

Introduction au Droit Public

Marie-Elisabeth **Baudoin**

- L'échec de la diplomatie de l'organisation des nations unies dans la crise syrienne.
- La crise liée aux migrants et l'incapacité de l'UE à gérer ce dossier.
- => Absence de l'État
- Mécontentement des agriculteurs et leurs revendications en France.
- Le surpeuplement des prisons françaises et le dysfonctionnement du système pénitencier.
- => Présence de l'État par sa défaillance
- Point commun : État en arrière plan, absent ou défaillant

L'État n'est pas mort, il n'est pas seulement source de conflit → sans État, pas d'organisation internationale ni aucune décision prise au niveau international ni national.

GEORGE BURDEAU → 1970 « personne n'a jamais vu l'État. Qui pourrait cependant nier qu'il soit une réalité ? La place qu'il occupe dans notre vie quotidienne est telle qu'il ne pourrait être retiré sans que, du même coup, soit compromise nos possibilités de vivre. »

ex : - arrêt au feu rouge par peur de sanction, ce n'est pas devant le policier qu'on s'incline mais devant l'autorité qu'il représente. Ce n'est pas la volonté de l'homme qui va déterminer notre comportement mais la puissance publique représentée par l'agent → L'agent n'est qu'un instrument.

- lorsque l'on est mécontent des ministres → les appréciations s'aggravent quand on estime que leur manquement à leur fonction est lié à une erreur humaine. → Ce sont des représentants de l'autorité qui ne sont pas titulaires de leur pouvoir.

=> Seul et vrai titulaire : L'ÉTAT.

Droit public = Droit de l'État

Définition du Droit public : ensemble des règles juridiques relatives à l'existence, à l'organisation, au fonctionnement et aux relations de l'État.

→ définition organique qui repose sur des institutions qui vont être les principaux auteurs et sujets du Droit public.

→ définition matériel : définir le Droit public comme Droit de pouvoir politique ou puissance publique.

I- Le Droit public est avant tout du Droit

Qu'est ce que le Droit ? → vient du bas latin « directum » : direction, directive / signifie normes de conduite/règles

Le Droit est l'ensemble des règles de conduite humaine édictées et sanctionnées par l'État et destinées à faire régner dans les relations sociales/sociétés l'autorité et la liberté.

Le Droit est l'instrument de l'État permettant de régler les rapports entre les individus qui composent une société.

A- La fonction du Droit : un mode de régulation sociale

Un adage latin dit : « Ubi societas, ibi jus, ibi societas, ubi jus. »

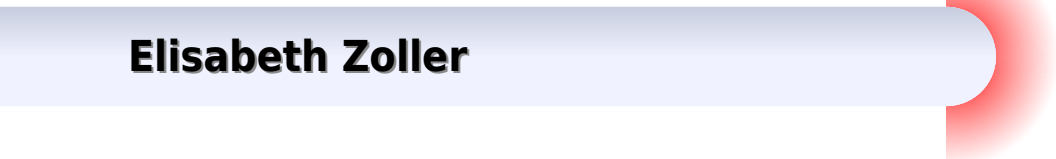
Là où il y a une société, il y a du Droit et dès qu'il y a du Droit, il y a une société.

Il ne peut y avoir de Droit que dans une société, mais dès qu'il existe une société, il y a du Droit.

Le Droit est un fait social et politique qui va permettre le bon fonctionnement d'une société.

Introduction Au Droit Public Preacutecis

Elisabeth Zoller



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Vattel's International Law from a XXIst Century Perspective / Le Droit International de Vattel vu du XXIE Siècle Vincent Chetail, Peter Haggemacher, 2011-05-23 No other scholar has so deeply influenced the development of international law or shaped the doctrinal debates as Vattel More than 250 years after its publication his Law of Nations has remained the most frequently quoted treatise of international law Vattel s International Law from a XXIst Century Perspective explores the reasons behind the extraordinary authority of Vattel and analyses its continuing relevance for thinking and understanding contemporary international law It gathers the contributions from well known experts of international law and history for the purpose of evaluating the Law of Nations from a XXIst century perspective The multiple facets of Vattel s thinking are apprehended through a wide ranging and comprehensive analysis respectively devoted to the international system the sources of international law the subjects of international law the law of peace and the law of war

Introduction to Public Law Elisabeth Zoller, 2008-06-30 Introduction to Public Law is a historical and comparative introduction to public law The book traces back the origins of the res publica to Roman law and analyzes the course of its development first during the monarchical age in continental Europe and England and then during the republican age that began at the end of the eighteenth century with the democratic revolutions in the United States and France For each period and country the book analyzes the major concepts of public law and their transformations sovereignty the state the statute the separation of powers the public interest and administrative justice

International Law in Theory and Practice Oscar Schachter, 2024-12-09

The Concept of Unity in Public International Law Mario Prost, 2012-03-15 Fragmentation has become a defining albeit controversial metaphor of international law scholarship in the era of globalisation Some scholars see it as a new development others as history repeating itself some approach it as a technical issue and some as the reflection of deeper political struggles But there is near consensus about the fact that the established vision of international law as a unitary whole is under threat At the core of the fragmentation debate lies the concept of unity but this is hardly ever rationalised and is more assumed than explained Its meaning remains vague and intuitive The Concept of Unity in Public International Law attempts to dispel that vagueness by exploring the various possible meanings of the concept of unity in international law However eschewing one grand theory of unity it identifies and compares five candidates Intentionally pluralistic in its outlook the book does not engage in normative arguments about whether international law is or should be unitary but seeks to show instead that the concept of unity is contested and that discourses on fragmentation are necessarily contingent The thesis on which the book is based won the 2009 Prize for best doctoral thesis from the Association des professeurs de droit du Qu bec

Legal Fictions in Theory and Practice Maksymilian Del Mar, William Twining, 2015-03-11 This multi disciplinary multi jurisdictional collection offers the first ever full scale analysis of legal fictions Its focus is on fictions in legal practice examining and evaluating their roles in a variety of different areas of practice e g in Tort Law

Criminal Law and Intellectual Property Law and in different times and places e g in Roman Law Rabbinic Law and the Common Law The collection approaches the topic in part through the discussion of certain key classical statements by theorists including Jeremy Bentham Alf Ross Hans Vaihinger Hans Kelsen and Lon Fuller The collection opens with the first ever translation into English of Kelsen s review of Vaihinger s *As If* The 17 chapters are divided into four parts 1 a discussion of the principal theories of fictions as above with a focus on Kelsen Bentham Fuller and classical pragmatism 2 a discussion of the relationship between fictions and language 3 a theoretical and historical examination and evaluation of fictions in the common law and 4 an account of fictions in different practice areas and in different legal cultures The collection will be of interest to theorists and historians of legal reasoning as well as scholars and practitioners of the law more generally in both common and civil law traditions

Foreign Investment and Dispute Resolution Law and Practice in Asia Vivienne Bath, Luke Nottage, 2012-03-12 This book considers foreign investment flows in major Asian economies It critically assesses the patterns and issues involved in the substantive law and policy environment which impact on investment flows as well as the related dispute resolution law and practice The book combines insights from international law and comparative study and is attentive to the socio economic contexts and competing theories of the role of law in Asia Contributions come from both academics with considerable practical expertise and legal practitioners with strong academic backgrounds The chapters analyze the law and practice of investment treaties and FDI regimes in Asia looking specifically at developments in Japan India China Indonesia Malaysia Korea and Vietnam The book explores the impact of the Asian Financial Crisis in the late 1990s and the Global Financial Crisis a decade later examining actual trends and policy debates relating to FDI and capital flows in Asia before and after those upheavals *Foreign Investment and Dispute Resolution Law and Practice in Asia* is a valuable resource for practitioners academics and students of International and Comparative Law Business and Finance Law Business Finance and Asian Studies

Modification of Treaties by Subsequent Practice Irina Buga, 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

Economic Sanctions in International Law and Practice Masahiko Asada, 2019-11-07

Providing perspectives from a range of experts including international lawyers political scientists and practitioners this book assesses current theory and practice of economic sanctions discussing current legal and political challenges faced by the international community It examines both the implementation of sanctions by major powers the United States the European Union and Japan as well as assessing the impact of those sanctions through case studies of Russia Iran Syria and North Korea Balancing theoretical analysis of legal considerations with national and regional level empirical analysis it also includes coverage of sanctions issues by the UN Security Council and the EU as well as the extraterritorial application of sanctions A valuable reference for academics and practitioners **Economic Sanctions in International Law and Practice** will be useful to those working in the fields of international law diplomacy and international political economy

The Oxford Handbook of the History of International Law Bardo Fassbender, Anne Peters, Simone Peter, Daniel Högger, 2012-11-01

The Oxford Handbook of the History of International Law provides an authoritative and original overview of the origins concepts and core issues of international law The first comprehensive Handbook on the history of international law it is a truly unique contribution to the literature of international law and relations Pursuing both a global and an interdisciplinary approach the Handbook brings together some sixty eminent scholars of international law legal history and global history from all parts of the world Covering international legal developments from the 15th century until the end of World War II the Handbook consists of over sixty individual chapters which are arranged in six parts The book opens with an analysis of the principal actors in the history of international law namely states peoples and nations international organisations and courts and civil society actors Part Two is devoted to a number of key themes of the history of international law such as peace and war the sovereignty of states hegemony religion and the protection of the individual person Part Three addresses the history of international law in the different regions of the world Africa and Arabia Asia the Americas and the Caribbean Europe as well as encounters between non European legal cultures like those of China Japan and India and Europe which had a lasting impact on the body of international law Part Four examines certain forms of interaction or imposition in international law such as diplomacy as an example of interaction or colonization and domination as an example of imposition of law The classical juxtaposition of the civilized and the uncivilized is also critically studied Part Five is concerned with problems of the

method and theory of history writing in international law for instance the periodisation of international law or Eurocentrism in the traditional historiography of international law The Handbook concludes with a Part Six entitled People in Portrait which explores the life and work of twenty prominent scholars and thinkers of international law ranging from Muhammad al Shaybani to Sir Hersch Lauterpacht The Handbook will be an invaluable resource for students and scholars of international law It provides historians with new perspectives on international law and increases the historical and cultural awareness of scholars of international law It is the standard reference work for the global history of international law

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