Do investment treaties unduly constrain regulatory space?

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1. *Framing the issue: Investment treaties and regulatory space*

International investment law (IIL) is at a crossroads. A large number of investment treaties and investor-state arbitrations, and rapidly expanding scholarly writing, have made IIL one of the most dynamic branches of international law. However, the proliferation of treaties and arbitrations has also made IIL a contested field, with experts and campaigners questioning substantive standards and dispute settlement mechanisms,[1] and commentators warning of a 'legitimacy crisis' or 'backlash' against the investment regime.[2] In addition, contrasting trends create uncertainty about the future direction of IIL. Several states have terminated some of their investment treaties, including South Africa, Indonesia, Venezuela, Ecuador and Bolivia. At the same time, the negotiation of mega treaties (including the investment chapter of the proposed Trans-Pacific Partnership) and negotiations among large economies (between the EU and Canada, the EU and the US and the EU and China, for example) are taking IIL well beyond traditional

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[1] G Van Harten, *Investment Treaty Arbitration and Public Law* (OUP 2007); N Bernasconi-Osterwalder et al, *Investment Treaties and Why They Matter to Sustainable Development: Questions & Answers* (IISD 2012), <www.iisd.org/pdf/2011/investment_treaties_why_ they_matter_sd.pdf>; and P Eberhardt, C Olivet, *Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom* (CEO/TNI 2012), <www.tni.org/sites/www.tni.org/files/download/profitingfrominjustice.pdf>.

[2] SD Franck, 'The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law through Inconsistent Decisions' (2005) 73 Fordham L Rev 1521; M Waibel et al (eds), *The Backlash against Investment Arbitration* (Kluwer Law International 2010).

concerns about investment flows to developing countries and could create some of the world's most ambitious investment treaties ever.[3]

Controversy about the interface between investment promotion and regulatory space has been central to these developments. At the heart of that interface is the fact that public-interest action can adversely affect investments, for example if new social, environmental or economic regulations increase operating costs or undermine business prospects. Under these circumstances, action taken in the name of a public interest can enter into tension with investment protection standards embodied in investment treaties. In the ongoing and oft-cited treaty-based arbitration *Philip Morris Asia Limited v The Commonwealth of Australia*, for example, a tobacco company sued Australia over the adoption of legislation to discourage smoking.[4]

These tensions have generated considerable debate, with critics raising concerns that investment treaties, as interpreted and applied by arbitral tribunals, are unduly restricting regulatory space, or even causing a 'regulatory chill' on socially desirable action.[5] Critics argue that investment treaties could undermine the sovereign right of states to regulate activities within their jurisdiction, but also their duty to do so, for example when necessary to protect human rights from business interference.[6] Empirical evidence on the extent of this 'regulatory chill' is difficult to find, partly because information is not in the public domain, counterfactuals are not available and biases undermine the evidence base; there are examples of governments both seeking advice on arbitration risks before enacting proposed measures, and maintaining measures in the face of arbitration threats or claims.[7]

What is clear is that, although monetary compensation is by far the most common remedy for breaches of investment treaties, meaning that

[3] UNCTAD, 'World Investment Report 2014 – Investing in the SDGs: An Action Plan' (2014) 114.

[4] UNCITRAL, PCA Case No. 2012-12, <www.italaw.com/cases/851>.

[5] E.g. UNCHR, High Commissioner for Human Rights, 'Human Rights, Trade and Investment' (2003) UN doc E/CN.4/Sub.2//2003/9, 35; and K Tienhaara, *The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy* (CUP 2009).

[6] United Nations Guiding Principles on Business and Human Rights, Principle 1, <www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf>.

[7] J Bonnitcha, *Substantive Protection under Investment Treaties: A Legal and Economic Analysis* (CUP 2014) 113-133.

states can still take public-interest measures so long as they pay compensation, the issue is not just about the distribution of the costs of public action. Given the large amounts awarded by arbitral tribunals to investors, the cost of regulation could in principle skew incentives for public action and discourage regulation, and it could do so beyond the state directly involved in the dispute: the government of New Zealand is waiting for the outcome of the *Philip Morris* arbitration before enacting comparable anti-smoking legislation.[8]

This tension between public action and private interests is not unique to IIL. It is a recurring theme in national and international law. At the national level, constitutional guarantees of the right to property provide an important arena for contesting that tension: in addition to initiating the *Philip Morris* arbitration, tobacco companies (unsuccessfully) challenged Australia's anti-smoking legislation before domestic courts, based on the right-to-property clause of the Australian Constitution.[9] The interface between public action and private interests permeates international human rights law.

Yet IIL presents important specificities. Unlike national law safeguards, IIL seeks to insulate foreign investment from the evolving social contract prevailing in a given society. And unlike much international law, investment treaties typically provide private actors with direct access to international redress, generally not conditioned to exhaustion of domestic remedies (which is the rule under international human rights law). Investor-state arbitration creates a unique space for international review of state conduct: tribunals usually comprising three private individuals review the conduct of democratically elected governments or legislatures, or of national courts, based on broadly formulated treaty standards that leave much discretion to arbitral tribunals.[10] While much international law is marred by enforcement problems, IIL is backed by multilateral instruments that facilitate the enforcement of pecuniary

[8] See LE Peterson 'First Hearing in Philip Morris v. Australia Arbitration is Pushed into 2014, as New Zealand Reveals it is Awaiting Outcome of Australian Cases' (2013), *Investment Arbitration Reporter* <www.iareporter.com/articles/20130228_2>.

[9] *JT International SA v Commonwealth of Australia / British American Tobacco Australasia Limited v The Commonwealth of Australia* [2012] HCA 43.

[10] For a discussion of these issues, see the interview with Toby Landau QC at <www.youtube.com/watch?v=bJaoADpICjs> (visited on 28 March 2014).

awards. Therefore, the restrictions that IIL places on regulatory space can have particularly far-reaching repercussions.

Conceptually, the rationale for shifts in the boundaries of regulatory space under IIL is typically framed in utilitarian terms: states conclude investment treaties to promote economic cooperation and encourage cross-border investments.[11] This utilitarian underpinning distinguishes IIL, say, from international human rights law, which ties international safeguards to the promotion of human dignity.[12] The explicit utilitarian rationale of IIL has triggered lively debates, and overall mixed empirical evidence, on whether investment treaties do in fact promote investment flows.[13] The utilitarian rationale also means that considerations about investment treaties and regulatory space are eminently matters of public policy choices – potentially reversible, or at least adjustable – about preferred development pathways, interfaces between state and markets, and balances between political and economic benefits and arbitration risks.[14]

Exploring the complex relationship between investment treaties and regulatory space requires tackling two interlinked questions – about the normative content of investment treaties, and about mechanisms for control over treaty administration, interpretation and compliance. I will now turn to discussing trends in the content of investment treaties, and will follow with a discussion of treaty administration, interpretation and compliance.

[11] See e.g. the preambles of Japan-Laos BIT 2008, Rwanda-US BIT 2008 and Colombia-India BIT 2009.

[12] The preamble of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights recognises 'the inherent dignity and […] the equal and inalienable rights of all members of the human family' and clarifies that 'these rights derive from the inherent dignity of the human person'.

[13] See for example KP Sauvant, L Sachs (eds), *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (OUP 2009).

[14] From a legal positivist perspective, ratification of human rights treaties is also a matter of public policy, although the close connection with human dignity creates compelling moral arguments that are absent in relation to investment treaties.

2. *An evolving treaty landscape, with multiple implications for regulatory space*

Over the years, multiple factors have considerably extended the reach of IIL. An exponential increase in the number of investment treaties,[15] coupled with sophisticated corporate planning techniques, has expanded the share of global economic activity covered by investment treaties, although important investment flows (between the US, Western Europe and Japan, for example) have so far remained outside the cover of investment treaties. The type of assets protected and measures covered by investment treaties has also expanded. Applying broadly formulated treaty definitions of 'investment', arbitral tribunals have taken IIL well beyond traditional concerns about foreign direct investment, to cover disputes over wide-ranging assets with minimal connection to the host state – from contracts for the provision of services primarily performed in third countries,[16] through to sovereign debt securities purchased on international markets.[17] And while only a few decades ago investment disputes commonly involved direct expropriations, contemporary arbitrations involve a much wider range of government measures, including environmental regulations, legislation to protect public health, action to sanction contractual breaches, policies to remedy historical injustices and measures to collect taxes or increase fiscal revenues.[18] As a result of these developments, investment treaties cover significant economic activity, protect a wide range of assets and affect diverse public measures.

This gradual expansion of the reach of IIL has been underpinned not by centralised codification through multilateral 'rational design', but by a highly dynamic process involving decentralised negotiation and contestation – including multiple bilateral treaty negotiations and the

[15] Including investment chapters in wider trade and investment agreements.

[16] *SGS Société Générale de Surveillance S.A. v Islamic Republic of Pakistan* (Decision on Objections to Jurisdiction, 6 August 2003) ICSID ARB/01/13; SGS *Société Générale de Surveillance S.A. v Republic of the Philippines* (Decision on Objections to Jurisdiction), 29 January 2004, ICSID ARB/02/6.

[17] *Abaclat and Others v The Argentine Republic* (Decision on Jurisdiction and Admissibility, 4 August 2011) ICSID ARB/07/5.

[18] Bernasconi-Osterwalder et al (n 1) 7.

interplay between arbitral jurisprudence and treaty practice.[19] This incrementally expanding reach of IIL has redefined the boundaries between investment protection and regulatory space, raised concerns about the ability of states to regulate in the public interest, and led some states to seek a 'recalibration' of their investment treaties. Early movers included the United States and Canada[20] – two states at the receiving end of sizeable arbitration caseloads in the context of the North American Free Trade Agreement (NAFTA). Some South and Southeast Asian states have also taken more nuanced approaches to investment treaty making,[21] as have some African states including with support from international organisations and think tanks.[22]

This shift is reflected in new departures in treaty formulation. The preamble of some recent investment treaties ties investment promotion to a wider set of ultimate policy goals, including sustainable development.[23] Some recent treaties also feature more narrowly formulated investment protection provisions, including clauses restricting fair and equitable treatment (FET) to the minimum standard of treatment under customary international law,[24] and annexes clarifying the criteria to determine whether an indirect expropriation has occurred.[25] A growing number of treaties feature general exceptions clauses broadly modelled on Article XX of the General Agreement on Tariffs and Trade (GATT) and Article XIV of the General Agreement on Trade in Services (GATS).[26]

[19] J Pauwelyn, 'Regime Composition, Emergence, and Change', in Z Douglas, J Pauwelyn, JE Viñuales (eds), *Foundations of International Investment Law: Bringing Theory into Practice* (OUP 2014) 11-43.

[20] US Model BITs of 2004 and 2012; Canada's Model BIT of 2004.

[21] E.g. ASEAN Comprehensive Investment Agreement (ACIA) of 2009.

[22] COMESA (Common Market for Eastern and Southern Africa) Investment Agreement of 2007; Southern African Development Community (SADC) Model Investment Treaty of 2012.

[23] E.g. Cameroon-Canada BIT 2014.

[24] E.g. Rwanda-US BIT 2008, art 5; ASEAN-Australia-New Zealand FTA 2009, art 6 (c).

[25] E.g. ACIA, Annex 2.

[26] E.g. COMESA Investment Agreement, art 22; ACIA, art 17; Benin-Canada BIT 2013, art 20.

It has been argued that recalibrated treaties go a long way towards addressing concerns about excessive restrictions on regulatory space.[27] However, other commentators have raised concerns about scope of application, protection standards, dispute settlement and the lack of a clear affirmation of a right to regulate even in recalibrated texts.[28] There is still too little arbitral jurisprudence on several recalibrated standards, and the jury is out on whether some of these standards adequately address concerns about regulatory space.

In addition, these evolutions in treaty making have increased diversity in the investment treaty landscape: there is significant diversity in the formulation of recalibrated treaties, and many states, particularly European states, have continued to conclude investment treaties not featuring recalibrated elements. As a result, depending on applicable treaties arbitral tribunals could reach different conclusions on whether a given measure breaches treaty standards. For example, statistics suggest that it is more difficult for a claimant to establish a violation of FET if this is tied to the minimum standard of treatment under customary law.[29] The polycentric and evolving nature of IIL means that the question of whether investment treaties unduly constrain regulatory space is geographically specific and historically contingent.

It is true that most-favoured-nation clauses tend to level the playing field, favouring (most likely non-recalibrated) approaches that are more generous towards investors. On the other hand, theoretical models centred on 'incomplete contracts' predict gradual convergence between North American and European treaty models in directions favouring recalibrated approaches.[30] This latter prediction seems borne out by developments in the negotiation of the Comprehensive Economic and Trade Agreement between the EU and Canada, which features many

[27] SA Spears, 'The Quest for Policy Space in a New Generation of International Investment Agreements' (2010) 13 J Intl Economic L 1037.

[28] See for example the 'Statement of Concern about Planned Provisions on Investment Protection and Investor-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP)' signed by numerous scholars and available at <www.kent.ac.uk/law/isds_treaty_consultation.html>.

[29] Findings cited in UNCTAD, *Fair and Equitable Treatment* (2012) 60-61.

[30] F Fontanelli, G Bianco, *The Inevitable Convergence of the US and the EU on the Protection of Foreign Investments – BITs, PTAs, and Incomplete Contracts*, ESIL 2013 Conference Paper no 7/2013 (2013), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364074>.

elements of Canada's recalibrated treaties. However, the question remains of whether the EU will pursue the same recalibrated treaty standards in negotiations with low-income countries, where the economic reality of investment flows is, at least in the medium term, one way and where the interest of large capital exporters is to maximise investment protection.

Finally, while much debate on regulatory space has focused on investment protection, investment liberalisation commitments can also restrict regulatory space: in principle and subject to exceptions and reservations, pre-establishment commitments affect the ability of states to regulate the admission of foreign investment. Some states that have recalibrated their investment protection provisions have also more assiduously included liberalisation commitments – particularly Canada and the United States. Partly as a result of the growing convergence between investment and trade treaties, other states have also increasingly entered into pre-establishment commitments. These trends increase the complexity of the variable geometries in investment treaty making, because treaties with recalibrated protection standards may also feature liberalisation provisions that importantly restrict regulatory space.

Overall, concerns about regulatory space have fostered shifts in the way some investment treaties are formulated. However, important questions remain, including with regard to the existing and still expanding stock of non-recalibrated treaties, the extent to which recalibrated treaties adequately address concerns, and constraints on regulatory space flowing from the growing use of pre-establishment obligations.

3. *Control over treaty administration, interpretation and compliance*

While the normative content of investment treaties crucially influences the interface between international commitments and regulatory space, factors affecting control over treaty administration, interpretation and compliance are also important.[31] Everything else being equal, constraints on regulatory space are likely to be more limited if states retain

[31] See A van Aaken 'Control Mechanisms in International Investment Law', in Z Douglas, J Pauwelyn, JE Viñuales (n 19) 409-435.

significant control over the operation of investment treaties. These aspects raise multiple issues; I will focus on three.

The first concerns the revision and termination of investment treaties. If states can more easily revise or terminate treaties, even expansive investment protection standards entail less stringent restrictions on regulatory space. Investment treaties can be and often are terminated by agreement between the state parties. Unlike many other international treaties, however, investment treaties usually restrict states' ability to unilaterally terminate treaties, or (for treaties involving more than two parties) to withdraw from them. Many termination clauses provide that the treaty can only be terminated after 10 or even 20 years; and that, once the treaty has been terminated, it continues to apply to investments made while the treaty was in force for an additional 10 or 20 years.[32] In other words, restrictions on regulatory space can be long-lasting.

The second issue concerns the extent to which states can predict and influence their exposure to investor-state arbitration and the interpretation of investment treaties in arbitral proceedings. Unlike contract-based arbitration, investment treaties expose states to claims from an unknown and potentially large number of investors. States can and do sometimes subject their consent to arbitration to certain requirements. Mechanisms such as party-appointed arbitrators provide states with a degree of control over arbitral proceedings. Ultimately, however, states cannot predict how many claims they will be exposed to, what measures will be challenged, and how much money will be involved. Importantly, they cannot always predict how arbitral tribunals will interpret treaty provisions.

Indeed, far from being Montesqueian *bouches de la loi*,[33] arbitral tribunals have significantly contributed to the development of IIL, developing key investment protection concepts such as 'legitimate expectations' and taking standards of treatment in directions not always foreseen by the state parties. The importance of arbitral jurisprudence in

[32] J Pohl, *Temporal Validity of International Investment Agreements: A Large Sample Survey of Treaty Provisions* (OECD 2014), <www.oecd.org/investment/investment-policy/WP-2013_4.pdf>.

[33] '[…] les juges de la nation ne sont […] que la bouche qui prononce les paroles de la loi'. Montesquieu, *L'Esprit des Lois* (1758/1995) 116 <www.ecole-alsacienne.org/CDI/pdf/1400/14055_MONT.pdf>. See van Aaken (n 31).

shaping IIL is to some extent inevitable given the vague formulation of many investment treaties,[34] although some commentators have also linked expansive arbitral interpretations to the incentive structures faced by arbitrators.[35] While in several areas there is growing convergence in arbitral jurisprudence, in others the opinions of arbitral tribunals remain divided,[36] leading to a degree of unpredictability both of dispute settlement outcomes and of the contours of regulatory space.

In recent years, states have been asserting greater control over treaty interpretation. Building on experience developed within NAFTA,[37] some recent treaties empower states parties to issue authoritative interpretations of treaty clauses, which are binding upon arbitral tribunals. However, the extent to which these clauses are activated and make a difference to the ways in which treaty interpretation affects regulatory space remains to be seen.

The third aspect of control over treaty administration, interpretation and compliance concerns capacity challenges affecting national administrative and judicial systems. Discussions about regulatory space typically assume deliberate public action. Depending on the position taken, this deliberate action is said to pursue a deserving public interest, or to involve opportunistic behaviour requiring discipline through investment protection. However, IIL raise regulatory space issues not only for deliberate policy choices, but also for capacity challenges.

In interpreting investment protection standards, arbitral tribunals have developed exacting tests for state conduct – for example, requiring states 'to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor'.[38] One arbitral tribunal found a violation of investment protection standards in a case partly rooted in a coordination failure among multiple ministries in-

[34] AK Bjorklund, 'Investment Treaty Arbitral Decisions as *Jurisprudence Constante*', in CB Picker, ID Bunn, DW Amer (eds.), *International Economic Law: The State and Future of the Discipline* (Hart 2008) 280.

[35] Van Harten (n 1).

[36] A notable example being the implications and application of umbrella clauses.

[37] NAFTA Free Trade Commission, Note of Interpretation of Certain Chapter 11 Provisions, 31 July 2001, <www.sice.oas.org/tpd/nafta/Commission/CH11understanding _e.asp>.

[38] *Technicas Medioambientales Tecmed S.A. v United Mexican States* (Award, 23 May 2003) ICSID ARB(AF)/00/2, 154.

volved in investment approval.[39] Another tribunal found that a five-year delay in proceedings before the Indian Supreme Court (a body catering for over one billion people in a poor country in per capita terms) breached investment treaty commitments.[40] These are demanding standards, particularly for low-income countries, but also for some high-income countries.[41]

Gaps between prescribed standards of treatment and levels of capacity can affect regulatory space. Effective public action on complex investment projects requires significant technical and institutional capacity. Ensuring consistency of state action on investments involving approvals from, or relations with, multiple government agencies at national and local levels also requires significant capacity. Public authorities may not be equipped to take action in ways that would not expose them to arbitration claims. This would tend to increase the risk that investors may challenge public action through investor-state arbitration. And while it could be argued that investment treaties pressurise states to strengthen administrative and judicial procedures, where resources are scarce there is a risk that governments might prioritise upgrading of institutional infrastructure for foreign investment, for example through separate fast-tracked procedures, over citizens' needs. Some recent investment treaties require tribunals to consider a country's level of development when applying FET.[42] Provisions of this type remain very rare, however, and it is as yet unclear how arbitral tribunals will apply them.

In addition, while the greater diversity in treaty formulation, discussed above, expands the menu of options that states can choose from in determining their preferred balance between international commitments and regulatory space, the unequal negotiating power characterising investment treaty negotiations, particularly between high and low-income countries, means that states are not equally able to obtain the

[39] *MTD Equity Sdn. Bhd. v Republic of Chile* (Award, 25 May 2004) ICSID ARB/01/7.

[40] *White Industries Australia Limited v The Republic of India* (UNCITRAL, Final Award 30 November 2011).

[41] See e.g. the numerous judgments of the European Court of Human Rights against Italy in length-of-civil-proceedings cases. An oft-cited example about expropriation is *Scordino v Italy (no 1)* App no 36813/97 (ECtHR [GC] Judgment 29 March 2006).

[42] E.g. art 14 (3) of the COMESA Investment Agreement.

balance they seek. States that can impose their model treaty will tend to have greater uniformity in their stock of investment treaties, while low-income countries are likely to end up with more diverse treaty stocks primarily shaped by the multiple capital-exporting states they negotiate with. Such diversity in treaty stocks creates greater challenges in administering the variable spaces for public regulation, and the complex systemic implications of most-favoured-nation clauses, in those countries where capacity constraints are likely to be felt most.

To sum up, investment treaties redefine regulatory space in ways that may be difficult for states to predict, influence, revise and terminate, and can expose states to liabilities for public action shaped by capacity challenges as well as deliberate choice.

4. *Democratising international investment law*

There is no 'correct' technical answer to the question addressed in this article. Choices on the boundaries between investment promotion and regulatory space are eminently political. Different governments can legitimately have different positions on acceptable balances between competing policy goals. Technical analysis can help policy makers to assess options. It is clear that investment treaties, even of the recalibrated type, can have far-reaching implications for regulatory space, requiring careful thinking through. This particularly the case in low and middle-income countries, where room for tightening regulatory frameworks may be greater, constraints on public finances harder, and capacity gaps more challenging.

The political nature of choices in investment treaty making raises questions about how public decisions are made. Some commentators have likened investment treaties to constitutional provisions on the right to property. However, constitutions – at least in theory – reflect the social contract. In democratic societies, their drafting or modification is typically carried out through mechanisms that 'guarantee extraordinary high levels of democratic consent'.[43]

[43] J Kurtz, 'Building Legitimacy through Interpretation in Investor-State Arbitration: On Consistency, Coherence, and the Identification of Applicable Law', in Z Douglas, J Pauwelyn, JE Viñuales (eds) (n 19) 257-296, 263.

Developments in IIL have not been accompanied by comparable levels of democratic deliberation. Except for a few jurisdictions where treaties must be ratified by parliament,[44] there has been little parliamentary oversight of investment treaty making,[45] and more generally little public debate, particularly in low-income countries. Given the far-reaching implications that investment treaties can have for wide-ranging policy areas, this low level of public oversight creates real challenges of democratic governance and accountability.

This is an evolving arena, however. Although public consultations on investment treaties are rare, they are becoming more common. Examples include the multi-stakeholder consultation processes carried out for the elaboration of the US Model BITs of 2004 and 2012,[46] and the (more circumscribed) online consultation launched by the European Commission on the investment chapter of the proposed Transatlantic Trade and Investment Partnership (TTIP).[47] Outside formal consultations, public scrutiny of investment treaty making is on the rise – as illustrated by NGO advocacy on TTIP and the proposed Trans-Pacific Partnership. Increasing numbers of *amicus curiae* submissions in investor-state arbitration also reflect growing citizen appropriation of IIL. In the longer term, this growing public scrutiny can help both rethink IIL, and increase its perceived legitimacy.

Much remains to be done to promote public debate, particularly in low-income countries where awareness of IIL issues tends to remain low. And for this public debate to be informed, it must build on rigorous analysis of the costs and benefits of concluding an investment treaty, and of different options for treaty formulation. As IIL negotiates the crossroads it is currently facing, there is an important role for scholarship to generate analysis and inform public choices on the future of IIL.

[44] E.g. art II(2)(2) of the US Constitution.

[45] Kurtz (n 43).

[46] Report of the Subcommittee on Investment Regarding the Draft Model Bilateral Investment Treaty, 30 January 2004, <www.ciel.org/Publications/BIT_Subcmte_Jan3004.pdf>; Report of the Subcommittee on Investment of the Advisory Committee on International Economic Policy Regarding the Model Bilateral Investment Treaty, 30 September 2009, <www.state.gov/e/eb/rls/othr/2009/131098.htm>.

[47] <http://ec.europa.eu/unitedkingdom/press/frontpage/2014/14_28_en.htm>.