Contents

Ta	able of Reports and Decisions	xix
In	troduction	1
	PART I—THE EFFECTIVENESS OF INTERNATION LEGAL REGULATION	AL
1.	Doctrinal Treatment of the Effectiveness of Legal Regulation	9
2.	Characteristics and Implications of the Effectiveness of Legal Regulation 1. The Essence of the Effectiveness of Legal Regulation	19 19
	 Determinacy of International Legal Regulation Judicial Responses to the Alleged Lack or Incompleteness 	22
	of Legal Regulation 4. Separation of International Law from Politics 5. The Interaction between Legal Regulation and the Sovereign	26 29
	Freedom of Action 6. Standards of Reviewability and Excusability under	36
	International Law 7. Evaluation	43 47
	PART II—THRESHOLD OF LEGAL REGULATION	1
3.	The Essence of the Threshold of Legal Regulation 1. Consensual Basis of International Law and the Threshold	51
	of Legal Regulation 2. The Relevance of Natural Law (a) Doctrinal Aspects 60 (b) Practical Aspects 66 (c) Evaluation 69	51
4.	Customary Law and Inherent Rules	70
	 Consent as Basis of Customary Law Consent and Opinio Juris 	71 75
	3. The Process of Emergence of Opinio Juris	80

	4. Doctrinal Criticisms of and Alternatives to the Consensual Explanation of Custom	84
	5. Consensual Basis of Custom and the Side Aspects of	
	Custom-Generation	91
	(a) General Aspects 91	
	(b) The Problem of Regional Customary Law 92	
	(c) The Problem of New States 93	
	(d) Protest and Persistent Objection 94	0.6
	6. The Issue of Inherent and Fundamental Rules	96
	7. Conclusion	100
	PART III—LAW AND NON-LAW IN THE	
	INTERNATIONAL LEGAL SYSTEM	
In	troduction	105
5.	Fact as Non-Law and the Limits on its Relevance	108
	1. Conceptual Aspects	108
	2. Facts and the Creation of International Rights and Titles	116
	3. Fact-based Claims to Affect Existing Legal Regulation	129
	4. The Factual Element in the Justification of Legal Rules	133
	5. Effective Control of Territory or Conduct	137
	6. The Factual Element and its Impact on the Scope of Legal Rules	148
	7. The Prescription of <i>De Facto</i> Outcomes by Legal Rules	155
	8. Requirements of Fact as Part of the Structural Framework	
	of International Law	157
	(a) The Law of State Responsibility 157(b) The Law of Treaties 159	
	9. Evaluation	160
,	Y NY Y	1 / 1
0.	Interest as Non-Law	161
	1. Conceptual Aspects	161
	2. Claims of Independent Legal Relevance of Interest	165
	3. References to Interest in Legal Rules	174
	4. The Systemic Relevance of Interest: State of Necessity in the	177
	Law of State Responsibility	177
	5. Evaluation	179
7.	Values as Non-Law	180
	1. General Aspects	180
	2. Peace and Security	181

Contents	XV
00,,,,,,,,	21 V

	3. Sustainable Development	182
	4. Democracy and 'Democratic Society'	184
	5. Considerations of Humanity	189
	6. Security and Survival of States	192
	7. Evaluation	194
•	O : Manastire Man I ave	105
8.	Quasi-Normative Non-Law	195
	1. General Introduction	195
	 2. The Doctrine and Essence of the Margin of Appreciation (a) General Aspects 197 (b) The European Convention on Human Rights 199 (c) WTO Law 201 (d) Bilateral Treaties 204 (e) Evaluation 207 	197
	 3. Necessity (a) The Law of the European Convention on Human Rights 208 (b) WTO Law 212 (c) Bilateral Treaties 213 (d) Humanitarian Law 214 (e) The Law of the Use of Force 219 (f) Conclusion 221 	208
	4. Equity	222
	 (a) General Aspects of Relevance 222 (b) The Indeterminacy of Equity 228 (c) The Essence of the Quasi-Normative Character of Equity 230 (d) The Non-Law Character of Equitable Criteria 232 (e) The Normative Basis of Equity 235 (f) The Scope of Relevance of Equity 237 (g) The Will of States and the Role of Tribunals 239 (h) Equity and the Risk of Subjectivism 240 (i) Factors Informing Equity 243 (j) Continuous Relevance of Law at the Stages of Application of Equity 246 (k) Individual Factors of Equity 249 (i) Geographical Factors 249 (ii) Practice and Conduct of the Parties 250 (iii) Interests of Coastal States 250 (iv) Equidistance 251 (l) Evaluation 253 5 The Standard of 'Fair and Equitable Treatment' in 	
	5. The Standard of 'Fair and Equitable Treatment' in International Investment Law	254
	 (a) Conceptual Aspects 254 (b) Indeterminacy and the Quasi-Normative Character of 'Fair and Equitable Treatment' 257 	
	(c) The General Content of 'Fair and Equitable Treatment' 258	

Contents

(d) Specific Elements of the 'Fair and Equitable Treatment' Standard (e) Evaluation 265	261
6. Proportionality	266
(a) General Aspects 266	
(b) The Law of the Sea 267	
(c) The European Convention on Human Rights 268	
(d) WTO Law 270	
(e) International Humanitarian Law 270	
(f) The Law of the Use of Force 272	
(g) Evaluation 274	275
7. Legitimate Expectations	2/)
PART IV—THE REGIME AND METHODS OF	
INTERPRETATION IN INTERNATIONAL LA	W
9. Conceptual Aspects of Interpretation	285
1. The Limits on the Process of Interpretation	285
2. Acts and Rules Interpreted	297
10. Treaty Interpretation: Rules and Methods	301
1. Early Views on Treaty Interpretation	301
2. The Relevance of the Vienna Convention	308
3. Plain and Ordinary Meaning of Words	318
(a) The Logical and Normative Primacy of Plain and	
Ordinary Meaning 318	
(b) The Resort to Plain and Ordinary Meaning in Judicial Practice	322
(c) The Concept of Autonomous Meaning 335	220
(d) The Reality and Implications of Textual Ambiguity in General	
4. Context (a) The Polevence and Limits of Context 330	339
(a) The Relevance and Limits of Context 339(b) The Resort to Context in Practice 340	
5. Object and Purpose of the Treaty	343
(a) Interpretative Relevance of the Object and Purpose 343	343
(b) Resort to Object and Purpose in Practice 345	
(c) Object and Purpose of Individual Treaty Provisions 353	
6. Subsequent Agreement and Subsequent Practice	355
(a) Conceptual and Structural Characteristics of	
Subsequent Practice 355	
(b) Resort to Subsequent Practice in Jurisprudence 359	
7. The 'Relevant Rules' of International Law	365
8. Preparatory Work	382
(a) Essence and Admissibility 382	
(b) Preparatory Work in Judicial Practice 387	

	Contents	XV
11.	Treaty Interpretation: Effectiveness and Presumptions	393
	 The Principle of Effectiveness (a) Essence and Reach 393 (b) Application in Jurisprudence 398 	393
	 2. Restrictive Interpretation (a) Essence and Doctrinal Treatment 413 (b) Application in Jurisprudence 415 	413
,	3. Presumption against Redundancy	422
	4. The Interpretation of Exceptions	424
	 5. Institutional Implications of Effective Interpretation (a) Implied Powers of International Organisations 431 (b) Inherent Powers of International Tribunals 435 	431
12.	Interpretation of Jurisdictional Instruments	440
	1. Doctrinal Argument	440
	2. Interpretation of Special Agreements and	
	Compromissory Clauses	441
	3. Interpretation of Declarations under the Optional Clause	
	of the International Court's Statute	460
	4. Evaluation	464
13.	Interpretation of Unilateral Acts and Statements	465
	1. General Aspects	465
	2. Principles of Interpretation of Unilateral	
	Acts and Statements	466
	3. Interpretation of Schedules of Commitments	
	in WTO Law	477
	4. Interpretation of Interpretative Declarations	480
	5. Interpretation of Submissions to International	/ 0 0
	Tribunals	482
	6. Interpretation of Waivers	484
14.	Interpretation of Institutional Decisions	487
	1. Decisions of International Organisations	487
	2. Decisions of International Tribunals	493
15.	Interpretation of Customary Rules	496
16.	The Agencies of Interpretation	511

PART V—TREATY INTERPRETATION AND INDETERMINATE PROVISIONS OF NON-LAW

17. The Essence of and Response to the Indeterminacy of	
Treaty Provisions	527
1. Conceptual Aspects	527
2. Presumption against Indeterminacy of Treaty Provisions in	
Jurisprudence	528
3. Emergency and Security Interest Exceptions	534
4. Determination of the 'Threat to the Peace' under Article 39	
of the United Nations Charter	540
5. 'Self-Judging' Clauses	547
6. Indeterminate Provisions in Arms Control and	
Disarmament Treaties	552
7. The Evaluation of General Characteristics of	
'Self-Judging' Clauses	554
18. Equity and Equitable Considerations in Treaties	557
1. Equity in the Law of Maritime Delimitation	557
2. 'Fair and Equitable Treatment' in Investment Treaties	560
(a) General Aspects of Interpretation 560	700
(b) Object and Purpose of the Treaty 562	
(c) Autonomous Meaning of 'Fair and Equitable Treatment' 569	
(d) The Proper Approach: Identity of 'Fair and Equitable	
Treatment' with the (Minimum) Standard of General	
International Law 571 (e) The Construction of 'Fair and Equitable Treatment' by the	
NAFTA Free Trade Commission 579	
Conclusion	583
D:LI:	505
Bibliography Index	585 593
IMUEX	フソ フ