INTERNATIONAL ECONOMIC LAW

Critical Concepts in Law

Edited by Asif H. Qureshi and Xuan Gao

Volume I
General International Economic Law: Theory
and Fundamental Concepts





	Acknowledgements	xix
	Preface	xxiii
	Table of abbreviations	XXV
	Chronological table of reprinted articles and chapters	xxvii
	General commentary: a conceptual approach to	
	International Economic Law	xxxvii
	Commentary: General International Economic Law:	
	theory and fundamental concepts	xlvii
	OLUME I GENERAL INTERNATIONAL ECONOMIC AW: THEORY AND FUNDAMENTAL CONCEPTS	
SE	ection 1 International Economic Law: theory	1
	RT 1 Onceptualising International Economic Law	3
1	The international economic law revolution	3
1	JOEL P. TRACHTMAN	3
2	The traditional relationship between international trade	
	law and international law	26
	DONALD M. MCRAE	
PA	RT 2	
Ec	conomic doctrine	45
3	A short history of the Washington Consensus	45
	JOHN WILLIAMSON	

PAI	RT 3	
Int	ernational distributive justice	62
4	International distributive justice PHILIPPE VAN PARIJS	62
5	Global justice and the Bretton Woods Institutions FRANK J. GARCIA	80
	CTION 2 INTERNATIONAL ECONOMIC LAW: NDAMENTAL CONCEPTS	103
	RT 4 urces	105
6	Is there customary international economic law? STEPHEN ZAMORA	105
7	The challenge of soft law: development and change in international law C. M. CHINKIN	140
	RT 5 e international economic setting	157
8	Defining globalisation JAN AART SCHOLTE	157
	RT 6 rticipants	190
9	Who are the developing countries in the WTO? FAN CUI	190
10	Non-governmental organizations JAGDISH BHAGWATI	220
	RT 7 onomic sovereignty	234
11	Sovereignty-modern: a new approach to an outdated concept JOHN H. JACKSON	234

1	2 Rethinking the sovereignty debate in international economic law KAL RAUSTIALA	264
_	PART 8 Non-discrimination and differential treatment	304
1	3 Differential treatment in international law: towards a new paradigm of inter-state relations PHILIPPE CULLET	304
	4 The principle of non-discrimination in international economic law: a conceptual and historical sketch FRIEDL WEISS	342
_	PART 9 Extraterritorial jurisdiction	362
1	Introduction in Report of the Task Force on Extraterritorial Jurisdiction THE INTERNATIONAL BAR ASSOCIATION	362
1	6 The limits of substantive international economic law: in support of reasonable extraterritorial jurisdiction CEDRIC RYNGAERT	387
_	PART 10 State immunity: commercial transactions	405
1	7 Exceptions to state immunity: the concept of commerciality HAZEL FOX	405
	PART 11 Constitutionalising International Economic Law	440
1	18 National constitutions and international economic law ERNST-ULRICH PETERSMANN	440
	PART 12 Economic human rights	491
1	19 The constitutional protection of economic rights	491

PART 13 Economic sanctions		525
20	The legality of economic coercion in general international law OMER YOUSIF ELAGAB	525
	DLUME II INTERNATIONAL MONETARY AND NANCIAL LAW	
	Acknowledgements Commentary: International Monetary and Financial Law	ix xi
	RT 1 Onetary sovereignty	1
21	Current legal aspects of monetary sovereignty François Gianviti	1
	RT 2 change arrangements	12
22	Strengthening the soft international law of exchange arrangements JOSEPH GOLD	12
	RT 3 ultilateral system of payments	66
23	The International Monetary Fund and current account convertibility HECTOR ELIZALDE	66
	RT 4 ernational capital transfers	85
	International jurisdiction over international capital flows and the role of the IMF: plus ça change	85

	RT 5 ernational liquidity: special drawing rights	106
25	International liquidity and the role of the SDR in the international monetary system PETER B. CLARK AND JACQUES J. POLAK	106
	RT 6 IF conditionality	132
26	An analysis of IMF conditionality ARIEL BUIRA	132
	RT 7 IF surveillance	164
27	The politics of influence: an analysis of IMF surveillance DOMENICO LOMBARDI AND NGAIRE WOODS	164
28	Standards and codes: the role of the IMF	192
	RT 8 ernational financial architecture	195
29	A new architecture for the global financial market: legal aspects of international financial standard setting MARIO GIOVANOLI	195
	er 9 vereign debt	252
30	Resolution of sovereign liquidity crises: basic concepts and issues FRANÇOIS P. GIANVITI	252
31	Sovereign debt restructuring, odious debt, and the politics of debt relief ROBERT K. RASMUSSEN	259
32	Sovereign workouts: an IMF perspective ANNE O. KRUEGER AND SEAN HAGAN	273

VOLUME III WORLD TRADE LAW

	Acknowledgements	ix
	Commentary: World Trade Law	xi
	RT 1	
The	eory of comparative advantage	1
33	Comparative advantage and the normative economics of international trade policy	1
	ALAN O. SYKES	
PAI	RT 2	
Re	ciprocity in trade negotiations	35
34	A diplomat's economics: reciprocity in the Uruguay Round negotiations	35
	J. MICHAEL FINGER	
PAI	RT 3	
Ma	arket access	50
35	The mystery of market access	50
	ЈОНИ МО	
	RT 4	
Na	tional treatment	77
36	Understanding national treatment: the participatory vision of the WTO	77
	PETER M. GERHART AND MICHAEL S. BARON	
	RT 5	
Mo	ost-favoured-nation treatment (MFN)	128
37	The theory of most favoured nation treatment	128
	RAI BHALA	

	RT 6 gional trade agreements	148
38	Breaking the barrier between regionalism and multilateralism: a new perspective on trade regionalism SUNGJOON CHO	148
	RT 7 fair trade practices	200
39	Unfair trade and the rules of dumping JOHN H. JACKSON	200
	RT 8 nsensus decision making	211
40	Decision-making in the World Trade Organization: is the consensus practice of the World Trade Organization adequate for making, revising and implementing rules on international trade CLAUS-DIETER EHLERMANN AND LOTHAR EHRING	211
	RT 9 ansparency and enforcement	237
41	The new GATT trade policy review mechanism: an exercise in transparency or "enforcement"? ASIF H. QURESHI	237
42	A re-appraisal of non-violation complaints under the WTO dispute settlement procedures FRIEDER ROESSLER AND PETINA GAPPAH	253
	RT 10 velopment and trade	274
43	Special and differential treatment in the millennium: special for whom and how different?	274

44	Aid for trade: cool aid or Kool-Aid? SAM LAIRD	292
45	Food security: food trade regime and food aid regime RUOSI ZHANG	331
	RT 11 ocess and production methods	350
46	The law of environmental "PPMs" in the WTO: debunking the myth of illegality STEVE CHARNOVITZ	350
47	The rise of 'climate protectionism' MARTIN KHOR	410
48	Threat to block South's exports on climate grounds MARTIN KHOR	412
VC	DLUME IV INTERNATIONAL INVESTMENT LAW	
	Acknowledgements Commentary: International Investment Law	vii ix
SE	CTION 1 KEY CONCEPTS IN GENERAL INTERNATIONAL LAW	1
	RT 1 ernational minimum standard	3
49	Customary international law: the emergence of a minimum standard RUDOLF DOLZER AND CHRISTOPH SCHREUER	3
50	Fair and equitable treatment and its relation to the minimum standard of international customary law	10

PAF	RT 2	
Expropriation		18
FF		
51	The taking of foreign property	18
	M. SORNARAJAH	
PAF		70
Sta	bilisation clauses	70
5 0	64.4.19-4.9	70
52	State responsibility in case of "stabilization" clauses	70
	F. V. GARCIA-AMADOR	
PAF		
Int	ernational corporate social responsibility	96
53	Corporate social responsibility	96
	PETER MUCHLINSKI	
SEC	CTION 2 KEY CONCEPTS IN INVESTMENT AGREEMENTS	151
~2.		
PAF		152
'in'	vestment' in International Investment Law	153
51	The definition of feweign investment	153
54	The definition of foreign investment	133
	M. SORNARAJAH	
	RT 6	
Fai	r and equitable treatment	164
55	,	
	investment law and practice	164
	STEPHEN VASCIANNIE	
PAI	RT 7	
Most-favoured-nation treatment		232
56	Most-favoured-nation treatment	232
	PIA ACCONCI	

VOLUME V INTERNATIONAL DEVELOPMENT LAW

64	Declaration on the Right to Development UN	152
	RT 3 ght to development	152
63	Permanent Sovereignty over Natural Resources UN	149
62	Sovereignty over natural resources as a basis for sustainable development NICO SCHRIJVER	119
61	Introduction to Sovereignty over Natural Resources NICO SCHRIJVER	94
	RT 2 rmanent sovereignty over natural resources	94
60	The Sen conception of development and contemporary international law discourse: some parallels BHUPINDER CHIMNI	74
59	The ends and the means of development AMARTYA SEN	57
58	Extract from The Perspective of Freedom AMARTYA SEN	41
57	Differing conceptions of development and the content of international development law DANIEL D. BRADLOW	1
	et 1 velopment	1
	•	
	Acknowledgements Commentary: International Development Law	ix xiii

65	The right to development: implications for international economic law ISABELLA D. BUNN	158
	RT 4 Stainable development	192
66	The concept of sustainable development, and its meaning in international law MARIE-CLAIRE CORDONIER SEGGER AND MARKUS W. GEHRING	192
67	Legal implications of sustainable development DUNCAN FRENCH	196
68	Sustainable development and biological diversity DUNCAN FRENCH	235
	RT 5 llennium development goals	290
69	United Nations Millennium Declaration UN	290
	RT 6 Onterrey Consensus	300
70	Monterrey Consensus of the International Conference on Financing for Development THE INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT	300
71	Financing for development, the Monterrey Consensus: achievements and prospects ABDEL HAMID BOUAB	319
	RT 7 w International Economic Order	328
72	Normative problems of a new international economic order	328

73	Charter of Economic Rights and Duties of States UN	342
74	Declaration on the Establishment of a New International Economic Order UN	355
75	Programme of Action on the Establishment of a New International Economic Order UN	360
76	International Covenant on Economic, Social and Cultural Rights UN	379
	RT 8 od governance and global governance	390
77	Governance, good governance and global governance: conceptual and actual challenges THOMAS G. WEISS	390
78	Corruption, legal solutions and limits of law INDIRA CARR	414
VC	DLUME VI INTERNATIONAL FISCAL LAW	
	Acknowledgements Commentary: International Fiscal Law	ix xi
	RT 1 ernational Fiscal Law defined	1
79	The concept of international fiscal law ARNOLD A. KNECHTLE	1

PART 2 Source v. residence		
80	Source and residence: new configuration of their principles: general report ANGEL SCHINDEL AND ADOLFO ATCHABAHIAN	7
PART 3 Fiscal sovereignty and jurisdiction		92
81	The freedom of a state to legislate in fiscal matters under general international law ASIF H. QURESHI	92
PART 4 Key concepts in double taxation relief		109
82	International double taxation UN	109
PART 5 Tax evasion and avoidance		138
83	International tax evasion and avoidance UN	138
PART 6 Harmful tax competition		162
84	Tax competition: harmful to whom? MICHAEL LITTLEWOOD	162
	RT 7 n-enforcement of tax claims: 'the revenue rule'	235
85	Modernizing the revenue rule: the enforcement of foreign tax judgments BARBARA A. SILVER	235

PART 8 Non-discrimination		258
86	Non-discrimination at the crossroads of international taxation: general report LUC HINNEKENS AND PHILIPPE HINNEKENS	258
87	Non-discrimination rules in international taxation: general report AVV. PIETRO ADONNINO	302
	RT 9 rmanent establishment	363
88	Is there a permanent establishment? General report JACQUES SASSEVILLE AND ARVID A. SKAAR	363
PART 10 Calculation of multijurisdictional company profits		411
89	Design of a national formulary apportionment tax system MICHAEL J. MCINTYRE	411
90	Transfer pricing REUVEN S. AVI-YONAH	422
	Index	443