Contents

Acknowledgments		
Abbreviations		

Introduction 1

- 1 The Subject and Basic Claims of This Book 1
- 2 Structure and Approach 3
- 3 The Benchmarks of Legality and Quality 7

PART 1 What Is Interpretation?

- 1 The Interpretation of International Law by Domestic Courts A Topic
 That Matters 15
 - 1 Introduction 15
 - 2 The State of the Literature 15
 - 2.1 Descriptive Blas 17
 - 2.2 Domestic Bias 20
 - 2.3 'Amour Impossible' 22
 - 2.4 Legal Imperative 23
 - 2.5 Swiss Gap 24
 - 3 Why Switzerland? 26
 - 4 Why Courts? 30
 - 5 Why Domestic Courts? 31
 - 6 Why International Law? 34
 - 7 Why Focus on the Law's Interpretative Methods? 37
- 2 Terminology and Conceptual Apparatus 44
 - 1 Introduction 44
 - 2 Legal Interpretation 44
 - 3 Judicial Interpretation 47
 - 4 Domestic Judicial Interpretation 52
 - 5 Methods of Interpretation 54
 - 5.1 Normative Interpretative Theories 54
 - 5.2 Structural and Axiological Interpretative Principles 55
 - 5.3 Rules 56
 - 5.4 Auxiliary Means 57
 - 5.5 Argument Types 57
 - 6 The Interpretation of International Law 58

VIII CONTENTS

3	Interpreting International Law in Context - Domestic			
	Specificities	62		

- 1 Introduction 62
- 2 The Swiss State and International Law 65.
 - 2.1 Swiss Foreign Relations Law 65
 - 2.2 International Law in the Swiss Legal Order 71
- 3 Legal Principles of Political Organization 87
 - 3.1 Federalism 87
 - 3.2 Linguistic Diversity 89
 - 3.3 The Rule of Law 90
 - 3.4 Semi-Direct Democracy 92
 - 3.5 The Federal Assembly qua 'Supreme Authority of the Confederation' 95
- 4 The Swiss Judiciary 97
 - 4.1 The Structure of the Swiss Judiciary 97
 - 4.2 Characteristics of Swiss Courts' Interpretative Activity 105
- 5 Conclusion 128

PART 2 Why Interpret?

- 4 The Legal Effect of Domestic Rulings in International Law 133
 - 1 Introduction 133
 - 2 Domestic Rulings as Means of Enforcement of International Law 137
 - 3 Domestic Rulings as Contributors to the Sources and Interpretation of International Law 142
 - Domestic Rulings in the Sources of International Law (Art. 38(1) (a)–(c) 1cj Statute) 145
 - 3.2 Domestic Rulings as Auxiliary Means (Art. 38(1)(d) 1cj Statute) 153
 - 4 Conclusion 158

PART 3 How to Interpret?

- 5 The Need for Interpretative Methods in International Law 161
 - 1 Introduction 161

CONTENTS IX

	2	Why Does the Law Need Interpretative Methods? a Comparison				
		With Interpretation Outside the Law 162				
		2.1 Stmtlarttles 164				
		2.2 Differences 166				
	3	The Origins of Interpretative Methods in Domestic and				
		International Law 167				
		3.1 Domestic Law 168				
		3.2 International Law 170				
		3.3 The Relationship between the Interpretative Methods of				
		Domestic and International Law 175				
	4	Three Reasons for Requiring States to Use Interpretative				
		Methods 176				
		4.1 Vagueness 176				
		4.2 Counter-Majoritarian Decisions 180				
		4.3 Judicial Politics 181				
	5	Three Objections against Interpretative Methods 184				
		5.1 The 'Vague Methods' Objection 184				
		5.2 The 'Self-Made Methods' Objection 187				
		5.3 The 'Outcome Over Process' Objection 189				
	6	Conclusion 190				
6	The	The Interpretative Methods of International Law: What Are They, and				
	Wh	y Use Them? 191				
	1	Introduction 191				
	2	The Interpretative Methods of International Law 192				
		2.1 Textual Interpretation 197				
		2.2 Systematic Interpretation 202				
		2.3 Teleological Interpretation 208				
		2.4 Historical Interpretation 213				
		2.5 The Relationship between the Various Interpretative				
		Methods 219				
	3	Conclusion 221				
131	Charle	Court of Track Internation				
7		iss Courts and Treaty Interpretation 223				
	1	Introduction 223				
	2	Domestic Courts and the Methods of Treaty				
		Interpretation 226				
		2.1 Introductory Remarks 226				
		2.2 Exposing and Evaluating the Practice 229				

X CONTENTS

3	Swiss Courts and the Methods of Treaty Interpret	ation 234
	The state of the s	and the first of t

- 3.1 The Swiss Federal Tribunal and Treaty Interpretation before the VCLT'S Entry into Force (1954–1980) 235
- 3.2 The Swiss Federal Tribunal and Treaty Interpretation after the VCLT's Entry into Force and before Its Ratification by Switzerland (1980–1990) 238
- 3.3 Swiss Courts and Treaty Interpretation after the VCLT's Entry into Force in Switzerland (1990–2016) 239
- 3.4 Relationship with Interpretative Methods under Swiss Law 265
- 3.5 Comparing the Practice of Swiss Courts 267
- 3.6 Putting the Swiss Judicial Practice into Perspective 269
- 4 Evaluation 270

s Swiss Courts and the Interpretation of Unwritten International Law 272

- 1 Introduction 272
- 2 Customary International Law 274
 - 2.1 Domestic Courts and the Interpretation of Customary International Law 274
 - 2.2 Swiss Courts and the Interpretation of Customary International Law 283
- 3 General Principles of International Law 302
 - Domestic Courts and the Interpretation of General Principles of International Law 303
 - 3.2 Swiss Courts and the Interpretation of General Principles of International Law 305
- 4 Evaluation 316

Conclusion and Recommendations 320

- 1 The Argument Defended in This Book 320
- 2 Recommendations 323
 - Improving the Legality and the Quality of Domestic Rulings 323
 - 2.2 Enhancing the Accessibility of Domestic Rulings 329

Bibliography 333 Index 373