The investment treaty system is currently witnessing a battle between states and tribunals about the appropriate balance of power between them when it comes to interpreting investment treaties. States entering into investment treaties establish dual roles for themselves as treaty parties (with an interest in interpretation) and actual or potential respondents in investor-state disputes (with an interest in avoiding liability). By viewing states primarily as respondents rather than also as treaty parties, investment tribunals often overlook or undervalue the relevance of the treaty parties’ subsequent agreements and practice to the interpretation of investment treaties. Drawing on international relations theories, public international law interpretive tools and comparisons with human rights law, this talk examines how states can reclaim their interpretive role in the investment treaty field and what limitations should be imposed on such a role.

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The views expressed in this lecture are those of the presenter and do not necessarily represent the views of The Australian National University.