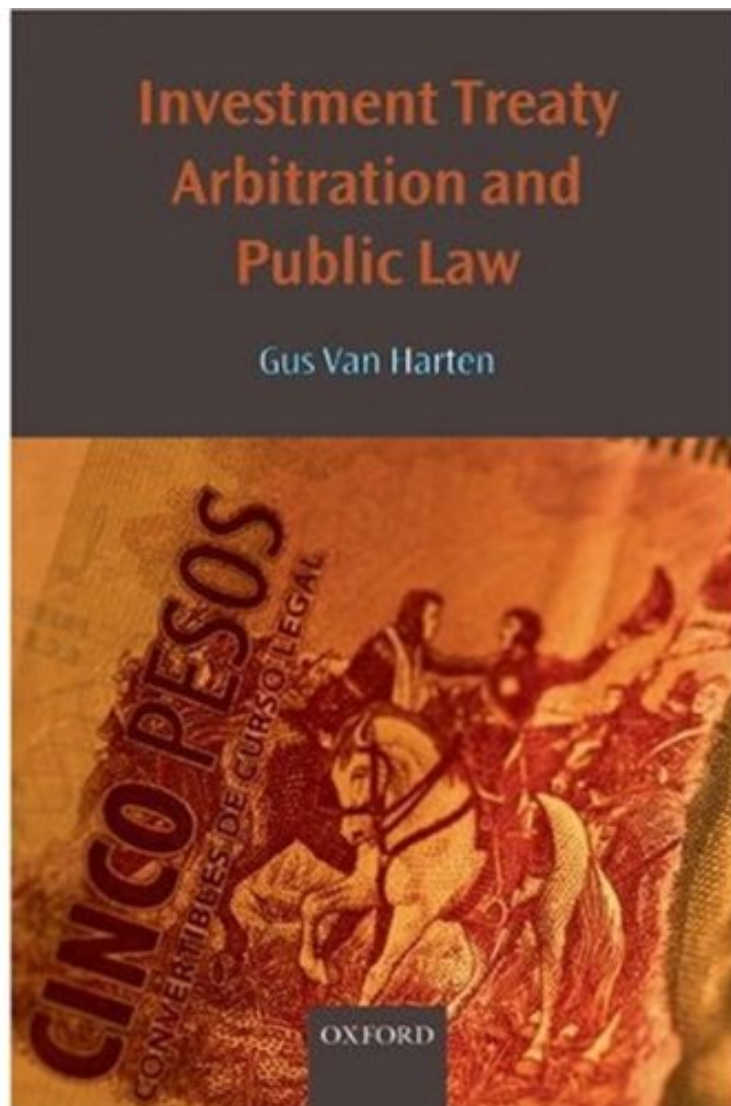


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Investment Treaty Arbitration and Public Law (Oxford Monographs in International Law)

H.H.A. Van Harten

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The recent explosion of investment treaty arbitration marks a major transformation of both international and public law, above all because of the manner in which states have delegated core powers of the courts to private arbitrators. This book outlines investment treaty arbitration as a public law system and demonstrates how it goes beyond all other forms of international adjudication in giving arbitrators a comprehensive jurisdiction to determine the legality of sovereign acts, and to award public funds to businesses that sustain loss as a result of government regulation. The analysis also reveals some startling consequences of transplanting rules of commercial arbitration into the regulatory sphere. For instance, the system allows public law to be interpreted by arbitrators in private as a matter of course, with limited scope for judicial review. Further, arbitrators can award compensation to investors in ways that go beyond domestic systems of state liability, and these awards may then be enforced in as many as 165 countries, making them more widely enforceable than any other adjudicative decision in public law. The system's mixture of private arbitration and public law undermines accountability and openness in judicial decision-making. But, most importantly, it poses a unique and fundamental challenge, neglected by other commentators - to the principle of judicial independence. To address this, this book argues that the system be replaced with an international investment court, properly constituted according to public law principles, and made up of tenured judges.

"The author's intellectual forebears--would be pleased by how this young author has avoided rehashing familiar charges of 'neoimperialism' or assertions of rampant greed by 'unaccountable' multinational enterprises in favor of a relatively succinct, refreshingly jargon-free, and scholarly censure of foreign investment arbitral regime." -Jose E. Alvarez, Columbia Law School
About the Author
Gus Van Harten teaches International Law at the London School of Economics, where he obtained his PhD. He was previously educated in Canada at the University of Guelph, York University, and Osgoode Hall Law School. His work on investment treaties has appeared in the European Journal of International Law, the Yale Human Rights and Development Law Journal, and the of International Political Economy.