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Converging Systems

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The WTO and International Investment Law Jürgen Kurtz, 2016-01-25 International law has historically regulated foreign trade and foreign investment differently. Distinct evolutionary pathways have led to variances in treaty form, institutional culture, and dispute settlement. With their inevitable erosion through the late twentieth to early twenty-first centuries, those weak boundaries have become porous and indefensible. Powerful economic, legal, and sociological factors are now pushing the two systems together. In this book, Jürgen Kurtz systematically explores the often complex and little understood dynamics of this convergence phenomenon. Kurtz addresses the growing connections between international trade and investment law, proposing a theoretically grounded and doctrinally tractable framework to understand the deepening relationship between them. The book also offers reform ideas and possibilities, providing treaty negotiators and other government officials with a set of theoretical insights and doctrinal models that can guide actors in building a justifiable and sustainable level of commonality between the two legal systems.

International Economic Law and Governance Julien Chaisse, Tsai-yu Lin, 2016-08-11 Nation states have long and successfully claimed to be the proper and sovereign forum for determining a country's international economic policies. Increasingly, however, supranational and non-governmental actors are moving to the front of the stage. New forms of multilateral and global policy making have emerged, including states and national administrations, key international organizations, international conferences, multinational enterprises, and a wide range of transnational pressure groups and NGOs that all claim their share in exercising power and influence on international and domestic policy making. In honour of Professor Mitsuo Matsushita's intellectual contributions to the field of international economic law, this volume reflects on the current state and the future of international economic law. The book addresses a broad spectrum of themes in contemporary international economic regulations and focuses specifically on the significant areas of Professor Matsushita's scholarship, including the rise of the soft law mechanism in international economic regulation, the role of the WTO and dispute settlement, and specific areas such as competition, subsidies, anti-dumping, intellectual property, and natural resources. Part one of the volume provides a comprehensive and critical analysis of the rule-based international dispute settlement mechanisms. Part two investigates the normative influences to and from WTO law, and Part three focuses on policy and law-making issues.

Transforming World Trade and Investment Law for Sustainable Development Ernst-Ulrich Petersmann, 2022-03-24 Transforming World Trade and Investment Law for Sustainable Development explains why the 2030 UN Sustainable Development Agenda for Transforming our World, aimed at realizing universal human rights and the 17 agreed sustainable development goals (SDGs), requires transforming the UN and WTO legal systems as well as international investment law and adjudication. UN and WTO law protect regulatory competition between diverse neo-liberal, state capitalist, European, ordo-liberal, and developing countries' conceptions of multilevel trade and investment regulation. However, geopolitical rivalries and trade wars increasingly undermine transnational rule of law and

effective regulation of market failures governance and constitutional failures Protecting the WTO legal and dispute settlement system remains essential for SDGs such as climate change mitigation measures and access to medical supplies and vaccines in global health pandemics Investment law and adjudication must better reconcile governmental duties to protect human rights and decarbonize economies with the property rights of foreign investors The constitutional human rights and environmental litigation in Europe enhances the legal accountability of democratic governments for protecting sustainable development However European economic constitutionalism has been rejected by neoliberalism China's authoritarian state capitalism and many developing countries governments The more that regional economic orders like the China led Belt and Road networks reveal heterogeneity and power politics block UN and WTO reforms the more the US led neoliberal world order risks disintegrating UN and WTO law must promote private public network governance and civil society participation in order to stabilize and depoliticize multilevel governance that protects SDGs and global public goods

Converging Divergences Sungjoon Cho, Jürgen Kurtz, 2015 This Article observes that the recent jurisprudence between international trade and investment law is converging in a way which the free market value and public interests are duly reconciled The Article contends that such jurisprudential convergence is structurally preordained yet historically manifested It is structurally preordained in the sense that commerce is inherently embedded in its surrounding social environment It is historically manifested in the sense that both regimes despite their unique past nonetheless featured a common ontogenetic path reflecting the embeddedness The Article eventually crystalizes the convergence thesis into a common law which is justifiable on both constitutional and practical grounds

The Multilateralization of International Investment Law Stephan W. Schill, 2014-01-30 Attempts at developing a theory of international investment law are complicated by the fact that this field of international law is based on numerous largely bilateral treaties and is implemented by arbitral panels established on a case by case basis This suggests a fragmented and chaotic state of the law with different levels of protection depending on the sources and targets of foreign investment flows This book however forwards the thesis that international investment law develops despite its bilateral form into a multilateral system of law that backs up the functioning of a global market economy based on converging principles of investment protection In discussing the function of most favored nation clauses the possibilities of treaty shopping and the impact of investor State arbitration with its intensive reliance on precedent and other genuinely multilateral approaches to treaty interpretation it offers a conceptual framework for understanding the nature and functioning of international investment law as a genuinely multilateral system

Prospects in International Investment Law and Policy Roberto Echandi, Pierre Sauvé, 2013-04-18 The negotiation of a patchy but burgeoning network of international investment agreements and the increasing use to which they are put is generating a growing body of jurisprudence which while still evolving requires closer analytical scrutiny Drawing on many of the most distinguished voices in investment law and policy and offering novel multidisciplinary perspectives on the rapidly evolving

landscape shaping international investment activity and treaty making this book explores the most important economic legal and policy challenges in contemporary international investment law and policy It also examines the systemic implications flowing from frenetic recent judicial activism in investment matters and advances several innovative propositions for how best to promote greater overall coherence in rule design treaty use and policy making and thus offer a better balance between the rights and obligations of international investors and host states **Boundaries of Investment Arbitration**

José E. Alvarez, 2018 **Redefining Sovereignty in International Economic Law** Wenhua Shan, Penelope

Simons, Dalvinder Singh, 2008-04-21 The concept of state sovereignty is increasingly challenged by a proliferation of international economic instruments and major international economic institutions States from both the south and north are re examining and debating the extent to which they should cede control over their economic and social policies to achieve global economic efficiency in an interdependent world International lawyers are seriously rethinking the subject of state sovereignty in relation to the operation of the main international economic institutions namely the WTO the World Bank and the International Monetary Fund IMF The contributions in this volume bringing together leading scholars from the developed and developing worlds take up the challenge of debating the meaning of sovereignty and the impact of international economic law on state sovereignty The first part looks at the issues from the perspectives of general international law international economic law and legal theory Part two discusses the impact of trade liberalisation on the sovereignty of both industrialised and developing states and Part three concentrates on the challenge to state sovereignty created by the proliferation of investment treaties and the significant recent growth of investment treaty based arbitration cases Part four focuses on the domestic and international effects of international financial intermediaries and markets Part five explores the tensions and intersections between the international regulation of trade and investment international human rights and state sovereignty *Reconceptualizing International Investment Law from the Global South* Fabio Morosini, Michelle Ratton

Sanchez Badin, 2017-10-26 This book shows how the current reform in investment regulation is part of a broader attempt to transform the international economic order Countries in the North and South are currently rethinking how economic order should be constituted in order to advance their national interests and preferred economic orientation While some countries in the North seek to create alternative institutional spaces in order to promote neoliberal policies more effectively some countries in the South are increasingly skeptical of this version of economic order and are experimenting with alternative versions of legal ordering that do not always sit well with mainstream versions promoted by the North While we recognize that there are differences in approaches to the investment regimes proposed by countries in the South we identify commonalities that could function as the founding pillars of an alternative economic order **Investment & Competition**

in International Policy Ahmad Masa'deh, 2003 **Protecting Investment in Services** Martín Molinuevo, 2011-12-05 This is the first book to tackle investment law and trade law jointly and to compare the principles rules and dispute settlement

mechanisms of investment agreements with the multilateral framework of the WTO GATS Among the many invaluable questions the book addresses are the following What are the substantive rules that apply to investment in services under investment agreements and the GATS How do these disciplines differ Which offers the best protection for investors in services and do they affect the governments policymaking capacity Who can gain access to investor State arbitration and WTO dispute settlement The in depth analysis supported by an extensive review of existent jurisprudence provides a thorough explanation of treaty standards like most favoured nation national treatment fair and equitable treatment domestic regulation and transparency as well as procedural rules on access to the dispute settlement mechanisms and enforcement procedures

An Introduction to International Investment Law David Collins, 2023-02-09 This insightful and accessible introduction provides students and practitioners with a comprehensive overview of the increasingly important discipline of international investment law Focusing primarily on the legal principles contained in the growing body of international investment agreements this book covers the core concepts of the discipline with attention given to their relation to each other and to the manner which they have developed through arbitration case law The context of each legal principle is explored along with a consideration of some of the major debates and emerging criticisms Avoiding extensive case extracts this book adopts an engaging and succinct narrative style which allows readers to advance their understanding of the topic while examining the legal principles with academic rigour and discerning commentary

The Development of World Trade Organization Law Gregory Messenger, 2016-01-28 The World Trade Organization is a central player in international trade regulation The rights and duties that form WTO law are not created in a vacuum however and there exists a complex network of domestic regional and international influences on the development of WTO law that go beyond the disciplines found in the covered agreements or the interpretations given by panels and the Appellate Body As such understanding the development of WTO law in a wider institutional context is critical to comprehending WTO law in a new age of legal globalization

The Development of World Trade Organization Law Examining Change in International Law examines the development of WTO law through an analysis of competing global actors norms and institutions Taking a different approach to social scientific or traditional legal models this book argues that such globalized actors are the driving force behind the development of WTO law yet not in control of it Identifying causal language as key to understanding this development the volume examines three different causal influences instrumental systemic and constitutive It applies this causal methodology to three key areas of WTO law safeguard measures sanitary and phytosanitary measures and subsidies The volume provides detailed explanations of why the law has developed as it has and offers insights into the future functioning of the WTO system

International Investment Law Tarcisio Gazzini, Eric De Brabandere, 2012-08-22 Transnational investment involves a variety of actors States public and private legal entities and natural persons whose relationships are governed by rules and legal instruments belonging to different legal systems This book provides a systematic study of the sources of rights and obligations in the field

of transnational investment and their coordination and interaction It focuses primarily on the network of over 3 000 Bilateral Investment Treaties international investment contracts customary international law the main multilateral treaties national legislation international case law and general principles of law The book firmly based on State practice arbitral awards and national decisions is indispensable to fully appraise the nature and content of the claims of private investors as well as to identify the law applicable in investment arbitration

International Investment Law Surya P Subedi, 2024-03-21 This book goes beyond stating what the law is and focuses on controversies occurring within this area of the law an excellent introduction to this complex area of international law for newcomers to the subject Kate Miles Australian International Law Journal The updated edition of this acclaimed book offers a critical overview of the law of foreign investment incorporating a thorough analysis of the principles and standards of treatment available to foreign investors in international law It is authoritative and multi layered offering an analysis of the key issues and an insightful assessment of recent trends in the case law from both developed and developing country perspectives A major feature of the book is that it deals with the tension between the law of foreign investment and other competing principles of international law In doing so it proposes ways of achieving a balance between these principles and the need to protect the legitimate rights and expectations of foreign investors on the one hand and the need not to restrict unduly the right of host governments to implement their public policy on the other including the protection of the environment and human rights and the promotion of social and economic justice within the host country Many of the pioneering ideas that were advanced in the first edition of this book have been taken up by governments and international organisations in their attempts to reform the investor State dispute settlement mechanism and strike a balance between different competing principles in developing international investment law Accordingly this fifth edition captures the essence of the ongoing multiple reform processes either planned or envisaged currently underway

World Trade and Investment Law Reimagined Alvaro Santos, Chantal Thomas, David Trubek, 2019-06-28 World trade and investment law is in crisis new and progressive ideas are needed Rules that facilitated globalization and supported global economic growth are being challenged A system of global governance that once seemed secure is now at risk as the United States ignores the rules while developing countries struggle to escape restrictions Some want to tear global institutions and agreements down while others try desperately to maintain the status quo Rejecting both options a group of trade and investment law experts from 10 countries South and North have joined hands to propose ideas for a new world trade and investment law that would maintain global growth while distributing costs and benefits more fairly Paying special attention to those who have suffered from trade dislocation and to restrictions that have hampered innovative growth strategies in developing countries they outline a progressive trade and investment law agenda in *World Trade and Investment Law Reimagined*

Principles of International Investment Law Rudolf Dolzer, Christoph Schreuer, 2012-11-15 This book outlines the principles behind the international law of foreign investment The main focus is on the law governed by bilateral and

multilateral investment treaties. It traces the purpose, context and evolution of the clauses and provisions characteristic of contemporary investment treaties and analyses the case law interpreting the issues raised by standard clauses. Particular consideration is given to broad treaty rules whose understanding in practice has mainly been shaped by their interpretation and application by international tribunals. In addition, the book introduces the dispute settlement mechanisms for enforcing investment law, outlining the operation of Investor vs State arbitration. Combining a systematic analytical study of the texts and principles underlying investment law with a jurisprudential analysis of the case law arising in international tribunals, this book offers an ideal introduction to the principles of international investment law and arbitration for students or practitioners alike.

The Foundations of International Investment Law Zachary Douglas, Joost Pauwelyn, Jorge E. Viñuales, 2014-05-01

International investment law is one of the fastest growing areas of international law. It has led to the signing of thousands of agreements, mostly in the form of investment contracts and bilateral investment treaties. Also in the last two decades, there has been an exponential growth in the number of disputes being resolved by investment arbitration tribunals. Yet the legal principles at the basis of international investment law and arbitration remain in a state of flux. Perhaps the best illustration of this phenomenon is the wide disagreement among investment tribunals on some of the core concepts underpinning the regime, such as investment property, regulatory powers, scope of jurisdiction, applicable law, or the interactions with other areas of international law. The purpose of this book is to revisit these conceptual foundations in order to shed light on the practice of international investment law. It is an attempt to bridge the growing gap between the theory and the practice of this thriving area of international law. The first part of the book focuses on the infrastructure of the investment regime, or more specifically on the structural arrangements that have been developed to manage foreign investment transactions and the potential disputes arising from them. The second part of the book identifies the common conceptual bases of an array of seemingly unconnected practical problems in order to clarify the main stakes and offer balanced solutions. The third part addresses the main sources of regime stress, as well as the main legal mechanisms available to manage such challenges to the operation of the regime. Overall, the book offers a thorough investigation of the conflicting theoretical positions underlying international investment law, testing their worth by reference to concrete issues that have arisen in the jurisprudence. It demonstrates that many of the most important practical questions arising in practice can be addressed by a carefully dosed resort to theory.

Comparing the Function of National Treatment in WTO & International Investment Law Leah Njoroge, 2014

National treatment is a basic component of both investment treaties and WTO Law. It guarantees a minimum standard of treatment of foreign investments in like circumstances and like products vis-à-vis their domestic counterparts. The focus of this essay will be to illustrate the point that whereas national treatment clauses in WTO law and in international investment law are aimed at ensuring non-discrimination based on the nationality of the subject matter, there are fundamental differences which are incapable of being infused from one regime to another.

The International Law on

Foreign Investment M. Sornarajah, 2021-07-01 The climate surrounding foreign investment law is one of controversy and change and with implications for human rights and environmental protection foreign investment law has gained widespread public attention and visibility This fully updated edition of Sornarajah's classic text offers thought provoking analysis of the law in historical political and economic contexts capturing leading trends and charting the possible course of future developments It takes into account the newer types of treaties that establish a regulatory space for states and moves away from inflexible investment protection exploring the newly created defences relating to environment human rights indigenous rights and other areas ending the fragmentation of the law It looks at the current debates on legitimacy of the system and current efforts at reform Suitable for postgraduate and undergraduate students The International Law on Foreign Investment is essential reading for anyone specialising in the law of foreign investments

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