## CONTENTS

Table of Cases	
Table of Conventions & Treaties	
Table of Legislation	XXXV
PART I. A CRITICAL ANALYTICAL FRAMEWORK FOR A	
CRITIQUE OF INTERNATIONAL LAW	
Chapter 1. Fairness and International Law: An Analytical	
Framework	3
1. Maturity and Complexity in International Law	4
2. The Post-Ontological Search for Fairness	7
a. Legitimacy as Procedural Fairness	7
b. Distributivė Justice as Fairness	8
3. Two Preconditions of Fairness Discourse	9
a. Moderate Scarcity	9
b. Community	10
c. The Existential Movement: Moderate Security and	
Community Now	II
4. The Gatekeepers of Fairness Discourse	I 4
a. No Trumping	16
b. Maximim	18
5. A Caveat	22
Chanton a. I amidima and Enimana	
Chapter 2: Legitimacy and Fairness	25
1. Legitimacy, Community, and the Social Contract	26
2. The Indicators of Legitimacy	30
a. Determinacy	30
b. Symbolic Validation	34
c. Coherence	38
d. Adherence	41

Ch	apter 3: Equity as Fairness	47	
I.	Equity as Law's Justice: Historical Origins	48	
	a. 'Unjust Enrichment'	50	
	b. Estoppel or 'Bon Fois' (Good Faith)	51	
	c. Acquiescence	53	
2.	The Distinction Between Equity and Ex Aequo et Bono	54	
3.	3. Equity as a Mode of Introducing Justice into Resource		
	Allocation	56	
	a. Corrective Equity	58	
	(i) Corrective Equity in Trading Arrangements	58	
	(ii) Corrective Equity in Continental Shelf Allocation	6 I	
	b. Broadly Conceived Equity	65	
	(i) Broadly Conceived Equity in Continental Shelf		
	Allocation	66	
	(ii) Broadly Conceived Equity in Conventional		
	Arrangements	74	
	c. Common Heritage Equity	75	
4.	Conclusions	79	
	PART II. FAIRNESS IN EMPOWERMENT OF PERSONS AND PEOPLES		
Cha	apter 4. Fairness to Persons: The Democratic		
	Entitlement	83	
Ι.	Introduction: The Power of Democratic Legitimacy	83	
	The Validation of Governance	85	
	The Legitimacy of International Validation	89	
•			
•	Associational Freedom: Historic Self-Determination	91	
5.	Discursive Rights	98	
	a. The Human Rights Declaration and Civil and Political		
	Rights Covenant	98	
	b. Process Determinacy: The Human Rights Committee	100	
	c. Other Systemic Protection of Discursive/Political Rights	104	
6.	Electoral Rights	105	
	a. Post-Colonial Election Monitoring	105	
	b. Enunciating Electoral Democracy	109	

	CONTENTS	1X
	c. The Future of International Guarantees of Free and Fair	
	Elections	I I 7
	d. Coherence of Underlying Normative Structure	I 2 I
	e. Renouncing Unilateralism f. Treating Like Cases Alike	130
		132
7.	Peace and the Democratic Entitlement	134
8.	Conclusion: The Emergence of Democracy as a Global Normative Entitlement	137
Cha	apter 5: Fairness to 'Peoples' and their Right to Self-Determination	140
I.	Postmodern Neo-Tribalism: An Introduction	140
2.	Uti Possidetis v. Self-Determination	146
3.	Legal Antecedents of Postmodern Claims to Neo-Tribal	
•	Self-Determination	147
4.	Confined by Uti Possidetis and Self-Determination	149
5.	A Post-Colonial Right to Secession?	154
6.	Redefining the Rules I: Focussing on Amelioration	162
7.	Redefining the Rules II: The Effort to Deconstruct the Problem	ı 68
	PART III: FAIRNESS AND INSTITUTIONAL POWER	
Cha	apter 6. Administrative Impartiality as Fairness: The UN Secretary-General's Good Offices and Other 'Third Party' Functions	I 73
		- / 3
I.	Introduction	173
2.	Historical Perspective: Earlier Cases	175
3.	Some Recent Examples of 'Good Offices'	180
	a. Some Successes	180
	(i) Iran-Iraq	180
	(ii) Afghanistan	181
	(iii) Namibia	183
	(iv) Cambodia	184
	(v) Central America	185
	(vi) Hostages held in Lebanon	188

## CONTENTS

		(vii)	Russian Relations with Baltic States	188
		(viii)	Mozambique	188
		(ix)	Some Legal Disputes: Libya-Malta and the Rainbow	
			Warrior	1889
			Guyana and Venezuela	191
		(xi)	Abkhazia	191
	b.	Frust	rated Interventions by the Secretary-General	193
		(i)	Cyprus	193
			Western Sahara	195
		` '	East Timor	198
		•	Iraq-Kuwait	198
		, ,	Libya	199
		, ,	Macedonia	200
		(vii)	Burundi	200
	C.	Join	t Ventures with Regional Organizations	201
		(i)	Somalia	201
		(ii)	Yugoslavia	203
		(iii)	Liberia	205
4.	Diff	ference	es in Style and Content	206
	a.	Sourc	es and Limitations of the Secretary-General's	
		Diplo	matic and Mediating Authority	206
	b.	The N	Margin of Discretion	207
	C.	To Do	elegate or Not to Delagate	210
5.	Effe	ectiven	ess	2 I I
6.	Rec	ent Tr	ends and the Future of the Good Offices Function	212
7.	Det	ermin	ants of Success and Failure	214
8.	Hov	w Good	d the Office?	215
	a.	Instit	utional Control and Co-ordination	216
			Control and Subordination .	217
Cha	apte	r 7. I	The Bona Fides of Power: Security Council and	
		1	Threats to the Peace	218
I.	AC	harter	of Limited Powers	218
2.	Evi	dence	of Principled Standards	221
3.	His	toric U	Jsage: The Easy Cases	222

	CONTENTS	xi
4.	The 'Hard Cases'	224
5.	Judicial Review?	242
Ch	apter 8: Just and Unjust War	245
Ι.	Introduction	245
2.	Historic Notions of Just and Unjust Wars	245
3.	The Legal Reformation: the Law in War and the Laws of War (Jus in Bello v. Jus ad Bellum)	250
4.	The 'Post War' Law Pertaining to War and Warfare	255
5.	The Charter System: From Collective Self-Defence to Collective Security	259
	a. Continuity and Innovation: the Move to New Institutions,	
	Processes; and Sources of Law  b. The Charter's Law Against War	259 266
	c. Norms and Practice Under the Geneva Conventions	274
6.	Conclusions	282
Ch	apter 9: Collective Security: Sharing Responsibility and Burdens	284
		284
I.	Burdens	
1.	Burdens Introduction	284
1. 2.	Burdens Introduction Collective Enforcement Measures Short of Armed Force	284
1. 2. 4.	Burdens  Introduction  Collective Enforcement Measures Short of Armed Force  The Use of Force in Self-Defense	284 289 292
<ol> <li>3.</li> <li>4.</li> </ol>	Burdens  Introduction  Collective Enforcement Measures Short of Armed Force  The Use of Force in Self-Defense  The Collective Use of Force by the UN	284 289 292
<ol> <li>3.</li> <li>4.</li> <li>6.</li> </ol>	Burdens  Introduction  Collective Enforcement Measures Short of Armed Force  The Use of Force in Self-Defense  The Collective Use of Force by the UN  Peacekeeping and Peacemaking	284 289 298 305
1.2.3.4.5.6.	Burdens  Introduction  Collective Enforcement Measures Short of Armed Force The Use of Force in Self-Defense The Collective Use of Force by the UN  Peacekeeping and Peacemaking  Regional Use of Force	284 289 298 305
1. 2. 3. 4. 5. Ch.	Introduction Collective Enforcement Measures Short of Armed Force The Use of Force in Self-Defense The Collective Use of Force by the UN Peacekeeping and Peacemaking Regional Use of Force Conclusions	284 289 298 305 313
1. 2. 3. 4. 5. Ch.	Burdens Introduction Collective Enforcement Measures Short of Armed Force The Use of Force in Self-Defense The Collective Use of Force by the UN Peacekeeping and Peacemaking Regional Use of Force Conclusions apter 10. Judicial Fairness: The International Court of Justice	284 289 298 305 310 313
1. 2. 3. 4. 5. Ch.	Burdens  Introduction  Collective Enforcement Measures Short of Armed Force The Use of Force in Self-Defense The Collective Use of Force by the UN  Peacekeeping and Peacemaking  Regional Use of Force  Conclusions  apter 10. Judicial Fairness: The International Court of Justice  Introduction	284 289 292 298 305 310 313

	d. Empirical Evidence of Structural Impartiality	324	
	e. Chambers: the Ultimate Recourse	326	
3.	Procedural Fairness		
	a. Procedural Aspects of Defining the Court's Jurisdiction	327	
	b. Provisional Measures	332	
	c. Rules of Evidence	335	
	d. Complex Facts e. Whom the Court Hears	338	
	e. Whom the Court Hears  (i) Necessary and Indispensable Parties	340 341	
	(ii) Intervention	343	
4.	Conclusion	346	
	PART IV. THE LAW AND INSTITUTIONS OF DISTRIBUTIVE JUSTICE		
Ch	apter 11. Law, Moral Philosophy, and Economics in		
	Environmental Discourse	35 I	
I.	Introduction	351	
2.	2. An Inventory of Environmental Fairness Issues		
3.	The Normative and Institutional Evolution of International Environmental Law		
		357	
4.	Moral Philosophy, Economics, and Environmental Law	364	
5.	The Unique Role of Law and Lawyers	372	
Cha	apter 12. Some Instances of Fairness in Establishing Environmental Normative Systems	380	
I.	Introduction	380	
2.	The Case of Ozone Depletion	380	
3.	Climate Change/Global Warming	387	
4.	Law of the Sea and the Common Heritage Principle	393	
5.	Res Communis in Outer Space and the Antarctic	399	
6.	Other Systemic Approaches to Environmental Fairness	405	
7.	Conclusions	412	

	CONTENTS	X111
Cha	apter 13. Economic Fairness: Terms of Development	
	and Trade	413
I.	Introduction	413
2.	Aid Programs	416
	a. Bilateral Aid	416
	b. Multilateral Lending Institutions	418
	c. Multilateral Compensatory Financing	420
	(i) IMF's Compensatory and Contingency Financing	
	Facility	420
	(ii) STABEX	42 I
3.	Market Stabilization	422
	a. Common Fund	422
	b. Individual Commodity Agreements	424
4.	Tariff Preferences	426
	a. The GATT Exceptions to MFN for LDCs	426
	b. The Caribbean Basin Initiative	427
5.	Resource Entitlements: UNCLOS II	430
	a. Sharing Sea Resources	430
	b. Creating New Allocable Commodities	432
6.	Process Legitimacy: the New World Trade Organization	433
7.	Technology Transfer	434
	a. UNCLOSII	434
	b. UNCTAD Code of Conduct on the Transfer of Technology	435
8.	Conclusion	436
Ch	apter 14. Fairness in International Investment Law	438
I.	Introduction: The International Law of Foreign Investment	438
2.	Stability and Change in Fairness Disclosure	438
3.	A Hypothetical Case	44 I
4.	The Nature of an Investment Agreement	443
5.	Bilateral Treaties in the Fairness Disclosure	447
6.	Multilateral Treaties in the Fairness Discourse	450
7.	Human Rights Treaties and Investment Fairness	453

## CONTENTS

O TO	
8. Fair Standards: Duty and Measure of Compensation for Taking	
offipensation for	
9. Taking of Aliens' Property That May Be Unlawful Per Se	457
a. Taking for Non Dan -	
b. Taking Without Due Process of Law c. Discriminatory Taking	465
c. Discriminates That Process of Law	466
aking	468
10. Conclusions	470
PART V. FAIRNESS ABOUT FAIRNESS: SHAPING A GLOBAL DISCOU	472
ABOUT FAIRNESS: SHAPING A GLOBAL TO	
Chapter 15. Forums of Fairness	RSE
of Fairness	
1. Fairness' Discourse	477
2. Two Characteristics of the Discourse	477
a. Equal Voice	4 / /
b. Single Voice	478
	479
3. Rethinking Structure	480
a. Amelioration 1	100
a. Ameliorating the Problem of Formal State  Equality	481
b. Amelianati	
and the Problem of	482
	T
4. A Modest Proposal	482
oposai	402
Index	483
	485
	- 0