

# Investment arbitration as a forum for solving state sovereignty disputes: undue restraint of police powers?

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- Is investment arbitration the proper forum for solving disputes dealing with core issues of state sovereignty?
- Have recent awards had the effect that states are unduly restrained in the exercise of their police powers?

# Proper forum for sovereignty disputes?

- What are the alternatives?
  - Diplomatic protection
  - National courts
- Advantages of investment arbitration:
  - Flexibility
  - Specialism
  - Willingness of arbitrators to take into account state sovereignty issues

# Undue restraint in recent case law?

- Case examples of tribunals' recognition and consideration of police powers include, e.g.:

- *Tecmed v. Mexico*
- *Saluka v Czech Republic*
- *Methanex v. USA*
- *LG&E v. Argentina*
- *Fireman's Fund v Mexico*
- ...

# Principles preventing undue restraint

- Proportionality
  - Weighing of purpose and effect
  - Risk: 'judicial activism'
  - Remedy: control - appeal?
- Transparency
- Public participation

Thank you for your attention!

