energy transit. The suspension of energy supply by exporting countries (e.g. Russia) as a response to breaches by transit states (e.g. Ukraine) will not be compatible with international law if it affects importing countries (e.g. the EU). This stems from the indivisible, interdependent, and in some cases *erga omnes* nature of transit obligations. However, this does not prevent states from introducing countermeasures relating to treaty obligations that are bilateralisable. For instance, the ECT prohibits the interruption of transit flows but does not explicitly exclude countermeasures with other ECT obligations (i.e. obligations that are not owed to other ECT Contracting Parties). In any event, the effect of countermeasures must be proportional to the injury suffered by prior breach. Moreover, countermeasures must respect human rights. The latter requirement can be very important in the energy sector, taking into account the severe impact on society and human life that the interruption of energy supply can have on states that are fully dependent on one external source of energy.

Despite the social and economic impact of interruptions of cross-border energy supply, international law arguments have not played a central role in the resolution of the transit disputes that have affected Europe's energy supply. States have focused on political ways of restoring energy flows and have refrained from launching compensation claims following the cessation of supply interruptions. Azaria does not engage with the possible reasons underlying the limited use of international law arguments in the geopolitically sensitive energy sector.

The limited practical relevance of international law so far does not reduce its potential to address future energy transit disputes. *Treaties on Transit of Energy via Pipelines and Countermeasures* highlights signs of "genuine multilaterisation" and "increasing treatification" in the field of energy transit. Pipeline agreements are concluded all over the world and increasingly by non-EU actors such as China that developed a massive pipeline infrastructure to secure the supply of natural gas and oil from Central Asia. The challenges that the EU faced and is still facing in the field of energy transit are therefore of broader relevance. In this context, *Treaties on Transit of Energy via Pipelines and Countermeasures* must be welcomed as a much-needed analysis of the complex case of the interruption of energy supply and its consequences under international law. Although at times difficult to follow given the level of detail, the precision of the study, and technical language, the book under review will prove to be most valuable scholarship for lawyers specialising in the field of energy and public international relations.

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Investment Treaty Arbitration as Public International Law: Procedural Aspects and Implications. By Eric De Brabandere [Cambridge: Cambridge University Press, 2014. 230 pp. Hardback £65.00. ISBN 9781107066878.]

It is a truth universally acknowledged that, for one reason or another, there is more to international investment arbitration than meets the eye. Say, on its face, it may *appear* to be composed of bilateral rules, bilateralisable obligations, and decentralised ad hoc adjudicators, but it *really* is multilateral. Or it may appear to build on commonplace legal techniques in a competent, if moderately unsophisticated, manner but it really is never-seen-before and unique, to the extent that only a phrase from a dead language or a metaphor of an exotic animal can fully capture. Or it may

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appear to be an entirely run-of-the-mill regime of international dispute settlement, inhabited by the same people and facing the same challenges as any other international tribunal, but, really, it cannot be fully comprehended without drawing upon domestic public law acumen. And so on.

What has been lacking so far is an extended argument for why what at first appears to be a spade is, even upon careful reflection, precisely that tool. Eric de Brabandere fills this gap with a fine monograph that delivers, briskly and with confidence, the thesis that international investment arbitration is a part of public international law. The argument of the book is presented in two parts. The first part, in a paraphrase of the title of the book, "argue[s] that investment treaty arbitration is a public international law dispute settlement mechanism" (pp. 1–2), exploring in turn its public international law character more broadly (ch. 1) and the particular issues relating to access by investors to arbitration (ch. 2). In ch. 1, de Brabandere makes the argument that international investment arbitration is part of international dispute settlement. In his view, while "[t]he method used to settle international investment disputes is clearly modelled on the rules and principles of international commercial arbitration" (p. 49), the subject matter is sovereign, obligations involved arise in public international law, and the process, including enforcement, is detached from the national legal orders (pp. 50–54). The overall effect of these characteristics is to locate the regime within public international law. Many aspects of this argument are plainly right. But it is the fuzziness around its edges that may be more rewarding to explore, for those who both agree or disagree with his argument.

For the former category of readers, de Brabandere may seem to be conceding too much to international commercial arbitration. It is perfectly plausible to view it as an interloper throughout the story, rather than a regime with a modicum of pedigree that is gradually displaced by the increasingly international law elements of practice. The backdrop for the foundational efforts of the 1960s, including the drafting of the 1965 Convention for the Settlement of Investment Disputes ("ICSID Convention"), was not commercial but inter-state arbitration, as reflected in the 1958 International Law Commission's ("ILC") Model Rules on Arbitral Procedure. Similarly, the most relevant backdrop for the first investment treaty arbitrations of 1990s was the (then) recent Iran-US Claims Tribunal, applying UNCITRAL Rules on International Commercial Arbitration to disputes that (partly) involved public international law. From this perspective, investment arbitration, both generally and in its treaty incarnation, was modelled on, and located within, public international dispute settlement from the very beginning.

Those more critical of de Brabandere's thesis may try to catch him out on inconsistencies. As is well known, the patently public international law elements are unevenly spread throughout the substantive and procedural rules of investment arbitration. The ICSID Convention expresses procedural law at the level of international law but can also (and indeed was primarily intended to) hear substantively contractual disputes that do not necessarily involve state responsibility under international law. Conversely, claims about breaches of investment treaties address the substance of state responsibility, but may be heard through procedure indistinguishable from commercial arbitration. The challenge is to finesse an argument of just the right scope that both fits and explains this messy practice. The title of the book suggests that de Brabandere relies on the "treaty" aspect to make the argument, which obliges him to explain away the aspects of contractual investment arbitration and commercial treaty arbitration.

From the perspective of basis of consent, a distinction is drawn between treaty and contract arbitration that comes from "public law" literature, characterising the

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first, but not the second, type of consent as "sovereign" (pp. 50–51). It is not entirely clear that this distinction is relevant for international dispute settlement. A valid consent by a state to arbitration with an investor, including but not limited to ICSID arbitration, will have its consequences under international law, through whatever instrument and by whatever terms it is expressed. Indeed, the character of consent does not necessarily correlate with the character and subject matter of the dispute, which may for some commercial arbitrations be more similar to treaty arbitrations (to adopt a recent coinage, viewing them together as "investomercial arbitrations") than to other commercial cases. The more serious challenge is posed by the (usual) presence of UNCITRAL or other commercial arbitration rules in treaties as an alternative to ICSID, suggesting that (almost all) investment treaty cases could have been heard outside ICSID. How can the argument for public international law dispute settlement be combined with the descriptively significant practice of subjection of arbitration to review and enforcement by domestic courts, in a manner that one would expect for commercial arbitration? That is a hard question, with some possible answers, but de Brabandere rather appears to concede that the full brunt of his argument applies only in ICSID (pp. 52–54). Since there is (usually) no legal necessity for treaty claims to be heard in ICSID, that is a very significant concession indeed.

The second part of the book paraphrases the subtitle of the book and explores the procedural aspects and implications of the international law perspective, applying it in turn to arbitrators (ch. 3), applicable law (ch. 4), transparency and public access (ch. 5), and remedies (ch. 6). The broader question, raised by the insightful analysis of the small procedural print, is whether the backdrop of international dispute settlement can provide a genuinely helpful nudge towards a particular approach or a specific solution. One does not have to be excessively cynical to take the view that the international law of dispute settlement comes with a common language and frame of reference, but in her infinite variety will often leave open multiple possible solutions, as may be appropriate for the particular judicial function. Indeed, some of the more interesting developments in investment arbitration are those that shape procedural solutions in a manner attuned to the judicial function exercised by these particular tribunals. Since the emphasis of de Brabandere's argument is often on solutions provided by similarities between different public international law procedures, there may be a temptation to identify cases where this perspective works less well.

In some instances, the extent of similarities is such that the implicit dichotomy between "commercial" and "public international law" becomes questionable. For example, "[t]he arbitral function and the qualifications of arbitrators generally have many common features . . ., because of the common principles applicable to any arbitral procedure" (p. 73), and some challenges in investment arbitration may seem unlike those in commercial arbitration (pp. 83–89). For some, this demonstrates the falseness of the contrast between international commercial arbitration and international dispute settlement: both are similar in their consensual basis and absence of a single overreaching authority. Those approaching the issue from the perspective of commercial arbitration may wonder whether investment arbitration really is more peculiar than sports, grain, gas price review, diamond, or domain names arbitration. Even within public international law, much could depend on how the issue is framed. Standards relating to arbitrators in an investor-state setting could be viewed as dictated by functions different from those that apply in inter-state disputes, even if international law is at issue in both instances (*Mauritius v UK*, PCA Case, Reasoned Decision on Challenge, 30 November 2011, at [165]–[170]). In other cases, the support drawn from international practice for adopting a particular

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solution may be less clear than asserted. The access of non-disputing parties (to use the term of ICSID Arbitration Rule 37(2)) in investment arbitration is indeed unlike commercial arbitration (pp. 150–53). But does it really go with the grain of public international law more generally (pp. 164–66), where such access either does not exist at all (the International Court of Justice) or is applied without overwhelming enthusiasm (Iran-US Claims Tribunal, World Trade Organisation, and UNCLOS Annex VII)?

In yet other cases, the practice of tribunals might have treated with an excessively light touch some of the subtler distinctions in technical international law. De Brabandere is right to emphasise the extent to which the law of remedies in investment arbitration has been shaped by – and through quantitative application has shaped in turn – the rules of state responsibility traditionally expressed in the inter-state setting (ch. 6), and his analysis of interlinkages between cases is particularly impressive (pp. 177–201). Indeed, in descriptive terms, the statement that "[t]he rules and principles relating to the forms of reparation are … similar when it is a non-state entity that is entitled to invoke the responsibility of a state" (p. 178, fn. 12) may be accurate as far as the uncontroversial elements of dispute settlement practice go. But it may be less helpful when invocation of restitution, moral damages, and satisfaction by non-state actors raise harder questions about the "without prejudice" proviso in Article 33(2) of the 2001 ILC Articles on state responsibility. A slightly different way of putting it is to say that the procedural perspective will not always be the most illuminating one. State responsibility may, for certain purposes, provide a sharper analytical tool: say, concerns about whether tribunals have *ratione personae* and *materiae* jurisdiction to award moral damages (pp. 197–98) seem to properly relate to the anterior question of whether a breach of a primary rule on treatment of objects, rather than entities, can give rise to such damage in the first place. But these are minor quibbles with what is overall a very fine and thought-provoking argument.

It is not uncommon for books under review to be described as timely (or even more than that), but this one really is. Some of the more significant bumps that investment law has recently hit may have been due to the lack of such a volume to provide the backdrop for developments over the last two decades. Not everybody will agree with everything that de Brabandere has to say, but any future argument about the nature of international investment law will have to engage with this book in a serious manner. The possibility of queries relating to some aspects of his argument do not undermine it; if anything, it shows how well this reasonable disagreement may be expressed through the common language of international dispute settlement.

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Privacy and Legal Issues in Cloud Computing. Edited by ANNE S.Y. CHEUNG and ROLF H. WEBER [Cheltenham and Northampton, Massachusetts: Elgar Law, Technology and Society, 2015. xiv, 290 and (Index) 14 pp. Hardback £85. ISBN 978 1 78347 706 7.]

This anthology reads as a desktop companion for practising lawyers on the legal technical issues concerning cloud computing and related privacy concerns. It is an authoritative guide for anyone seeking an in-depth compendium on the myriad

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