Contents

Prefa	ace x	t .
Acro	nyms	XXI
Tabl	e of Cas	ses XXV
Tabl	e of Sta	tutes XXVII
List	of Char	ts XXXIV
List	of Table	es XXXV
Abo	ut the A	author XXXVI
Glob	oal Cons	stitutionalism: Positivism and International Law 1
	Summ	ary 1
1.1		uction: The Problematic Dynamics 1
1.2	Norma	tive Fluidity of the Three Traditions 7
	1.2.1	Instrumentalist Tradition 8
		Inter-disciplinarist Tradition 13
	1.2.3	A Contested Constitutionalist Tradition 16
1.3		gens and the Positivist Explanation of Global
	Consti	tutionalism 23
	1.3.1	Three Formative Features of Global Constitutionalism 24
	1.3.2	Five Modi Operandi of Global Constitutionalism 27
		(a) Unity 27
		(b) Legality 29
		(c) Harmony 30
		(d) Hierarchy 32
		(e) Convergence 38
1.4	Challe	nges to Global Constitutionalism 41
	1.4.1	Western Bias and Hegemony 41
	1.4.2	Defiance of International Law 44
	1.4.3	Terrorism 48
1.5	Conclu	ision 49
Inte	rnation	al Trade Law: Theories and Practices in Negotiations 53
	Summ	ary 53
2.1	Why T	rade? 53
	2.1.1	First Explanation: Peace, Wealth, and Righteousness 55
	2.1.2	Second Explanation: Wealth and Advantages 59
	2.1.3	Third Explanation: New Trade Theory 65
	2.1.4	Fourth Explanation: Welfare-Grundnorm 69

	2.2	Controversies: New and Old, and the Winners and Losers
		of International Trade 77
		2.2.1 The Backlashes 78
		2.2.2 The Paybacks 83
	2.3	Assessments and Reality Check 85
		2.3.1 Conceptual Muddle: WTO is not a Free Trade Institution and the
		Sole Agency of Globalization 86
		2.3.2 Derogations, Divergences, Constructed Advantage, and
		Asymmetry 88
		2.3.3 Domestic Practices 90
		2.3.4 Question of Governance 91
	2.4	Conclusion 92
2	Mal	king Pules in the vime. Negotistians From D. L. (D. 1)
3	IVICI	king Rules in the WTO: Negotiations From Doha to Bali 94 Summary 94
	3.1	Dela Barrell / Barrell
	3.2	
	3.4	
		3.2.1 Key Players' Reluctance to Liberalize Trade 105
	0.0	3.2.2 Faulty Methodology 111
	3.3	
	3.4	F
		Possible Implications 124
	3.6	Conclusion 127
4	Nor	th-South Controversy: Developed and Developing Countries in the
•	WT	
		Summary 131
	4.1	Introduction 132
	4.2	The Fragmented Approach 135
	4.3	The Uniformity Approach 143
	4.4	Bali Ministerial Decisions on LDCs 149
	4.5	
		Conclusion 158
		-0-
5	Self-	Determination and Minority Rights under International Law 164
		Summary 164
	5.1	Right to Self-Determination (RSD) 164
	5.2	RSD: Internal Autonomy of Groups 167
	A-C	5.2.1 The UN Declaration on the Rights of Indigenous Peoples 172
		5.2.2 RSD and Minority Rights 176

6

7

5.3	IRSD and Its Scope: Empowerment of All Peoples 178		
	5.3.1 The Scope of IRSD under the UNDRIP 179		
	5.3.2 Rights over Land and Resources 181		
	5.3.3 IRSD and Human Rights for All Peoples 184		
5.4			
	5.4.1 Could Federalism Ensure Autonomy? 190		
	5.4.2 Federalism as the Solution of Discrimination and		
	Inequality 196		
	5.4.3 Is Federalism the Natural Political Course for Nepal? 200		
5.5	Conclusion 205		
Hun	nan Rights: The Interlocutor of Global Constitutionalism 207		
	Summary 207		
6.1	Introduction 207		
6.2	The Genesis and Foundation of Human Rights 212		
6.3	International Human Rights Regime 220		
6.4	Civil and Political Rights 223		
6.5	Economic, Social, and Cultural Rights 231		
6.6	CAT and Human Rights 235		
6.7	Core Instruments 238		
6.8	Implementation of Human Rights Instruments 243		
	6.8.1 Domestic Implementation 243		
	6.8.2 Regional Implementation 247		
	6.8.3 International Implementation 254		
	6.8.4 Universal Jurisdiction 258		
6.9	Conclusion 259		
Asia	n Approaches to International Law 261		
	Summary 261		
7.1	Is International Law Eurocentric or Universal? 262		
7.2	Is there any Uniform Asian Approach to International Law? 266		
7.3			
	7.3.1 Constitutionalization of Globalization 274		
	7.3.2 International Law as the Designer of Globalization 278		
7.4	Constitutionalization of International Relations: From Diplomacy to		
	Law 281		
7.5	International Relations: Harmonization of Domestic Rules and		
	Practices 294		
7.6	International Relations and Global Constitutionalism 302		
7.7	Conclusion 306		

8 The Future of International Law 309

Summary 309

- 8.1 Possible Future Trends 309
- 8.2 The Security Council and the Veto System 312
- 8.3 R2P: Responsibility to Protect or Right to Prevail 323
- 8.4 Two Innovations: PKOs & Criminal Trial 331
- 8.5 Conclusion: Positivism on the Rise 338

Bibliography 343 Subject Index 365