with a myriad of inspiring perspectives on all controversially discussed issues in the field, this collection of essays certainly is seminal and a rich source for those in academia and practice willing to make use of the public law argument.

¹⁰ Cf. *CME Czech Republic B.V. (The Netherlands) v. Czech Republic*, UNCITRAL, Final Award, Separate Opinion by Ian Brownlie, 14 Mar 2003, at paras 72 and 79; also see S. Ripinsky and K. Williams, *Damages in International Investment Law* (2008), at 375.

¹¹ There are other collections of essays revolving around similar issues. To give but one example, Dupuy, Francioni, and E.-U. Petersmann (eds), *supra* note 8, deals with human rights aspects of international investment law, and in some parts and contributions touches upon public law analysis; only see Ch III 'Judicial "Balancing" of Economic Law and Human Rights in Regional Courts', at 195.

The doctrinal avenue for comparative public law analysis, as the reference to Friedmann¹² foreshadowed and as Stephan Schill argues in his introductory contribution, is ‘general principles of law’ as referred to in Article 38(1)(c) of the Statute of the International Court of Justice. They provide a source of law to be taken into account when interpreting investment treaties according to Article 31(3)(c) of the Vienna Convention on the Law of Treaties.¹³ The relevance of comparative public law will, so Schill contends, depend on the interpretative leeway international investment agreements permit. ‘To the extent that investment obligations leave no room for doubt, the ambit of comparative public law will be limited to a *de lege ferenda* perspective. To the extent, however, that there is interpretative leeway, comparative public law can be used broadly.’¹⁴ Generally, two ways are imaginable in which public law might impact on the interpretation of investors’ rights. First, it may extend those rights and sharpen their contours. Investment tribunals may deduce institutional and procedural requirements from domestic and international (public law) standards.¹⁵ Secondly, comparative public law analysis may also be used to limit an investor right. It may demonstrate that certain state conduct is permitted in domestic legal systems, and thereby support the argument that the state measure at issue in an investment dispute is justified.¹⁶

Unfortunately, both Schill’s and subsequent contributions¹⁷ stop here. They flesh out the potentials of comparative public law analysis to extend and to limit investor rights in specific subject areas, but they do not tackle the more general question regarding the theoretical foundations of the ‘public’ character of international investment law. If international investment law has strong public law traits – if not, a comparative study would be obsolete – there must be a public interest involved that serves as the yardstick of legal argument.¹⁸ Public law without public interest is hardly thinkable, so what is (or what are) the public interest(s) to be considered in the realm of international investment law? If we deny that public interests are at stake in international investment law, again, employing a comparative public law analysis becomes dubious. If, however, we accept that there is something out there, an effort must be undertaken to grasp what it is and what role it asserts in the investment realm. Otherwise, analysis may lose focus and orientation.

To be sure, the focus of Schill’s book is on developing a methodology for interpreting international investment law rather than elaborating on its theoretical foundations. However, part I entitled ‘Concept and Foundations’ contains only three contributions,¹⁹ and none deals with the reasons for the conceptualization of international investment law as public law. In particular, delineating thoughts on a general approach *vis-à-vis* defining the limits of investors’ rights in light of the state’s aim to further the public interest would have been worthwhile.²⁰ Even more interesting, and partly transgressing the scope of comparative public law analysis, is

¹² See *supra* note 1.

¹³ Schill, *supra* note 6, at 26 ff.

¹⁴ *Ibid.*, at 31.

¹⁵ *Ibid.* at 32.

¹⁶ Also see della Cananea, ‘Minimum Standards of Procedural Justice in Administrative Adjudication’, in the vol. under review, at 39, 42 f, and 47 f, who, however, presents a brilliant *tour de force* through 300 years of legal thought in order to flesh out commonly shared due process standards appropriate to guide international investment law: cf. at 69 ff.

¹⁷ See Stephan Schill’s contribution on umbrella clauses, where he acknowledges such a premise, at 317, 336 ff.

¹⁸ Compared with 6 to 8 contributions in the three other parts. Also see *infra* sect 3C.

¹⁹ However, see Schill, *supra* note 18, 341 and *infra* sect 2B.

²⁰ Such as the title of Jürgen Kurtz’s essay: see Kurtz, ‘The Merits and Limits of Comparativism: National Treatment in International Investment Law and the WTO’, in the vol. under review, at 243.

a further question: is the public interest in a global investment law regime that enmeshes domestic and international law and sets harmonious international standards that strongly impact on the domestic legal regime a domestic or rather a global or transnational issue? And if the latter was assumed how did this affect a general 'public law' theory of international investment law?

B *Specific Subject Areas of International Investment Law Viewed through the Public Law Lens*

It is a strength of this book that it vigorously, albeit not blindly, embraces the notion of international investment law as public law. While most contributions demonstrate the value of the comparative public law approach, the book also includes voices that flesh out the 'limits of comparativism'²¹ in specific subject areas.

Irmgard Marboe, for example, after an astute comparative study of state responsibility on the one hand and state liability under different jurisdictions on the other hand, stresses that the privileged position the state assumes for itself *vis-à-vis* state liability in the domestic and European realms is increasingly criticized as ill-founded and lacking legitimacy. 'Consequently', she concludes, 'caution should be taken not to introduce new criteria allegedly based on "general principles of law" into international investment law, which could then be confronted with the same criticism'.²²

Jürgen Kurtz establishes a methodological critique of the comparative analysis conducted by investment tribunals *vis-à-vis* the national treatment standard.²³ Indeed, as he rightly points out, awards such as *Occidental*²⁴ or *Methanex*,²⁵ drawing on WTO (case) law while neglecting the textual, contextual, systemic, and remedial differences²⁶ between the world trade and the investment law regimes, lead to unsound conclusions regarding the role of competition when interpreting 'likeness'.²⁷ Kurtz is less sceptical than Marboe, however. He does see some potential in drawing on WTO law regarding, e.g., the interpretation of what constitutes 'less favourable treatment', provided such comparative analysis is sensitive to the differences between international investment law and world trade law.²⁸

It was the editor who wrote one of the most inspiring essays of this volume. Dealing with so-called 'umbrella clauses'²⁹ in international investment agreements, Schill draws on the general principles of *pacta sunt servanda* and *clausula rebus sic stantibus* in order to determine in which cases the host state's interferences with investor-state contracts amount to a breach of the umbrella clause and in which cases the host state is in fact entitled to interfere.³⁰ Exploring the scope and limits of government action (allegedly) in the public interest, Schill argues that the

²¹ Marboe, 'State Responsibility and Comparative State Liability for Administrative and Legislative Harm to Economic Interests', in the vol. under review, at 377, 411.

²² Kurtz, *supra* note 21.

²³ *Occidental Exploration and Production Co. v. Ecuador*, LCIA Case No. UN3467, UNCITRAL, Final Award, 1 July 2004, at paras 174 ff.

²⁴ *Methanex Corp. v. US*, UNCITRAL/NAFTA, Final Award of the Tribunal on Jurisdiction and Merits, 3 Aug 2005, Part IV, Ch B, at paras 28 ff.

²⁵ Kurtz, *supra* note 21, at 250 ff.

²⁶ *Ibid.*, at 255 ff., 278.

²⁷ *Ibid.*, at 262 ff., 278.

²⁸ I.e., a provision guaranteeing the observation of obligations assumed by the host state *vis-à-vis* the investor.

²⁹ *Supra* note 18, at 330 ff.

³⁰ *Ibid.*, at 337 ff.

host state cannot contract away its power to interfere with investor–state contracts and bases this claim on customary international law as well as domestic public law.³¹ Hence he asserts an ‘implicit police power exception to the operation of the umbrella clause for the regulation of contracts in the public interest’³² and delineates the standard – proportionality analysis³³ – which he deems most appropriate to decide when the host state should be required to compensate the investor.³⁴

His argument is convincing and the ‘implicit police power exception’, along with the proportionality test, might even accrue to a kind of litmus test for public interest exceptions to investor rights. One thought, however, may be added which Schill seems to neglect. In the domestic context as well as in inter-state arbitration to which Schill refers when proving the ‘implicit police power exception’, the state is very much concerned to avoid its conduct being found to be unlawful. The most perilous remedy in these contexts is the stigma of unlawfulness, not so much the obligation to pay compensation. By contrast, in international investment law it does not matter so much to the host state whether its conduct is considered lawful or not. What matters to it most is how much compensation it has to pay. High amounts of compensation entail serious consequences on the host state’s incentive or even ability to pursue the public interest, regardless of whether the host state’s conduct was lawful or unlawful.³⁵ Considering that paying money is by far the most important remedy in international investment arbitration, it becomes doubtful whether public law standards *vis-à-vis* compensation derived from the domestic and inter-state context may be transferred to the international investment realm without modification.

Aware that in international investment law states fear compensation more than findings of illegality, Anne van Aaken’s essay on primary and secondary remedies in a comparative perspective³⁶ equates primary remedies – i.e., the focus on illegality and thus on prevention or restitution – with domestic law and secondary remedies – i.e., damages and compensation – in international investment law.³⁷ Arguing that primary remedies protect property rights more effectively and that secondary remedies, if they amount to very high sums, are as intrusive on a host state’s sovereignty as primary remedies, van Aaken argues for ‘reintroduc[ing] primary remedies in investment law’.³⁸

This is an intriguing and thought-provoking suggestion, which calls on law and economics considerations to corroborate the notion of a high effectiveness of primary remedies. However, I am rather sceptical whether it is really wise to introduce primary remedies in international investment law. Despite its (global) ‘public law’ or even an allegedly ‘global administrative law’³⁹ character one should not forget that the international investment regime differs considerably from a domestic legal order, at least as regards both the possibilities of enforcement and the

³¹ *Ibid.*, at 340.

³² Also cf. Kingsbury and Schill, ‘Public Law Concepts to Balance Investors’ Rights with State Regulatory Actions in the Public Interest – the Concept of Proportionality’, in the vol. under review, at 75.

³³ Schill, *supra* note 18, at 341 f.

³⁴ Cf. *CME v. Czech Republic*, Separate Opinion by Ian Brownlie, *supra* note 10, at paras 72 and 79.

³⁵ Van Aaken, ‘Primary and Secondary Remedies in International Investment Law and National State Liability: A Functional and Comparative View’, in the vol. under review, at 721.

³⁶ *Ibid.*, at 723.

³⁷ *Ibid.*, at 749.

³⁸ Cf. Van Harten and Loughlin, *supra* note 5; van Aaken, *supra* note 36, at 721.

³⁹ See R. Dolzer and C. Schreuer, *Principles of International Investment Law* (2008), at 19 ff. For a critical account of the investment arbitration regime as it stands nowadays see van Harten, ‘Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law’, in the vol. under review, at 627; see also van Harten, *supra* note 5, at 152 ff.

state's willingness and ability to abide by the rule of law. Van Aaken's suggestion presupposes a well-functioning administration that considers itself bound by an international tribunal's decision ordering primary remedies. While this may be true for some, national administrations and governments are usually less willing to comply with the orders and judgments of international tribunals than they are to follow domestic courts. Moreover, while the enforcement regime for secondary remedies is rather elaborate and efficient, building on the principles of the New York Convention and thus on a proven and tested mechanism of international commercial arbitration, it is difficult to imagine how enforcement of primary remedies should proceed. It is indeed the general scepticism regarding a host state's willingness to abide by international rules and principles of investment protection that induced the international community to create the investment arbitration regime, and that is the major justification for its existence to date.⁴⁰

Finally, a short note on a further interesting piece in the book under review. Catherine Donnelly's contribution on comparative public procurement constitutes a more than overdue inquiry into an area of law of utmost importance in international investment law.⁴¹ Albeit occasionally operating a little bit too generously regarding terminology,⁴² Donnelly provides an astute study of four principles – transparency, legitimate expectations, due process, and proportionality – relevant both in domestic and European public procurement law and in international investment law.

C A Few Words on Structure

Unfortunately, structure is one of the weaker aspects of this volume. Schill's book consists of four parts. Part I, as was already mentioned above, seeks to lay out 'Concept and Foundations'. Part II, 'Investor Rights in Comparative Perspective', pertains to substantive issues such as fair and equitable treatment or denial of justice. Kurtz' contribution and Schill's piece on umbrella clauses belong here. Part III also deals with substantive issues; unlike Part II, however, it does not tackle investor rights, but focuses on 'Comparative Administrative and Comparative Constitutional Law on Selected Issues' and includes the text by Donnelly on public procurement. Eventually, Part IV purports to comprise essays on 'Dispute Settlement, Arbitral Procedure, and Remedies'. *Inter alia*, Anne van Aaken's contribution is found here.

Regrettably, it remains opaque how, for example, Kingsbury's and Schill's – excellent – piece⁴³ on proportionality is a matter of the 'Concept and Foundations' of comparative public law analysis. Proportionality may well serve as a concept to view international investment law issues through the 'public law' lens. It is thus a specific question and not really an aspect responding to the general question of *the* concept of comparative public law analysis. Placing it in Part IV

⁴⁰ C. Donnelly, 'Public–Private Partnerships: Award, Performance, and Remedies', in the vol. under review, at 475.

⁴¹ Fair and equitable treatment in the investment context is rather a right than a principle, cf. *ibid.*, 475 – at least this is debatable and hence terminology must be treated with care. Cf. on rights and principles in legal theory R. Dworkin, *Taking Rights Seriously* (1977); R. Alexy, *Theorie der Grundrechte* (1986). Moreover, Donnelly appears sometimes to use fair and equitable treatment and transparency interchangeably, cf. Donnelly, *supra* note 41, 480. This somewhat neglects the fact that the other 'principles' she scrutinizes – such as legitimate expectations, due process and even to some extent proportionality – form aspects of the fair and equitable treatment standard in international investment law: see Dolzer and Schreuer, *supra* note 40, at 133 ff. Correctly, however, at the end of her scrutiny, see Donnelly, *supra* note 41, at 498: 'the more overarching principle of fair and equitable treatment'.

⁴² Kingsbury and Schill, *supra* note 33.

⁴³ Burke-White and von Staden, 'The Need for Public Law Standards of Review in Investor-State Arbitrations', in the vol. under review, at 689.

next to William Burke-White's and Andreas von Staden's contribution on public law standards of review⁴⁴ in my opinion would have been more suitable, since both essays target public law standards of review but promote different answers – proportionality on the one hand⁴⁵ and margin of appreciation⁴⁶ on the other. Moreover, Part III referring to 'Selected Issues' appears as a rather random assemblage of various matters. There is no doubt that they are important and most contributions are excellent. However, one suspects that a clear-cut editorial concept did not exist when the individual contributions were drafted.

3 Conclusion

It is the thankless task of a reviewer to select from the wealth of articles in this rich volume, and I advise everybody interested in the topic to rummage through the book. It includes many contributions that would more than deserve to be mentioned, but did not find their way into this review merely due to lack of space for further discussion. The book has some flaws, which I have pointed out – e.g., that it stops short of laying a general 'public law' theory of international investment law or that the way it is structured does not always convince. Nonetheless, I am confident it will spark debate in many areas of international investment law and provide somewhat of a blueprint for subsequent comparative analyses that aim at informing public international law.

Individual Contributions

Stephan W. Schill, International Investment Law and Comparative Public Law. An Introduction;

Giacinto della Cananea, Minimum Standards of Procedural Justice in Administrative Adjudication;

Benedict Kingsbury and Stephan W. Schill, Public Law Concepts to Balance Investors' Rights with State Regulatory Actions in the Public Interest. The Concept of Proportionality;

Markus Perkams, The Concept of Indirect Expropriation in Comparative Public Law.

Searching for Light in the Dark;

Stephan W. Schill, Fair and Equitable Treatment, the Rule of Law, and Comparative Public Law;

Helge Elisabeth Zeitler, Full Protection and Security;

Ali Ehsassi, Cain & Abel. Congruence and Conflict in the Application of the Denial of Justice Principle;

Jürgen Kurtz, The Merits and Limits of Comparativism: National Treatment in International Investment Law and the WTO;

Freya Baetens, Discrimination on the Basis of Nationality. Determining Likeness in Human Rights and Investment Law;

Stephan W. Schill, Umbrella Clauses as Public Law Concepts in Comparative Perspective;

Abba Kolo, Transfer of Funds. The Interaction between the IMF Articles of Agreement and Modern Investment Treaties. A Comparative Law Perspective;

Irmgard Marboe, State Responsibility and Comparative State Liability for Administrative and Legislative Harm to Economic Interests;

Hector A. Mairal, Legitimate Expectations and Informal Administrative Representations;

Kim Talus, Revocation and Cancellation of Concessions, Operating Licenses and Other Beneficial Administrative Acts;

⁴⁴ Kingsbury and Schill, *supra* note 33, at 102.

⁴⁵ Burke-White and von Staden, *supra* note 44, at 715 ff.

Catherine Donnelly, Public-Private Partnerships. Award, Performance and Remedies;
Christina Binder and August Reinisch, Economic Emergency Powers. A Comparative Law Perspective;
Federico Lenzerini, Property Protection and Protection of Cultural Heritage;
Christian Tietje and Karoline Kampermann, Taxation and Investment. Constitutional Law Limitations on Tax Legislation in Context;
Paul B. Stephan, Comparative Taxation Procedure and Tax Enforcement;
Gus Van Harten, Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law;
Chester Brown, Procedure in Investment Treaty Arbitration and the Relevance of Comparative Public Law;
William Burke-White and Andreas von Staden, The Need for Public Law Standards of Review in Investor-State Arbitrations;
Anne van Aaken, Primary and Secondary Remedies in International Investment Law and National State Liability. A Functional and Comparative View;
Borzu Sabahi and Nicholas J. Birch, Comparative Compensation for Expropriation;
Alessandra Asteriti and Christian J. Tams, Transparency and Representation of the Public Interest in Investment Treaty Arbitration

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