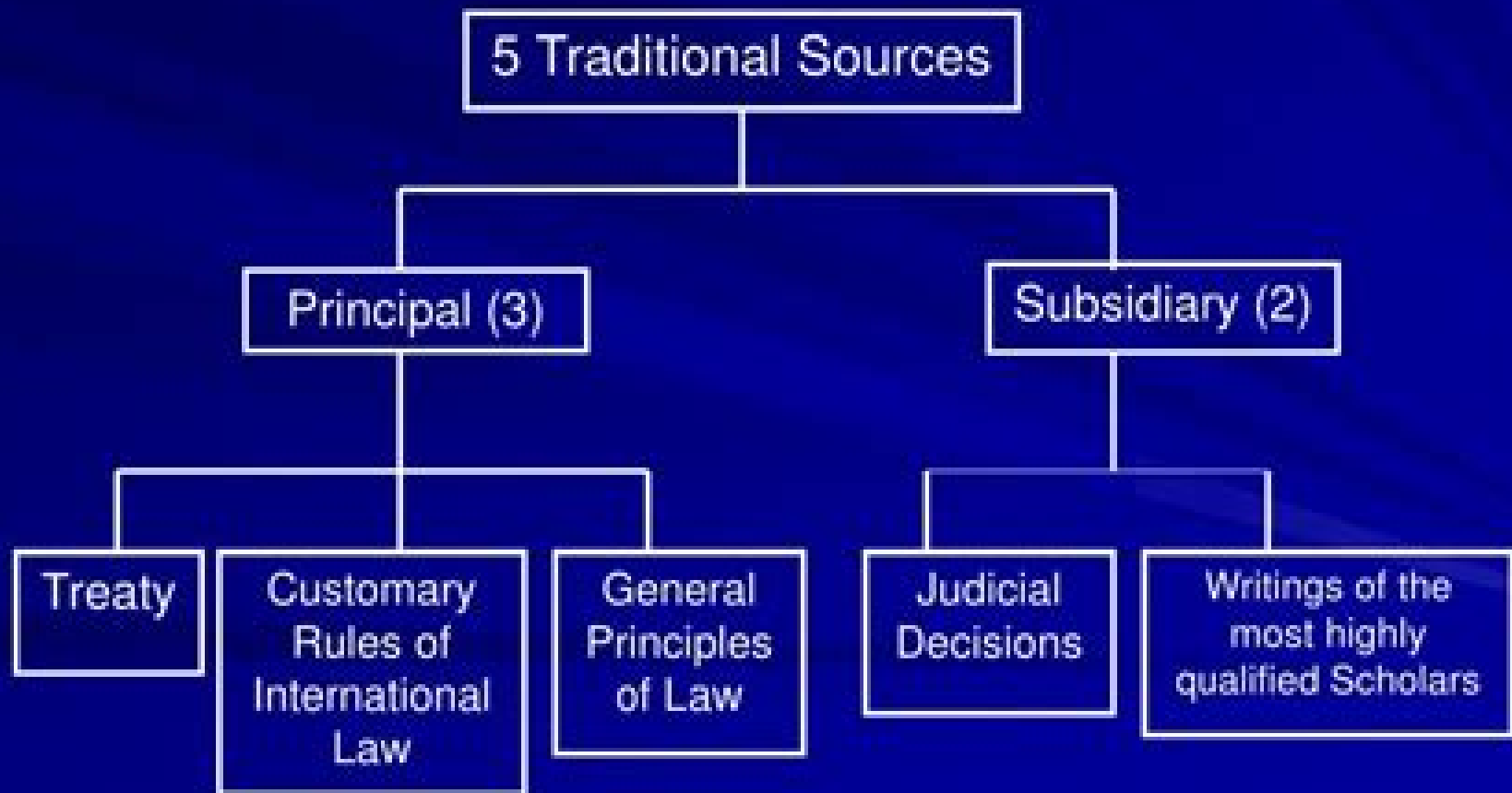


2. SOURCES OF INTERNATIONAL LAW

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The Sources Of International Law Foundations Of Public International Law

Bertrand Ramcharan



The Sources Of International Law Foundations Of Public International Law:

The Sources of International Law Hugh Thirlway, 2014-02 Because of its unique nature the sources of international law are not always easy to identify and interpret This book provides an ideal introduction to these sources for anyone needing to better understand where international law comes from As well as looking at treaties and custom the book will look at more modern and controversial sources *Encyclopedia of Public International Law* R. Bernhardt, 1981-01-15 **Formalism and the Sources of International Law** Jean d'Aspremont, 2013-05-23 This book revisits the theory of the sources of international law from the perspective of formalism It critically analyses the virtues of formalism construed as a theory of law ascertainment as a means of distinguishing between law and non law The theory of formalism is re evaluated against the backdrop of the growing acceptance by international legal theorists of the blurring of the lines between law and non law At the same time the book acknowledges that much international normative activity nowadays takes place outside the ambit of traditional international law and that only a limited part of the exercise of public authority at the international level results in the creation of international legal rules The theory of ascertainment that the book puts forward attempts to dispel some of the illusions of formalism that accompany the traditional sources of international law It also sheds light on the tendency of scholars theorists and advocates to deformalize the identification of international legal rules with a view to expanding international law The book seeks to revitalize and refresh the formal identification of rules by engaging with some tenets of the postmodern critique of formalism As a result the book not only grapples with the practice of law making at the international level but it also offers broad theoretical insights on international law dealing with the main schools of thought in legal theory positivism naturalism legal realism policy oriented jurisprudence and postmodernism This paperback edition features the author's discussion of this book on the EJIL Talk blog [History of International Law · Foundations and Principles of International Law · Sources of International Law · Law of Treaties](#) Sam Stuart, 2014-05-12 *History of International Law Foundations and Principles of International Law Sources of International Law Law of Treaties* *General Principles as a Source of International Law* Imogen Saunders, 2021-02-25 This book provides a comprehensive analysis of an often neglected misunderstood and maligned source of international law Article 38 1 c of the Statute of the International Court of Justice sets out that the Court will apply the general principles of law recognized by civilized nations This source is variously lauded and criticised held up as a panacea to all international law woes or denied even normative validity The contrasting views and treatments of General Principles stem from a lack of a model of the source itself This book provides that model offering a new and rigorous understanding of Article 38 1 c that will be of immense value to scholars and practitioners of international law alike At the heart of the book is a new tetrahedral framework of analysis looking to function type methodology and jurisprudential legitimacy Adopting an historical approach the book traces the development of the source from 1875 to 2019 encompassing jurisprudence of the Permanent Court of International Justice and the International

Court of Justice as well as cases from international criminal tribunals the International Criminal Court and the World Trade Organisation The book argues for precision in identifying cases that actually apply General Principles and builds upon these proper use cases to advance a comprehensive model of General Principles advocating for a global approach to the methodology of the source **The Sources of International Law** H. W. A. Thirlway, 2014 Catholic Cosmopolitanism

and Human Rights Leonard Francis Taylor, 2020-03-05 Provides a more complete account of the human rights project that factors in the contribution of cosmopolitan Catholicism **Modernizing the Role of the International Court of Justice**

Bertrand Ramcharan, 2022-03-16 This book discusses the future role of the International Court of Justice ICJ in a world facing survival challenges It discusses threats such as climate change environmental degradation and pandemics and argues that in the future the ICJ will need to carry out judicial security and protection functions as it is the only organ of the United Nations UN that can discharge such functions in view of its independence and expertise The author proposes that the ICJ can apply a hitherto unused jurisdictional provision in Article 36 of its statute that allows it to deal with All Matters Specially Provided for in the UN Charter and presents three examples of issues that would require the urgent attention of the ICJ vaccine equity in a global pandemic climate disaster and mass movements of people across frontiers due to climate change and environmental degradation Bertrand Ramcharan Guyana is a Barrister at Law of Lincoln s Inn with a Doctorate in international law from the London School of Economics LSE and the Diploma in International Law of the Hague Academy of International Law He was LSE International Law Scholar and has been Commissioner of the International Commission of Jurists and a Member of the Permanent Court of Arbitration He has also been Director of the Research Centre of the Hague Academy of International Law The Right to Life Professor at the Geneva Graduate Institute and Chancellor of the University of Guyana He is a former Chief speech writer of the UN Secretary General and has performed the functions of UN High Commissioner for Human Rights His doctoral thesis was on the approach of the International Law Commission to the codification and progressive development of international law **Indigenous Land Rights in the Inter-American System** Mariana Monteiro de Matos, 2020-10-12

Rights to their traditional lands and resources are essential to the survival of indigenous peoples They have been formulated and advanced in the most progressive way by the Inter American system of human rights protection In this book Mariana Monteiro de Matos analyzes in detailed and comprehensive inquiry the pertinent jurisprudence of the Inter American Commission and Court of Human Rights She identifies three distinct waves of decision regarding the objects of ownership or possession the rights associated and the holders of the rights Originally the book also offers a profound analysis of corollary procedural law *The Designation of Marine Protected Areas* Anna von Rebay, 2023-05-23 This book provides empirical evidence that all States have a universally binding obligation to adopt national laws and international treaties to protect the marine environment including the designation of Marine Protected Areas Chapter by chapter this obligation is detailed providing the foundation for holding States responsible for fulfilling this obligation The fundamentals are analysed in a

preliminary chapter which examines the legally binding sources of the Law of the Sea as well as its historical development to help readers understand the key principles at hand The Law of the Sea provides more than 1000 instruments and more than 300 regulations concerning marine protection While the scope of most treaties is limited either regarding species regions or activities one regulation addresses States in all waters the obligation to protect and preserve the marine environment as stipulated under Art 192 of the 1982 United Nations Convention on the Law of the Sea UNCLOS As this Constitution of the Ocean not only contains conventional laws but also very broadly reflects pre existing rules of customary international law an extensive analysis of all statements made by States in the UN General Assembly their practices national laws and regulations as well as other public testimonials demonstrates that Art 192 UNCLOS indeed binds the whole community of States as a rule of customary international law with an erga omnes effect Due to the lack of any objections and its fundamental value for humankind this regulation can also be considered a new peremptory norm of international law ius cogens While the sovereign equality of States recognises States freedom to decide if and how to enter into a given obligation States can also waive this freedom If States accepted a legally binding obligation they are thus bound to it Concerning the specific content of Art 192 UNCLOS a methodical interpretation concludes that only the adoption of legislative measures national laws and international agreements suffices to comply with the obligation to protect and preserve the marine environment which is confirmed by the States practices and relevant jurisprudence When applied to a specific geographical area legislative measures to protect the marine environment concur with the definition of Marine Protected Areas Nonetheless as the obligation applies to all waters the Grotian principle of the freedom of the sea dictates that the restriction of activities through the designation of Marine Protected Areas on the one hand must be weighed against the freedoms of other States on the other To anticipate the result while all other rights under the UNCLOS are subject to and contingent on other regulations of the UNCLOS and international law only the obligation to protect and preserve the marine environment is granted absolutely and thus outweighs all other interests

Recognition and Regulation of Safeguard Measures Under

GATT/WTO Sheela Rai, 2011-05-11 This book discusses the law of safeguard measures as laid down in the WTO agreements and cases decided by the Panel and the Appellate Body The book sets out a comprehensive treatment of safeguard measures covering the history and evolution of the law and considers safeguards from a developing countries perspective drawing examining how beneficial the provisions relating to safeguard measures and their interpretation given by the Panel and Appellate Body have been for developing countries

Conflict of Norms in Public International Law Joost

Pauwelyn, 2003-07-31 One of the most prominent and urgent problems in international governance is how the different branches and norms of international law interact and what to do in the event of conflict With no single international legislator and a multitude of states international organisations and tribunals making and enforcing the law the international legal system is decentralised This leads to a wide variety of international norms ranging from customary international law

and general principles of law to multilateral and bilateral treaties on trade the environment human rights the law of the sea etc Pauwelyn provides a framework on how these different norms interact focusing on the relationship between the law of the World Trade Organisation WTO and other rules of international law He also examines the hierarchy of norms within the WTO treaty His recurring theme is how to marry trade and non trade rules or economic and non economic objectives at the international level *Regulatory Freedom and Indirect Expropriation in Investment Arbitration* Aniruddha

Rajput,2018-12-20 Many investment arbitration cases involve a challenge to a regulatory measure of a host state on the basis of indirect expropriation The practice of arbitral tribunals is diverse and unsettled In recent years States have been trying to clarify the relationship between regulatory freedom also known as police powers and indirect expropriation by revising provisions on indirect expropriation in their investment treaties This book provides the first focused analysis of indirect expropriation and regulatory freedom drawing on a broad range of the jurisprudence of investment tribunals The nature of regulatory freedom in international law has been explained on the bases of jurisprudence of international courts and tribunals such as the International Court of Justice ICJ Permanent Court of International Justice PCIJ dispute resolution bodies of the World Trade Organisation WTO European Court of Human Rights While showing how cases involving standoff between regulatory freedom and indirect expropriation can be resolved in practice the book goes on to present a conceptual framework for interpreting the nuances of this relationship The book provides a detailed responses to the following complex questions To what extent do states retain regulatory freedom after entering into investment treaties What is the scope of regulatory freedom in general public international law What are the elements of regulatory freedom and standard of review How to draw a dividing line between regulatory freedom and indirect expropriation Whether the sole effects doctrine or the police powers is the appropriate method for distinguishing between regulatory freedom and indirect expropriation While addressing these questions the author analyses different theoretical approaches that reflect upon the relationship between regulatory freedom and indirect expropriation and how far they assist in understanding these potentially overlapping concepts their relationship with each other and the method for distinguishing between them Given the dense network of around three thousand bilateral investment treaties BITs that impose an obligation to protect foreign investments in a State this book will help practitioners identify through analysis of cases from diverse fields how a situation may be categorized either as regulatory freedom or as indirect expropriation The analysis will also be of value to government officials and lawyers involved in negotiating and re negotiating investment treaties and to arbitrators who have to decide these issues Scholars will welcome the book s keen insight into the contentious relationship between a customary international law norm and a treaty norm *International Law for Humankind* Antônio Augusto Cançado Trindade,2013-06-17 This volume is an updated and revised version of the General Course on Public International Law delivered by the Author at The Hague Academy of International Law in 2005 Professor Can ado Trindade Doctor honoris causa of seven Latin American Universities

in distinct countries was for many years Judge of the Inter American Court of Human Rights and President of that Court for half a decade 1999 2004 He is currently Judge of the International Court of Justice he is also Member of the Curatorium of The Hague Academy of International Law as well as of the Institut de Droit International and of the Brazilian Academy of Juridical Letters

Origins of the Just War Rory Cox, 2026-02-03 A groundbreaking history of the ethics of war in the ancient Near East Origins of the Just War reveals the incredible richness and complexity of ethical thought about war in the three millennia preceding the Greco Roman period establishing the extent to which ancient just war thought prefigured much of what we now consider to be the building blocks of the Western just war tradition In this incisive and elegantly written book Rory Cox traces the earliest ideas concerning the complex relationship between war ethics and justice Excavating the ethical thought of three ancient Near Eastern cultures Egyptian Hittite and Israelite he demonstrates that the history of the just war is considerably more ancient and geographically diffuse than previously assumed Cox shows how the emergence of just war thought was grounded in a desire to rationalise sacralise and ultimately to legitimise the violence of war Rather than restraining or condemning warfare the earliest ethical thought about war reflected an urge to justify state violence Cox terms this presumption in favour of war *ius pro bello* the right for war characterizing it as a meeting point of both abstract and pragmatic concerns Drawing on a diverse range of ancient sources Origins of the Just War argues that the same imperative still underlies many of the assumptions of contemporary just war thought and highlights the risks of applying moral absolutism to the fraught ethical arena of war

From Apology to Utopia Martti Koskeniemi, 2006-02-02 This book presents a critical view of international law as an argumentative practice that aims to depoliticise international relations Drawing from a range of materials Koskeniemi demonstrates how international law becomes vulnerable to the contrasting criticisms of being either an irrelevant moralist Utopia or a manipulable *fa ade* for State interests He examines the conflicts inherent in international law sources sovereignty custom and world order and shows how legal discourse about such subjects can be described in terms of a small number of argumentative rules This book was originally published in English in Finland in 1989 and though it quickly became a classic it has been out of print for some years In 2006 Cambridge was proud to reissue this seminal text together with a freshly written Epilogue in which the author both responds to critiques of the original work and reflects on the effect and significance of his deconstructive approach today

A Guide to General Principles of Law in International Investment Arbitration Patrick Dumberry, 2020-04-20 In recent years there has been a noticeable increase in references by investor State arbitral tribunals to general principles of law as a source of law however these references have rarely been accompanied by detailed explanation This book aims to provide the actors involved in investor State arbitration with a set of comprehensive guidelines to better understand the nature meaning and function of general principles of law in the field of international investment law Applying these principles to practice the book assesses seventeen concepts and notions in the field of investment arbitration to provide counsel and arbitrators with clear guidance

on what should and should not be considered a general principle of law *The Legal Foundations of INTERPOL* Rutsele Silvestre J Martha, 2010-07-23 This book is a study of the legal aspects of the birth and development of an international organisation using the example of INTERPOL as a detailed case study It is not a constitutional manual for INTERPOL but an organisational study and does not seek to be exhaustive in terms of its description of INTERPOL's operations Its main focus is the examination of the question whether an international organisation in this case INTERPOL can be created without a solemn and formally celebrated treaty At the same time the book sets out the legal foundations for extra judicial international police enforcement cooperation and explains the creation structure and operation of INTERPOL the organisation that promotes that cooperation For practitioners who for whatever reason have to deal with INTERPOL it provides a much needed explanation of the legal foundations of the Organisation its legal status and some basic guidance on its operations It also includes information relevant for lawyers litigating issues with INTERPOL about how their clients can challenge the way the Organisation has processed information concerning them or has alerted police forces worldwide about them The work is to be welcomed not only because of its thorough research and main conclusions but primarily because it submits known facts about INTERPOL to a rigorous legal analysis from the perspective of public international law The practical as well as theoretical importance of the study needs to be underlined The study provides practitioners who for whatever reason have to deal with INTERPOL with the much needed explanation about the legal foundation of the Organisation its legal status and some basic guidance on its operations Foreword by Ronald K Noble Secretary General of INTERPOL July 2009 Legal Protection of Foreign Direct Investment. A Critical Assessment with Focus on South Africa and Zimbabwe Talkmore Chidede, 2016-06-02 This study undertakes a critical assessment of the legal protection of foreign direct investments FDI in South Africa and Zimbabwe by determining their compliance with the international minimum standards norms and or best practices on the legal protection of FDI by host states Firstly the study argues that foreign investment is much needed in South Africa and Zimbabwe to improve economic growth and development to create jobs and to increase their competitiveness However these benefits are not accrued automatically but rather host states need to create an enabling environment to receive such benefits Thus host states need to put an investment scheme into operation to guarantee the legal protection of foreign investments South Africa and Zimbabwe have at large crafted and implemented investment laws and related policies which tend to be hostile towards foreign investments Therefore similar investment laws and related policies in both jurisdictions are analysed This study will also offer recommendations for a legal investment which is not only flexible friendly and favourable to foreign investment in South Africa and Zimbabwe but also advances their local economic policies Rethinking the Sources of International Law Godefridus J. H. Hoof, 1983-01-01 Deals with the concept of sources of international law

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