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Treaty Interpretation

2015-06-18

this series features works on substantial topics in international law which provide authoritative statements of the chosen areas taken together they map out the whole of international law in a set of scholarly reference works and treatises intended to be of use to scholars practitioners and students this book provides a guide to interpreting treaties properly in accordance with the modern rules for treaty interpretation which are codified in the vienna convention on the law of treaties these rules now apply to virtually all treaties both in an international context and within many national legal systems where treaties have an impact on a large and growing range of matters lawyers administrators diplomats and officials at international organisations are increasingly likely to encounter issues of treaty interpretation which require not only knowledge of the relevant rules but also how these rules have been and are to be applied in practice there is now a considerable body of case law on application of the codified rules this case law combined with the history and analysis of the rules provides a basis for understanding this most important task in the application of treaties internationally and within national systems of law any lawyer who ever has to consider international matters and increasingly any lawyer whose work involves domestic legislation with any international connection is at risk nowadays of encountering a treaty provision which requires interpretation whether the treaty provision is explicitly in issue or is the source of the relevant legislation this expanded edition includes consideration of a range of recent cases takes account of relevant work of the international law commission and has new material addressing matters raised in the growing body of literature on treaty interpretation

The Evolutionary Interpretation of Treaties

2014-07-17

if an old treaty regulating commerce or forbidding degrading treatment of persons is to be interpreted decades after its conclusion does commerce or degrading treatment of persons have the same meaning at the time of interpretation as they had when the treaty was concluded the evolutionary interpretation of treaties has proven one of the most controversial topics in the practice of international law indeed it has been seen as going against the very grain of the law of treaties and has been argued to be contrary to the intention of the parties breaching the principle of consent this book asks what the place of evolutionary interpretation is within the understanding of treaties at a time when many important international legal instruments are over five decades old it sets out to place the evolutionary interpretation of treaties on a firm footing within the vienna rules of interpretation as codified in articles 31-33 of the vienna convention on the law of treaties the book demonstrates that the evolutionary interpretation of treaties in common with all other types of interpretation is in fact based upon an objective understanding of the intention of the parties in order to marry intention and evolution the book argues that on the one hand evolutionary interpretation is the product of the correct application of articles 31-33 and on the other that articles 31-33 are geared towards the objective establishment of the intention of the parties the evolutionary interpretation of treaties is therefore shown to represent an intended evolution

Research Handbook on the Law of Treaties

2014-09-26

offering a unique conceptual approach to the law of treaties this insightful research handbook not only sets out the foundational issues but identifies tensions within the field including formalism vs flexibility integrity vs flexibility and unifor

The Oxford Handbook of European Union Law

2015

since its formation the European Union has expanded beyond all expectations and this expansion seems set to continue as more countries seek accession and the scope of EU law expands touching more and more aspects of its citizens' lives. The EU has never been stronger and yet it now appears to be reaching a crisis point beset on all sides by conflict and challenges to its legitimacy. Nationalist sentiment is on the rise and the Eurozone crisis has had a deep and lasting impact. EU law, always controversial, continues to perplex, not least because it remains difficult to analyse: what is the EU, an international organization or a federation? Should its legal concepts be measured against national standards or another norm? The Oxford Handbook of EU Law illuminates the richness and complexity of the debates surrounding the law and policies of the EU, comprising eight sections. It examines how we are to conceptualize EU law, the architecture of EU law-making and administering EU law, the economic constitution and the citizen, regulation of the market place, economic, monetary and fiscal union, the area of freedom, security and justice, and what lies beyond the regulatory state. Each chapter summarizes, analyses and reflects on the state of play in a given area and suggests how it is likely to develop in the foreseeable future. Written by an international team of leading commentators, this Oxford Handbook creates a vivid and provocative tapestry of the key issues shaping the laws of the European Union.

The Impact of Investment Treaty Law on Host States

2018-02-08

Traditionally, international investment law was conceptualised as a set of norms aiming to ensure good governance for foreign investors in exchange for their capital and know-how. However, the more recent narratives postulate that investment treaties and investor-state arbitration can lead to better governance, not just for foreign investors but also for host state communities. Investment treaty law can arguably foster good governance by holding host governments liable for a failure to ensure transparency, stability, predictability and consistency in their dealings with foreign investors. The recent proliferation of such narratives in investment treaty practice, arbitral awards and academic literature raises questions as to their juridical, conceptual and empirical underpinnings. What has propelled good governance from a set of normative ideals to enforceable treaty standards? Does international investment law possess the necessary characteristics to inspire changes at the national level? How do host states respond to investment treaty law? The overarching objective of this monograph is to unpack existing assumptions concerning the effects of international investment law on host states by combining doctrinal, empirical, comparative analysis and unveiling the emerging nationally felt responses to international investment norms. The book aims to facilitate a more informed understanding of the present contours and the nature of the interplay between international investment norms and national realities.

The Effects of Armed Conflict on Investment Treaties

2022-08-25

This book analyses the multi-faceted impact armed conflict has on investment treaties, refuting the common association of the outbreak of hostilities with the termination or suspension of treaties. It not only makes a case for the continuity of investment treaties, the book argues that the impact of armed conflict on such agreements goes far beyond these questions, changed factual circumstances and public interests, as well as international humanitarian law, heavily influence the application and interpretation of investment protection standards. The book argues that investment treaties can and must channel these effects to remain effective during armed conflict and strike a fair balance between investor and public interests. It shows ways in which contextual and systemic interpretation, respect for reasonable state action and careful treaty

design can ensure that investment treaties continue to fulfil their purpose of strengthening compliance with legal rules also in times of armed conflict

Blackstone's EU Treaties and Legislation 2013-2014

2013-08

this volume gives coverage of eu law containing all the up to date statutes relevant to undergraduate law degrees it gives unannotated primary and secondary legislation allowing students to take it into examinations

The Law of Investment Treaties

2021-02-18

investment treaties grant special international protection to foreign investors and give them a means to enforce those rights against states in which they have invested this book systematically examines the law of international investment treaties particularly with respect to its origins structure content and effects although the precise provisions of investment treaties are not uniform virtually all investment treaties address the same issues this book examines those issues in detail including the scope of application conditions for the entry of foreign investment and general standards of treatment of foreign investments investment treaty law has continued to evolve rapidly and dramatically since publication of the second edition of this work in 2015 the field has seen considerable growth in the number and scope of investment treaties now estimated at 3300 and investor state arbitrations cases which reached over 1000 in 2020 the field has also experienced significant changes and reforms in 2018 eleven pacific basin countries despite the withdrawal of the united states forged ahead to conclude the comprehensive and progressive agreement for trans pacific partnership cpttp a potentially far reaching regional trade and investment agreement the next year the three north american nations replaced the north american free trade agreement nafta with the united states mexico canada agreement usmca and in 2020 european union member states terminated over 100 intra eu bits leaving intra eu investors to rely on eu law and legal processes alone for protection from unfavourable government acts this edition of the law of investment treaties incorporates a consideration of all of these and other reforms into its analysis of the body of law created by investment treaties since world war ii

Commentaries on Selected Model Investment Treaties

2013-01-17

the existing literature on the substantive and procedural aspects of bilateral investment treaties bits relies heavily on investment treaty arbitration decisions as a source of law what is missing is a comprehensive analytical review of state practice this volume fills this gap providing detailed analyses of the investment treaty policy and practice of nineteen leading capital exporting states and emerging market economies the authors are leading experts in government academia and private legal practice and their chapters are largely based on primary source materials each chapter provides a description of the regulatory or policy framework governing foreign investment both inflows and outflows with a historical presentation of the state s model bit an examination of internal government processes and practices relating to treaty negotiation conclusion ratification and record keeping and a detailed article by article analytical commentary of the state s model bit elucidating the policy behind each provision and highlighting the ways in which the actual investment treaty practice of that state deviates from this standard text this commentary is supplemented by the case law relevant to that state s investment treaties this commentary will be of immense assistance to counsel and arbitrators engaged in arguing and determining the proper interpretation of bits and investment chapters in free trade agreements and to government officials and scholars engaged in bit policy formulation and implementation it will serve as a standard resource for legal practitioners

scholars policy makers and other stakeholders in the field of international investment policy law and arbitration

Intellectual Property Ordering Beyond Borders

2022-10-13

this volume brings together various perspectives to re conceptualise ip protection beyond borders within a broader public international law framework

Schwarz on Tax Treaties

2021-09-28

schwarz on tax treaties is the definitive analysis of tax treaties from united kingdom and irish perspectives and provides in depth expert analysis of the interpretation and interaction of those treaty networks with the european union and international law the sixth edition significantly develops the earlier work with enhanced commentary and is updated to include the latest uk irish domestic and treaty developments international and eu law including covered tax agreements modified by the beps multilateral instrument judicial decisions of ireland the uk and foreign courts on uk and irish treaties digital services tax treaty binding compulsory arbitration brexit and the eu uk trade and cooperation agreement taxpayer rights in exchange of information taxpayer rights in eu cross border collection of taxes attribution of profits to permanent establishments and eu dac 6 disclosure of cross border planning case law developments including uk supreme court in fowler v hmrc indian supreme court in engineering analysis centre of excellence private limited and others v cit australian full federal court in addy v cot french supreme administrative court in valueclick english court of appeal in irish bank resolution corporation v hmrc jj management and others v hmrc united states tax court in adams challenge v cir uk tax tribunals in royal bank of canada v hmrc lloyd webber v hmrc esso exploration and production v hmrc glencore v hmrc mccabe v hmrc padfield v hmrc davies v hmrc uddin v hmrc english high court in minera las bambas v glencore kotton v first tier tribunal and cjeu in n luxembourg i and others the danish beneficial ownership cases État belge v pantochim college pension plan of british columbia v finanzamt münchen hb v istituto nazionale della previdenza sociale about the author jonathan schwarz ba llb witwatersrand llm uc berkeley ftii is an english barrister at temple tax chambers in london and is also a south african advocate and a canadian and irish barrister his practice focuses on international tax disputes as counsel and as an expert and advises on solving cross border tax problems he is a visiting professor at the faculty of law king s college london university he has been listed as a leading tax barrister in both the legal 500 for international corporate tax and chambers guide to the legal profession for international transactions and particular expertise in transfer pricing he has been lauded in who s who legal uk bar for his brilliant handling of cross border tax problems in chambers guide he is identified as the double tax guru with extraordinary depth of knowledge and experience when it comes to tax treaty issues and is a creative thinker and a clear and meticulous writer

EU Constitutional Law

2022-01-16

this title is a comprehensive textbook of eu constitutional law setting out the structure values procedures and policies of the european union it is a first point of reference for issues of eu constitutional law the book encompasses six major parts the first part addresses the formation history of the european union the treaties the accessions and the withdrawal of the united kingdom the second part covers the competences of the european union it contains an extensive analysis of the key constitutional principles governing the exercise of competences by the union and the balance of power between the union and its member states followed by an in depth analysis of eu citizenship and the four freedoms followed by an overview of the main internal and external policy domains the third part addresses the role and workings of the

various institutions european council council european parliament commission european court of justice and european central bank the position of the member states of the union and various other institutional matters part four explores the various decision making processes addressing not only the legislative and executive decision making but also the budget cfsp and external action the fifth part looks at the legal instruments and the position of eu law in the eu and national legal orders with an attention to the key principles of primary and direct effect and the role of fundamental rights and the charter of fundamental rights the final part sets out the complete and coherent system of judicial protection in the european union offering an overview of the various courses of action before the eu courts and in the national legal orders to enforce eu law or to obtain judicial protection

Modification of Treaties by Subsequent Practice

2018-04-04

while treaties can be notoriously difficult to amend by formal means they must nevertheless be adapted over time in order to remain useful herein lies the role of subsequent practice as a key tool for treaty change subsequent practice a well established means of treaty interpretation sometimes diverges from the original treaty provision to such an extent that it can no longer be said to constitute an act of interpretation or application rather it becomes in effect one of treaty modification the modification of treaties by subsequent practice extends to all fields of international law from the law of the sea environmental law and investment law to human rights and humanitarian law such modifications can have significant practical consequences from revising or creating new rights and obligations to establishing new institutional mechanisms determining when and how treaty modification by subsequent practice occurs poses difficulty to legal scholars and dispute settlement bodies alike and impacts states expectations as to their treaty obligations this significant yet underexplored process is the focus of this book modification of treaties by subsequent practice proves that subsequent practice can under carefully defined conditions that ensure strict accordance with the will of the treaty parties alter supplement and terminate treaty provisions or even entire treaty frameworks it can also generate customary law and fuel regime interaction ultimately this book demonstrates the relevance and dynamism of the process of treaty modification by subsequent practice emphasizing the need to deal with the issue head on and explains on a theoretical and practical level how it can be identified and dealt with more consistently in the future the book thus contributes to a deeper understanding of the process of treaty modification by subsequent practice and its continued role in striking the judicious balance between the stability of treaties on the one hand and the organic evolution of the law on the other

Regionalism in International Investment Law

2013-03-07

regionalism in international investment law provides a multinational perspective on international investment law in it distinguished academics and practitioners provide a critical and comprehensive understanding of issues in a field which has grown exponentially in its importance particularly over the last decade focusing on the european union australia north america asia and china the book approaches the field of foreign direct investment from both academic and practical viewpoints and analyzes different bilateral regional and multinational agreements often yielding competing perspectives the academic perspective yields a strong conceptual foundation to often misunderstood elements of international investment law while the practical perspective aids those actively pursuing foreign direct investment in better understanding the landscape identifying potential conflicts which may arise in more accurately assessing the risk underlying the issues in conflict and in resolving those issues thorny issues relating to global commerce sovereignty regulation expropriation dispute resolution and investor protections are covered depicting how they have developed and are applied in different regions of the world these different treatments ensure that readers are able grasp the subject matter at multiple levels and provide a comprehensive overview of developments in the field of foreign

direct investment

General Principles of Law and International Investment Arbitration

2018-06-01

in general principles of law in investment arbitration the authors address selected general principles of law assessing their functions in investment arbitration the resulting picture is that of a lively source that escapes doctrinal straitjackets and maintains its relevance

International Extradition

2014

this edition remains as its preceding ones the most comprehensive text on the subject of international extradition as practiced in and by the united states and in general about the international practice of extradition foreword

The Origin and Evolution of Investment Treaty Standards

2019-12-05

this book provides a conceptual and legal analysis of the core of investment protection guarantees that emerge from international treaties signed since 1959 for the promotion and protection of foreign investment it focuses on both the origin and evolution of investment treaty standards beginning with origins the work considers the broader context at the time when the first modern investment treaty was concluded it goes on to examine the many decisions of ad hoc arbitral tribunals that have since been called upon to apply these treaties in order to resolve the several hundred investor state disputes it also looks at some of the recent investment treaties that have attempted to clarify and or reform the content and scope of investment protection guarantees federico ortino posits that the key investment protection provisions in investment treaties and thus much of the controversy associated with such treaties revolve around three concepts legal stability investment s value and reasonableness he argues that from the very beginning the protections afforded to foreign investments by modern investment treaties have been exceptionally broad and as such restrictive of host states ability to regulate and whilst a growing number of investment treaty tribunals as well as new investment treaties have to some extent reined in such broad protections the evolution of key investment protection standards has been marred by inconsistency and uncertainty

EU Treaties and the Judicial Politics of National Courts

2015-08-11

cases such as the maastricht ruling by the german federal constitutional court or the crotty decision by the irish supreme court have gone down in the history of european integration as outstanding examples of intervention by judicial actors in important political processes in this book dr castillo ortiz makes for the first time a comprehensive analysis of all such rulings by national higher courts on european union treaties issued during their processes of ratification using an interdisciplinary law and politics approach and a sophisticated methodological strategy the book describes the political dynamics underlying some of the most relevant judicial episodes in the process of european integration during the last decades litigation strategies by europhile and eurosceptic actors relations between the judiciary and the other branches of government and clashes of power between national courts and the european court of justice of the european union by offering empirical evidence and by relying on scientific rigor the book seeks to provide both experts and the general public an accessible account of one of the most salient but least

studied aspects of current european law and politics

The Law of Interactions Between International Organizations

2021-02-02

the book analyses how international law addresses interactions between international organizations in labour governance these interactions are ubiquitous they offer each organization an opportunity to promote its model of labour governance yet simultaneously expose it to adverse influence from others the book captures this ambivalence and examines the capacity of international law to mitigate it based on detailed case studies of mutual influence between the international labour organization the world bank and the council of europe the book offers an in depth analysis of the pertinent law and its key challenges both at institutional and inter organizational level the author envisions a law of inter organizational interactions as a normative framework structuring interactions and enhancing the effectiveness and legitimacy of multi institutional governance

Treaties in Motion

2020-06-25

the book examines treaty law from the angle of types of motion combining theory with practical examples and empirical data

Treaties and Subsequent Practice

2013-06-13

subsequent practice by states is crucial to the interpretation of treaties this book examines its potential to serve as a substitute for formal treaty amendments it combines both practical and theoretical contributions on the subject and includes the reports of the international law commission s treaties over time programme

The International Law on Foreign Investment

2017-08-24

presenting international foreign investment law in historical political and economic contexts this book embraces all recent developments

Community Interests Across International Law

2018-05-10

this book explores the extent to which contemporary international law expects states to take into account the interests of others namely third states or their citizens when they form and implement their policies negotiate agreements and generally conduct their relations with other states it systematically considers the various manifestations of what has been described as community interests in many areas regulated by international law and observes how the law has evolved from a legal system based on more or less specific consent and aimed at promoting particular interests of states to one that is more generally oriented towards collectively protecting common interests and values through essays by experts in the field this book explores topics such as the sources of international law and the institutional aspects of developing the law and covers a range of areas within the law

Law and Practice of International Arbitration in the CIS Region

2016-04-24

the former soviet republics of the commonwealth of independent states cis generate a significant and growing amount of work for the major western and cis regional international arbitral institutions this book a country by country analysis of regulation and practice of international arbitration in ten cis jurisdictions offers the first comprehensive review of commercial arbitration in the region it also analyses notable developments in the use of arbitration mechanisms contained in bilateral and multilateral investment treaties affecting the region the book provides not only a detailed analysis of the law but also insight from local practitioners into the culture of arbitration and how the law is applied in each jurisdiction jurisdictions covered include armenia azerbaijan belarus kazakhstan moldova russia tajikistan turkmenistan ukraine and uzbekistan in addition to detailed discussion of the particular features of arbitral practice in each jurisdiction contributions cover the following issues and topics arbitrability of disputes and public policy arbitral procedure recognition and enforcement of commercial and investor state arbitration awards implementation of the uncitral model law and other instruments affecting arbitral practice and procedure statistics from key arbitration institutions adherence to the icsid new york and key regional conventions relevant to arbitration relevant regulations cases as well as applicable bilateral investment treaties law and practice related to investor state arbitration and role of the court of the eur asian economic union an informative introductory chapter provides detailed discussion and analysis of historic and current trends affecting arbitration practice among the cis countries including the role of regional conventions relatively unknown in the west as a comprehensive overview of international arbitration in this burgeoning region this book has no peers it is sure to be highly valued and used by lawyers arbitrators and academics concerned with alternative dispute resolution as well as by arbitration institutions companies states and individuals engaged in arbitration

The Governance of Online Expression in a Networked World

2017-10-02

in recent years we have witnessed the mushrooming of pro democracy and protest movements not only in the arab world but also within europe and the americas such movements have ranged from popular upheavals like in tunisia and egypt to the organization of large scale demonstrations against unpopular policies as in spain greece and poland what connects these different events are not only their democratic aspirations but also their innovative forms of communication and organization through online means which are sometimes considered to be outside of the state s control at the same time however it has become more and more apparent that countries are attempting to increase their understanding of and control over their citizens actions in the digital sphere this involves striving to develop surveillance instruments control mechanisms and processes engineered to dominate the digital public sphere which necessitates the assistance and support of private actors such as internet intermediaries examples include the growing use of internet surveillance technology with which online data traffic is analysed and the extensive monitoring of social networks despite increased media attention academic debate on the ambivalence of these technologies mechanisms and techniques remains relatively limited as is discussion of the involvement of corporate actors the purpose of this edited volume is to reflect on how internet related technologies mechanisms and techniques may be used as a means to enable expression but also to restrict speech manipulate public debate and govern global populaces this book was published as a special issue of the journal of information technology and politics

BRICS and International Tax Law

2016-04-24

with the ongoing expansion of outbound foreign direct investment fdi in the countries representing the brics economic bloc brazil russia india china and south africa and with all of them at the same time listed among the top seven countries plagued by tax evasion and avoidance in the guise of illicit out flows the ve governments both individually and through cooperative initiatives have devised new international tax strategies that are proving to be of great interest and value to other countries both developing and developed the core of these strategies addresses the necessity of stemming the out ow of revenue while strongly supporting fdi both inbound and outbound while complying with international obligations including those arising from human rights laws this book is the rst in depth commentary on this new and evolving area of international tax law the detailed analysis covers the entire eld of brics international tax law considering topics such as the following information exchange procedures and pitfalls response to the oecd s base erosion and pro t sharing beps initiative role of bilateral and multilateral double taxation conventions including the multilateral instrument and the bilateral investment treaties thin capitalization transfer pricing controlled foreign corporation rules shortcomings related to authorities limited manpower international audit and investigation procedures the brics approach to residence and mandatory and binding arbitration and the brics approach to shaping the developing world s international tax system notably the author personally conducted interviews with senior international representatives of the brics tax authorities as well as with leading brics academics and practitioners tax cases together with human rights and investment cases and administrative guidelines in all ve countries are also included in the analysis the study concludes with recommendations for improving each of the ve countries tax law and procedures especially in the area of dispute resolution the author s goal is to extend the existing body of knowledge of the brics international tax laws in order to assist in developing an understanding of the brics approach to dealing with evasion and avoidance an approach which facilitates both outbound and inbound fdi simpli es tax authority administration and establishes a basis for resolving international disputes which is compatible with sovereignty in achieving this objective the author has produced a major work that is of immeasurable value to tax advisers government and governance of cials academics and researchers both in developing international taxation strategies and in helping to resolve disputes with tax authorities

Principles of International Energy Transition Law

2023-10-19

energy transition is a complex global problem with governance and policies cutting across multiple legal silos including human rights environment international economics finance energy law of the sea and transnational commerce as of yet there is no comprehensive treatment of the legal principles governing energy transition as a whole furthermore energy transition must solve a trilemma that pits energy equity the need to provide access to energy needed to fuel human development and energy security the need to provide resilient and reliable energy systems against environmental sustainability without a comprehensive understanding of these issues law and policy makers risk exacerbating rather than resolving the underlying problems principles of international energy transition law introduces the energy transition problem by situating the climate emergency in its broader energy and development context showing how global energy value chains are deeply enmeshed in and drive global economic and human development it combines the different legal perspectives in one consistent analysis by outlining their interactions and showing how they can be reconciled the book discusses thirty two international legal principles governing different aspects of the energy transition trilemma s three parts it then uses a commons governance perspective to propose a holistic approach to applying and balancing these different parts and their different legal principles highlighted sections summarise the most important concepts and ideas for easy reference making the title particularly accessible for students and policy makers as well as law practitioners

The Interpretation and Uniformity of the UNCITRAL Model Law on International Commercial Arbitration

2016-03-22

numerous jurisdictions worldwide have augmented their ratification of the new york convention of 1958 with the uncitral model law 1985 uml which takes a giant step forward toward global uniformity in legal application and understanding of the arbitration process this book develops a standard or benchmark for the uml objective of uniformity using the relevant legislation and case law of hong kong singapore and australia to consider whether a uniform approach to implementation of the uml and its interpretation is being achieved across those jurisdictions the author s methodological tools are eminently adaptable to other jurisdictions given the importance of the ability to set aside an arbitral award the body of case law on setting aside and the directly related area of enforcement the emphasis throughout is on article 34 in addition the study considers the meaning of uniformity in law and in the context of the uml the correct approach to interpretation of the uml pre and post article 2a the interpretational relationship between the uml and the convention on contracts for the international sale of goods cisg the relationship between the uml and the new york convention the degree of textual uniformity of article 34 with the three jurisdictions focused on and the degree of applied uniformity of article 34 both in terms of juristic methodology and similarity of results the author with more than thirty years of practice in the field of commercial arbitration in hong kong has had access to voluminous cases spanning decades and brings his specialist expertise to the subject this book considers whether the uml has succeeded in its aim of achieving uniformity it serves as a guide both academic and practical to exploring and adopting the correct approach to the interpretation of the uml as well as to the method of classification of court decisions under the uml this study is of immeasurable academic and practical value

Arbitrating Brands

2019

in light of the controversy of the philip morris cases against australia and uruguay this book systematically explores trade marks and brands as foreign direct investment and in particular their substantive protection under international investment treaties with the use of various hypothetical examples of devaluation of investments made in brands the book explores the specifics of arbitrating investment claims arising out of state trade mark regulation this work aims to establish useful tools in bridging the terminological and analytical gaps between experts in intellectual property law and international investment law

The EU as a Global Regulator for Environmental Protection

2019-08-08

this book critically examines the extension of eu environmental legislation beyond eu borders through measures that determine access to the single market on the basis of processes that take place in third countries it makes a timely contribution to political debates about the relations between eu and non eu countries and the union s role in the global governance of environmental policy where it has been considered a global leader the book aims to identify and explain the emerging legal phenomenon of internal environmental measures with extraterritorial implications as an important manifestation of eu global regulatory power and assesses the extraterritorial reach of eu environmental law from a legitimacy perspective it examines mechanisms that can bolster its legitimacy focusing on the legal orders of the eu and the world trade organization which are key legal fora for controlling the eu s global regulatory power

Europeanisation, Soft Law and the Crisis

2023-12-23

influence of hard law on national policies still is a central topic in europeanisation research one aspect often overlooked is the impact of soft law instruments such as the open method of coordination omc through the omc all member states agree on common goals and exchange best practices to improve policy coordination in a certain area without the obligation how to design policies omc impacts in individual member states have been studied extensively yet a comparative perspective explaining their variance is lacking this study by niclas beinborn tries to fill this gap by analysing the different impacts of a recent omc the european youth strategy 2010 euys his analysis is twofold in a first step he applies theory driven fuzzy set qca to a novel dataset depicting the variance of national activities around the euys as causalities remain unclear in a second step he presents an innovative analysis framework encompassing two dimensions national motivation and relative openness to implement non binding eu law to define ideal types of omc adaptation case studies on the euys in germany and ireland proof the potential of this framework to explain why and how omcs work differently

Rethinking the Relationship Between International, EU and National Law

2024-03-06

the interdisciplinary embedding and novel conceptual approach offered in the book to address the relationship between legal orders offers a significant and original contribution to the literature the first part of the book provides a critical account of dominant approaches to explain this relationship where theories of kelsenian monism dualism legal pluralism and constitutionalism are criticized in the second part kirchmair engages with an innovative idea by applying insights from social contract theory to the relationship between international eu and member state law and establishes his theoretical approach consent based monism the book focuses on the most important structural characteristics of the external relations law of the eu as well as the primacy of eu law in lieu of national constitutional identity which is demonstrated in part three

Irresolvable Norm Conflicts in International Law

2017-08-04

conventionally international legal scholarship concerned with norm conflicts focuses on identifying how international law can or should resolve them this book adopts a different approach it focuses on identifying those norm conflicts that law cannot and should not resolve the book offers an unprecedented controversial yet sophisticated argument in favour of construing such irresolvable conflicts as legal dilemmas legal dilemmas exist when a legal actor confronts a conflict between at least two legal norms that cannot be avoided or resolved addressing both academics and practitioners the book aims to identify the character and consequences of legal dilemmas to distil their legal function within the sphere of international law and to encourage serious theoretical and practical investigation into the conditions that lead to a legal dilemma the first part proposes a definition of legal dilemmas and distinguishes the term from numerous related concepts based on this definition the second part scrutinises international law s contemporary norm conflict resolution and accommodation devices in order to identify their limited ability to resolve certain kinds of norm conflicts against the background of the limits identified in the second part the third part outlines and evaluates the book s proposed method of dealing with legal dilemmas in contrast to conventional approaches that recommend dealing with irresolvable norm conflicts by means of non liquet declarations judicial law making or a balancing test the book s proposal envisions that irresolvable norm conflicts are dealt with by judicial and sovereign actors in a complementary fashion judicial actors should

openly acknowledge irresolvable conflicts and sovereign actors should decide with which norm they will comply the book concludes with the argument that analysing various aspects of international law through the concept of a legal dilemma enhances its conceptual accuracy facilitates more legitimate decision making and maintains its dynamic responsiveness

Hague Yearbook of International Law / Annuaire de La Haye de Droit International, Vol. 33 (2020)

2022-10-24

the aim of the hague yearbook of international law is to offer a platform for review of new developments in the field of international law in addition it devotes attention to developments in the international law institutions based in the international city of peace and justice the hague

Legislative Activities Report of the Committee on Foreign Relations, United States Senate

2013

europaean intellectual property law offers a full account of the main areas of substantive europaean ip law and a discussion of their wider context and effect the amount and reach of europaean law and decision making in the field of intellectual property has grown exponentially since the 1960 s making it increasingly difficult to treat europaean law as an adjunct to domestic intellectual property regimes europaean intellectual property law responds to this reality by presenting a clear and detailed account of each of the main areas of substantive eu intellectual property law situated in the context of both the eu legal system and international ip law including eu constitutional law the law of the europaean patent convention 1973 2000 and private international law it draws selectively on examples from domestic ip regimes to illustrate substantive differences between those regimes and to demonstrate the impact of europaean law and decision making on eu member states this unique thoroughly modern approach goes beyond a discussion of the provisions of europaean legal instruments to consider their wider context and effect europaean intellectual property law is the ideal guide for any student wishing to gain a full and critical understanding of the substantive europaean law of intellectual property

European Intellectual Property Law

2016

today the majority of the armed conflicts around the world are fought between states and armed groups rather than between states this changed conflict landscape creates an imperative to clarify the obligations of armed groups under international law while it is generally accepted that armed groups are bound by international humanitarian law the question of whether they are also bound by human rights law is controversial this book brings significant new understanding to the question of whether and when armed groups might be bound by human rights law its conclusions will benefit international law academics legal practitioners and political scientists and anthropologists working on issues related to rebel governance and civil wars this book addresses the debate on this topic by employing a theoretical historical and comparative analysis that spans international humanitarian law international criminal law and international human rights law embedding these different perspectives in public international law this book brings several key points of clarification to the legal framework firstly the book draws upon social science literature on armed conflict to present a new viewpoint on the role that human rights law plays vis à vis international humanitarian law in non international armed conflicts secondly the book sheds light on the circumstances in which armed groups acquire obligations under human rights law it brings illumination to these topics by combining historical and comparative research on belligerency insurgency and international humanitarian law with a theoretical analysis of legal personality under international law in the final part of the book the

author tests the four most utilised theories of how armed groups are bound by human rights law examining whether armed groups can be bound by virtue of i treaty law ii control of territory iii international criminal law and iv customary international law in the book s conclusions the author presents final remarks that are designed to provide concrete guidance on how the issue of armed groups and human rights law can be dealt with more thoroughly in practice

The Accountability of Armed Groups under Human Rights Law

2017-08-11

this book provides an essential and critical overview of the most significant issues concerning the domestication of international criminal law in particular with regard to the implementation of the icc statute it discusses the most recent proposals for reform of the german code of crimes under international law the völkerstrafgesetzbuch 20 years after its entering into force and introduces the project for an italian code of international crimes drafted by the committee of experts established in 2022 by the ministry of justice following the adoption of the icc statute many states including germany with the völkerstrafgesetzbuch introduced specific legislation to incorporate international criminal law into their domestic legal systems and a considerable number of them have been investigating and prosecuting war crimes crimes against humanity genocide and even aggression ever since twenty five years later however the process is not completed as other countries like italy are still working on adopting provisions on international crimes this book opens with a broad overview of the different approaches of the domestication of international criminal law with a specific focus on the german and the italian systems after an assessment of the prerequisites for the domestic implementation of international criminal law also from a constitutional law perspective each chapter offers an in depth analysis of a specific issue such as the definition of international crimes genocide and crimes against humanity war crimes and aggression the applicability of and exceptions to the general principles of domestic criminal law the regulation of individual criminal responsibility sanctions and sentencing as well as procedural aspects related to immunities jurisdiction and prosecutorial discretion the strong academic perspective of many authors is complemented by an equally strong practitioner perspective of the others provided by legal scholars in the highest positions in international and national judicial institutions resulting in a well informed and critical appraisal of the most recent developments overall in the international criminal justice system domesticating international criminal law will be of great interest to legal scholars and students as well as practitioners with an interest in comparative and international law international criminal law and international relations

Domesticating International Criminal Law

2023-06-01

this book provides a philosophical critique of legal relations between the eu and distant strangers neither located within nor citizens of its member states starting with the eu s commitment in articles 3 5 and 21 teu to advance democracy human rights and the rule of law in all its relations with the wider world ganesh examines in detail the salient eu and international legal materials and thereafter critiques them in the light of a theory of just global legal relations derived from kant s philosophy of right in so doing ganesh departs from comparable kantian scholarship on the eu by centering the discussion not around the essay toward perpetual peace but around the doctrine of right kant s final and comprehensive statement of his general theory of law the book thus sheds light on areas of eu law eu external relations law standing to bring judicial review public international law jurisdiction global public goods and human rights human rights jurisdiction and also critiques the widespread identification of the eu as a kantian federation of peace the thesis on which this book was based was awarded the 2020 rené cassin thesis prize english section

Rightful Relations with Distant Strangers

2021-03-25

investment treaties are said to improve the rule of law in the states which enter into them fearing claims governments will internalise international investment obligations into their decision making processes resulting in positive spill over effects on the rule of law such arguments have never been backed by empirical research this book presents an analytical framework for thinking about the internalisation of international commitments in governmental decision making that takes account of the complexities of governance in so doing it provides a typology of processes whereby international treaty obligations may be internalised by governments and identifies factors which may affect whether and to what extent international commitments are internalised in governmental decision making this framework serves as the background for the main body of the book in which empirical case studies address whether and how a select group of governments in asia internalise international investment treaty obligations in their decision making

Investment Treaties and the Rule of Law Promise

2022-10-06

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