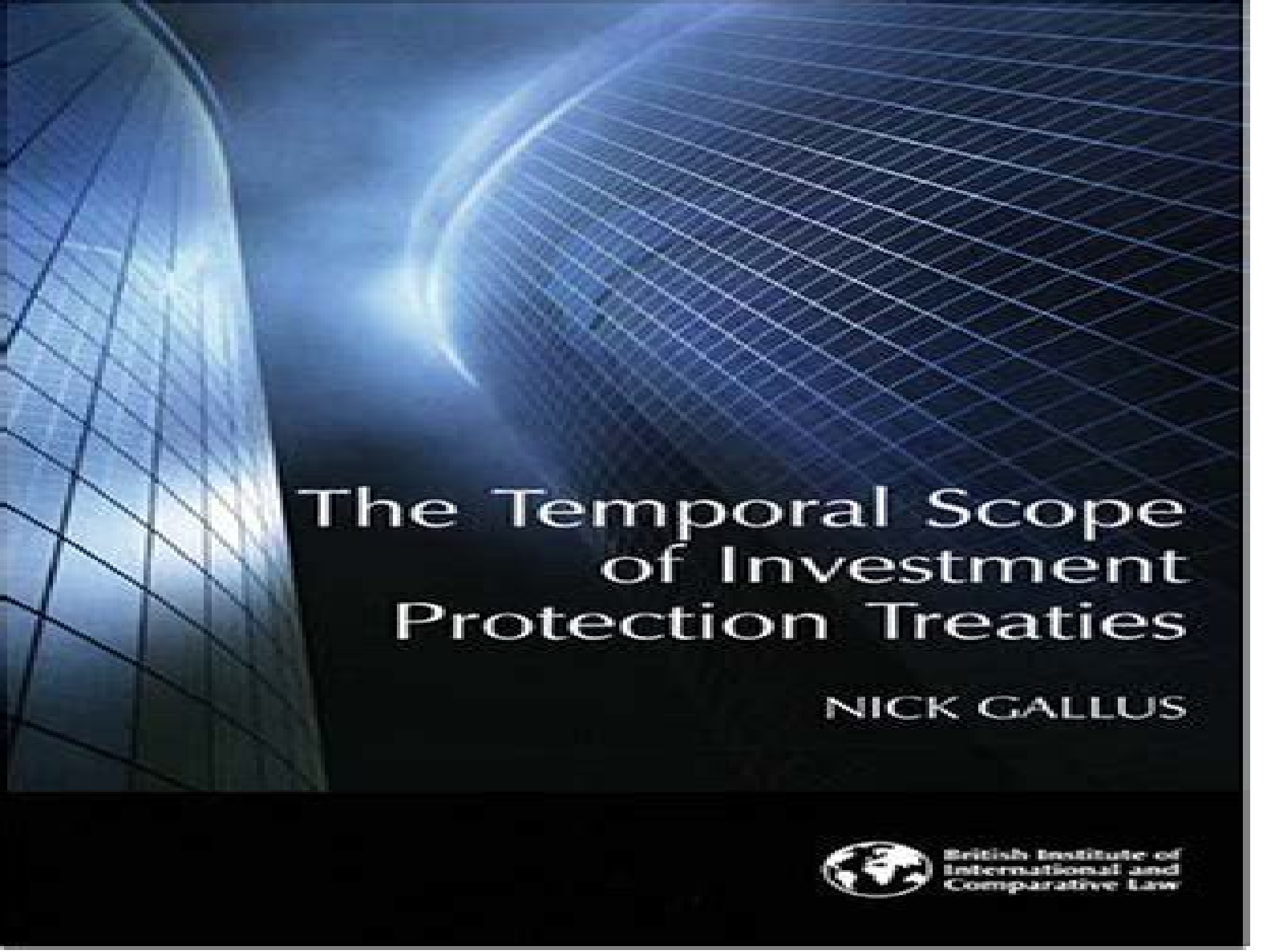




The Temporal Scope of Investment Protection Treaties

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International and
Comparative Law

The Temporal Scope Of Investment Protection Treaties

Petr Stejskal



The Temporal Scope Of Investment Protection Treaties:

The Temporal Scope of Investment Protection Treaties Nick Gallus, 2008 This book addresses all aspects of investment protection treaty tribunals temporal jurisdiction Specifically the book examines the application of the temporal rule to investment protection treaties including the aspect of the rule providing that a State cannot breach a treaty through acts occurring before the treaty comes into force u circumstances under which a State can breach a treaty through continuing or composite acts beginning before the treaty comes into force the consequence of State acts after the treaty is signed but before it is ratified time limits disputes arising before an investment protection treaty comes into force The book draws from investment protection treaty decisions as well as relevant decisions of other international tribunals and is therefore not only a resource for investment protection treaty practitioners arbitrators academics and students but also for those interested in the temporal jurisdiction of any international tribunal [The Vienna Convention on the Law of Treaties in Investor-State Disputes](#) Esmé Shirlow, Kiran Nasir Gore, 2022-08-25 The Vienna Convention on the Law of Treaties VCLT as the treaty on treaties has achieved a rich and nuanced track record of use in international law It has now been over fifty years since the VCLT was opened for signature in 1969 and over forty years since it entered into force in 1980 As of 2022 the VCLT has been ratified by 116 States and signed by 45 others with some non ratifying States also recognising parts as reflective of customary international law In the intervening decades the VCLT has had a profound influence on the interpretation application and development of international investment law including in the context of investment treaty arbitration This book presents the first consolidated analysis of how the VCLT has informed the practice of international investment law and the resolution of investor State disputes and the role that the VCLT may play in shaping the future of this field The diverse contributors to this book are scholars and practitioners from around the world who offer a variety of perspectives on the nexus between the VCLT international investment law and investor State dispute settlement ISDS Each chapter demonstrates how approaches to key issues of treaty law in investment treaty arbitration diverge or converge from the VCLT and approaches of other international courts as well as the lessons that investment treaty arbitration could derive or even offer for the interpretation and application of the VCLT rules in other settings Their insights and analyses consider aspects such as the role of the VCLT for interpretation of more specific approaches to treaty law drafted by treaty negotiators treaty application in circumstances of contested State territory or succession challenges temporal challenges arising in treaty interpretation the status of bilateral investment treaties between European Union Member States and related termination endeavours questions concerning the validity termination and amendment of investment treaties including as part of ongoing ISDS reform processes current multilateral reform proposals including the possibility of an appellate mechanism or a multilateral investment court grappling with the challenge of fragmentation in international investment law including the role of prior decisions in treaty interpretation the challenges introduced by treaty conflict and the multitude of approaches

that may be taken by national courts when implementing treaties like the New York Convention and treaty interpretation and drafting as aided by emerging technologies such as data analytics machine learning smart contracts and blockchain The book s appendix provides a highly valuable tabular summary of ISDS arbitral practice relating to the VCLT collating key references from over 350 different procedural orders decisions and awards By revisiting the role that the VCLT has played in the development of this field of law this invaluable book unlocks insights into how the VCLT might be used to support its ongoing development and the resolution of the next generation of investor State disputes This book is essential reading for a variety of stakeholders including arbitrators counsel scholars and government officials who will benefit from its in depth and practical analysis of the VCLT s relevance to and impact on investment law and investor State arbitration and its role in shaping where this field of public international law might be headed in the decades to come Schreuer's Commentary on the ICSID Convention Stephan W. Schill, Loretta Malintoppi, August Reinisch, Christoph H. Schreuer, Anthony

Sinclair, 2022-09-14 This unique compendium offers an article by article commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States Providing a comprehensive explanation of the functioning of this important mechanism for the settlement of investor State disputes it incorporates the preparatory work the Convention s text various rules and regulations adopted under the Convention the practice of arbitral tribunals under the Convention and academic writings on the subject The first and second editions of this Commentary have been relied upon by numerous arbitral tribunals This third edition follows the same system and approach but extensive updates and revisions reflect the vast increase in arbitral practice since the publication of the second edition A number of novel issues that have emerged through this practice are now addressed making this practice oriented guide an indispensable tool for anyone dealing with the ICSID Convention Likewise the number of contributors to and editors of the third edition has increased

Revolution in the International Rule of Law: Essays in Honor of Don Wallace, Jr. Borzu Sabahi, Nicholas J. Birch, Ian A. Laird, José Antonio Rivas, 2014-10-01 As the title suggests A Revolution in the International Rule of Law Essays in Honor of Don Wallace Jr is a European style Festschrift or Liber Amicorum and compiles short essays by eminent scholars and practitioners who have known Prof Wallace during his long and distinguished career as a Professor of law at Georgetown University Law Center and among others as the Chairman of the International Law Institute the U S Delegate to UNCITRAL the Legal Adviser to the USAID President of the ABA Section on International Law presiding officer of the UNIDROIT Foundation and Of Counsel to a number of prominent international law firms including Winston Strawn LLP Morgan Lewis LLP Arnold Porter LLP and Shearman Sterling LLP The primary topics covered in the book are Foreign Investment and Political Risk International Investment Law and Arbitration Unification of Private Law Commercial Law Reform Public Procurement Rule of Law and Transitional Justice International Business Law and Human Rights Legal Aspects of the United States Foreign Affairs Public International Law Separation of Powers and Terrorism Professor Wallace s friends including the

co editors have submitted 45 essays including a biographical piece prepared by the editors to this volume Principles of International Investment Law Rudolf Dolzer, Ursula Kriebaum, Christoph Schreuer, 2022-01-13 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 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 scholars and practitioners alike **The Interpretation of International Investment Law** Todd Weiler, 2013-05-02 In The Interpretation of International Investment Law Equality Discrimination and Minimum Standards of Treatment in Historical Context author Todd Weiler demonstrates how historical analysis should be adopted in the interpretation of international investment law obligations Weiler subjects some of the most commonly held beliefs about the nature and development of international investment law to a critical re appraisal based upon meticulously assembled historical record In the process the book provides readers with a fresh perspective on some of the oldest obligations in international law This stimulating contribution to the discourse on interpretation of international investment law standards sheds new light on the formation of such primary obligations as fair and equitable treatment protection and security and the customary international law minimum standard of treatment for aliens Additionally a thought provoking historical analysis explains why a one size fits all approach to obligations found in both trade and investment treaties such as MFN treatment and national treatment must be rejected With a keen attention to detail The Interpretation of International Investment Law Equality Discrimination and Minimum Standards of Treatment in Historical Context reveals the dynamic relationship between historical analysis critical theory and the construction of both customary and treaty norms in international investment law **Domestic Law in International Investment Arbitration** Jarrod Hepburn, 2017 Although domestic law plays an important role in investment treaty arbitration this issue is little discussed or analysed When should investment treaty tribunals engage with domestic law How should investment treaty tribunals resolve matters of domestic law These questions have significant ramifications for both the legitimacy of the investment treaty system and the arbitral mandate of the tribunal members Drawing on case law international law principles and comparative analysis this book addresses these important issues Part I of the book examines three areas of investment law the fair and equitable treatment standard expropriation and remedies in which the role of domestic law has so far been under appreciated It argues that tribunals are justified in drawing on domestic law as a relevant

factor in their rulings on these three issues Part II of the book examines how questions of domestic law should be resolved in investment arbitration It proposes a normative framework for use by tribunals in ascertaining the contents of the domestic law to be applied It then considers counter arguments exemptions and exceptions to applying this framework and it evaluates how tribunals have ruled on questions of domestic law to date Investment treaty arbitration has endured much criticism in recent times partly over fears of its encroachment on sovereignty The book ultimately contends that closer attention by tribunals to one of the principal expressions of a state s sovereignty the elaboration of its domestic law will reduce criticism of the field

International Investment Law Hélène Ruiz Fabri, Edoardo Stoppioni, 2022-05-19 Written by leading experts in the field this collection offers a critical and comparative analysis of the existing case law on international investment law The book makes a topical contribution to the existing literature showing most notably that 1 international investment law has a longer history than that generally considered and that this history is fundamental to understanding its development 2 international investment law is crafted today by a large number of actors These include not only investment arbitrators but also a variety of international and national courts and tribunals and 3 the literature and case law in languages other than English and from different legal cultures is essential to grasp the essence of the development of the topic This book brings together more than 40 experts from different countries and legal traditions and combines conceptual analysis and archival investigation of landmark case law to provide the reader with a fresh and innovative understanding of the breadth of international investment law

Evolution in Investment Treaty Law and Arbitration Chester Brown, Kate Miles, 2011-11-17 International investment law is in a state of evolution With the advent of investor State arbitration in the latter part of the twentieth century and its exponential growth over the last decade new levels of complexity uncertainty and substantive expansion are emerging States continue to enter into investment treaties and the number of investor State arbitration claims continues to rise At the same time the various participants in investment treaty arbitration are faced with increasingly difficult issues concerning the fundamental character of the investment treaty regime the role of the actors in international investment law the new significance of procedure in the settlement of disputes and the emergence of cross cutting issues Bringing together established scholars and practitioners as well as members of a new generation of international investment lawyers this volume examines these developments and provides a balanced assessment of the challenges being faced in the field

Treaty Shopping in International Investment Law Jorun Baumgartner, 2016-11-24 Treaty shopping also known under the terms of nationality planning corporate re structuring or corporate maneuvering implies a strategic change of nationality or strategic invocation of another nationality with the aim of accessing another usually more favourable investment treaty for purposes of investment arbitration When deciding on whether an investment claim based on treaty shopping should be upheld or dismissed investment arbitral tribunals have been increasingly faced with significant questions such as What is treaty shopping and how may legitimate nationality planning be distinguished from treaty abuse in

international investment law Should a claimant that is controlled by a host State national be considered a protected investor or should tribunals pierce its corporate veil Does an investor have to make the investment in good faith and does it have to make a contribution of its own to the investment it is claiming protection for When does a corporate restructuring constitute an abuse of process and which is the role of the notion of dispute in this respect How efficient are denial of benefits clauses to counter treaty shopping Treaty Shopping in International Investment Law examines in a systematic manner the practice of treaty shopping in international investment law and arbitral decisions that have undertaken to draw this line While some legal approaches taken by arbitral tribunals have started to consolidate others remain unsettled painting a picture of an overall inconsistent jurisprudence This is hardly surprising given the thousands of international investment agreements that provide for the investor's right to sue the host State on grounds of alleged breaches of investment obligations This book analyses and discusses the different ways by which arbitral tribunals have dealt with the value judgment at the core of the distinction between objectionable and unobjectionable treaty shopping and makes proposals de lege ferenda on how States could reform their international investment agreements in particular with respect to treaty drafting in order to make them less susceptible to the practice of treaty shopping Cambridge Compendium of International Commercial and Investment Arbitration Stefan Kröll, Andrea K. Bjorklund, Franco Ferrari, 2023-03-02 The Compendium like an encyclopedia contains entries for most of the foundational principles and concepts underlying arbitration Each entry takes a holistic view of international arbitration as they tackle core concepts from both a commercial and an investment arbitration perspective focusing on the fundamental issues underlying the various topics rather than on the solutions adopted in any particular jurisdiction thus making the Compendium a truly cross border transnational resource This innovative approach will allow readers to identify the commonalities as well as the differences between commercial and investment arbitration whether and where cross fertilization has taken place and what consequences it can have This approach allows the Compendium to be a tool in promoting the creation of a culture of international arbitration that considers commercial arbitration and investment arbitration as part of a whole but with certain distinct features particular to each General Principles of Law and International Investment Arbitration Andrea Gattini, Attila Tanzi, Filippo Fontanelli, 2018-05-29 General Principles of Law in Investment Arbitration surveys the function of general principles in the field of international investment law particularly in investment arbitration The authors analysis provides a representative case study of how this informal source operates alongside and in the absence of other sources of applicable law The contributions are divided into two parts devoted respectively to substantive principles and procedural ones The principles discussed in the book are selected for their currency in the practice their contested nature and their relevance *The Protection of Foreign Investments in Mongolia* Bajar Scharaw, 2017-11-07 This book analyses the adequacy of Mongolia's legal system for foreign investment protection by conducting a multi level assessment of international investment treaties domestic legislation of the host State and investor

State contracts from an international comparative perspective The investigation distinguishes between three legal dimensions each of which offers both substantive legal guarantees for the protection of investments in the host State and provisions for the settlement of investment disputes by arbitration In the first dimension of Public International Law PIL Mongolia is bound by international investment treaties which offer investors an international law setting In the second dimension a special domestic investment law defines the domestic framework for the establishment promotion and protection of investments but also for the conclusion of investor State contracts These contracts in turn open a third legal dimension which represents a cross section through the PIL and domestic law dimensions of investment protection Following the development of a multi level system with legal dimensions that are not isolated but rather interrelated and mutually reinforcing the book examines whether Mongolia s international investment treaties and domestic investment law reflect globally shared international and domestic standards of treatment and protection of foreign investments Lastly the author inquires whether the domestic laws applicable to investor State contracts in Mongolia allow investors and the Mongolian Government to agree on protective terms according to the not uncontroversial standards of international contract practice

Good Faith and International Economic Law Andrew D. Mitchell, M Sornarajah, Tania Voon, 2015-05-21 The past two decades have seen a significant proliferation of trade and investment treaties around the world States are increasingly negotiating agreements that regulate both trade and investment such as the Trans Pacific Partnership Agreement and the Transatlantic Trade and Investment Partnership The number of investor state dispute settlement cases is rapidly accumulating each year yet states enthusiasm for investor state arbitration has become more qualified as concern has intensified that the system can be abused by foreign investors Good faith is therefore becoming increasingly important as a principle particularly in the investment context due to disputes about investor conduct such as corporate restructuring in order to gain the protection of a particular investment treaty regarding an existing or foreseeable dispute and States responses to public policy concerns through attempts to modify or terminate investment treaties in the face of ongoing or expected claims Tribunals adjudicating investment disputes have used the principle of good faith in a haphazard and uncoordinated manner causing serious problems of uncertainty and inconsistency In response to these developments this book contains the first comprehensive and integrated analysis of the treatment of good faith in international investment law noting the broader implications of good faith in public international law and international trade law

The Effects of Armed Conflict on Investment Treaties Tobias Ackermann, 2022-08-25 Based on author s thesis doctoral Ruhr Universit at Bochum 2020

Practising Virtue David D. Caron, Stephan W. Schill, Abby Cohen Smutny, Epaminontas E. Triantafilou, 2015-11-12 International arbitration has developed into a global system of adjudication dealing with disputes arising from a variety of legal relationships between states between private commercial actors and between private and public entities It operates to a large extent according to its own rules and dynamics a transnational justice system rather independent of domestic and

international law In response to its growing importance and use by disputing parties international arbitration has become increasingly institutionalized professionalized and judicialized At the same time it has gained significance beyond specific disputes and indeed contributes to the shaping of law Arbitrators have therefore become not only adjudicators but transnational lawmakers This has raised concerns over the legitimacy of international arbitration Practising Virtue looks at international arbitration from the inside with an emphasis on its transnational character Instead of concentrating on the national and international law governing international arbitration it focuses on those who practise international arbitration in order to understand how it actually works what its sources of authority are and what demands of legitimacy it must meet Putting those who practise arbitration into the centre of the system of international arbitration allows us to appreciate the way in which they contribute to the development of the law they apply This book invites eminent arbitrators to reflect on the actual practice of international arbitration and its contribution to the transnational justice system International Investment Law and General International Law Christian J. Tams, Stephan W. Schill, Rainer Hofmann, 2023-01-19 This book questions whether investment law influences the wider field of general international law and more specifically whether approaches adopted by tribunals in investment arbitrations have radiated or should radiate into other fields of international law The Nationality of Corporate Investors under International Investment Law Anil Yilmaz Vastardis, 2020-10-01 This monograph offers a detailed and distinctive analysis of corporate nationality under international investment law covering the ICSID Convention and the investment treaty framework It takes the reader back to the basics threading through the concepts of jurisdiction nationality and corporate personality to give a clear context to the discussion of corporate nationality under international investment law at a time when international investment is dominated by multinational business enterprises operating in a globalised economy The book examines different understandings of corporate personality and nationality under a selection of jurisdictions and public international law It also offers an in depth analysis of approaches found in ICSID arbitral awards and in investment treaty practice distilling the problematic areas and discussing the impacts of the areas of concern It evaluates the techniques developed to address problems and puts forward suggestions for effective and balanced solutions to the questions of corporate nationality and personal scope of investment protection Bilateral Investment Treaties Kenneth J. Vandeveld, 2010 Bilateral Investment Treaties History Policy and Interpretation organizes summarizes and comments upon the arbitral awards interpreting and applying BIT provisions Policymakers and practitioners will find a thorough introduction to the operation of the BITs including the principal arguments and case authorities on both sides of the major issues in international investment law The book is intended to be a single volume reference covering every important development in the 50 years of BIT programs worldwide from 1959 until 2009 Author Kenneth Vandeveld argues that the primary purpose of the BITs is to promote the application of the rule of law to foreign investment while a secondary purpose is to create a liberal investment regime He further argues that BITs are based on six core principles reasonableness security

nondiscrimination access transparency and due process The book explains each of these principles and analyzes the major BIT provisions based on them Vandeveld addresses the host of complex questions that BITs engender Do bilateral investment treaties attract foreign investment or otherwise contribute to economic development Do BITs limit host state regulatory discretion too much Why should countries continue to conclude BITs What is meant by BIT guarantees of fair and equitable treatment and full protection and security What is the scope of the BIT provision for most favored nation treatment The book's expert analysis of these questions makes it useful to policy makers in the area of international economic relations attorneys representing multinational companies and anyone interested in the process of economic globalization

The Application of Foreign Investment Protection in Times of Armed Conflict Petr Stejskal, 2025-08-25 The monograph presents scenarios of situations where foreign investments suffer damage These model scenarios are based on thorough analysis of real cases facts from the ground and recent arbitral practice relating namely to arbitrations against Russia Syria or Libya This allows the author in the next step to ascertain what rules are applicable to the conduct of states towards foreign investments but also to demonstrate how they apply in real case scenarios In particular the work identifies and applies to these tailored scenarios relevant norms of international investment law international humanitarian law and international human rights law These regimes are relevant for protection of foreign investment but they differ as to the situations they govern parties whose conduct they regulate and obligations they stipulate It is therefore appropriate to analyse in their interconnection how these rules govern typical situations that may arise during armed conflict and what particularly they prescribe On the basis of application of these rules on the defined scenarios the monograph focuses on the issue of applicability of investment treaties in occupied territories and on interactions and on the issue of conflict of norms in situations where foreign investments qualify as military objectives

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