

THE PARADOX OF CONSENSUALISM IN INTERNATIONAL LAW

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The Paradox of Consensualism in International Law C.L. Lim, O.A. Elias, 2024-01-15 If international law is derived from the consent of States who should be in a better position to say what has been consented to than the disputing States themselves It seems that if the doctrine of consent is taken seriously there would be no room for an objective legal answer to the question What is law Furthermore States do not necessarily employ the same criteria for determining the applicable law when engaged in dispute And the doctrine of sovereignty is of very limited utility since not all of substantive international law can be explained in terms of the atomic concept of sovereignty This leaves consent as the mediating concept between the substantive doctrine of international law on the one hand and the actual practice of States and others whose practice and participation in the global legal order help shape the body of international laws on the other Nevertheless this is not to say that there is nothing higher than the actual legal claims forwarded by international actors International law is no mere superstition since none argue that there is no one legal solution In that sense the unity of the international legal order is preserved The problem is that the solutions actually forwarded in dispute are too numerous and international law too abstract to serve as arbiters between the competing claims Thus at the level of substantive doctrine there is a fragmentation of that earlier mentioned picture of unity But even here only consent can mediate between unity and fragmentation stability and change order and justice legislation and revolution The strength of international law lies in its adaptability to political strategic and diplomatic necessities To suggest otherwise is to depart from a picture of international law that presumes the empirical verifiability of international laws This book has as its principal concern certain orthodoxies of source thinking in international law and is aimed at working out the implications of these It aims to show how certain theoretical conceptions have shaped the law in action for good or ill It will appeal to political theorists diplomats global decision makers and international lawyers who are interested in the question What can we do with the international law that we have as distinct from the question What should we do with international law

The Persistent Objector Rule in International Law

James A. Green, 2016-03-03 The persistent objector rule is said to provide states with an escape hatch from the otherwise universal binding force of customary international law It provides that if a state persistently objects to a newly emerging norm of customary international law during the formation of that norm then the objecting state is exempt from the norm once it crystallises into law The conceptual role of the rule may be interpreted as straightforward to preserve the fundamentalist positivist notion that any norm of international law can only bind a state that has consented to be bound by it In reality however numerous unanswered questions exist about the way that it works in practice Through focused analysis of state practice this monograph provides a detailed understanding of how the rule emerged and operates how it should be conceptualised and what its implications are for the binding nature of customary international law It argues that the persistent objector rule ultimately has an important role to play in the mixture of consent and consensus that underpins

international law *Multiple Nationality And International Law* Alfred Michael Boll, 2007 This book is a comprehensive overview of multiple nationality in international law and contains a survey of current State practice covering over 75 countries It examines the topic in light of the historical treatment of multiple nationality by States international bodies and commentators setting out the general trends in international law and relations that have influenced nationality While the book s purpose is not to debate the merits of multiple nationality but to present actual state practice it does survey arguments for and against multiple nationality and considers States motivations in adopting a particular attitude toward the topic As a reference work the volume includes a detailed examination of the nature of nationality under international law and the concepts of nationality and citizenship under municipal law The survey of State practice also constitutes a valuable resource for practitioners *The Oxford Handbook of International Investment Law* Peter Muchlinski, Federico Ortino, Christoph Schreuer, 2008 The Oxford Handbook series is a major new initiative in academic publishing Each volume offers an authoritative and state of the art survey of current thinking and research in a particular subject area Specially commissioned essays from leading international figures in the discipline give critical examinations of the progress and direction of debates Oxford Handbooks provide scholars and graduate students with compelling new perspectives upon a wide range of subjects in the humanities and social sciences The Oxford Handbook of International Investment Law aims to provide the first truly exhaustive account of the current state and future development of this important and topical field of international law The Handbook is divided into three main parts Part One deals with fundamental conceptual issues Part Two deals with the main substantive areas of law and Part Three deals with the major procedural issues arising out of the settlement of international investment disputes The book has a policy oriented introduction setting the more technical chapters that follow in their policy environment within which contemporary norms for international foreign investment law are evolving The Handbook concludes with a chapter written by the editors to highlight the major conclusions of the collection to identify trends in the existing law and to look forward to the future development of this field Crimes Against Humanity Nergis Canefe, 2021-04-15 This book brings together jurisprudential debates on international criminal law international law scholarship on the limits of state sovereignty and applied political philosophy concerning responsibility and accountability in the context of mass political crimes and state criminality It offers a compelling view of legal reasoning concerning accountability regimes in the Global South No other study addresses questions of ethical dimensions of mass crimes and accountability for state criminality Marine Conservation Agreements Howard Schiffman, 2008-03-31 The decline of many living marine resources requires us to carefully examine the existing framework for ocean governance The ability of states to opt out of or even veto measures adopted by marine conservation and management organizations is often discussed as a factor contributing to the present decline This book examines the extent to which objection procedures specific reservation provisions and vetoes termed collectively as exemptive provisions have been utilized in the history of key

marine conservation and management regimes and the impact they have had Drawing upon classic treaty law the law of reservations in particular the law of the sea and the developing field of international environmental law this book explores the evolving legal landscape that informs and potentially limits the use of exemptive provisions in marine conservation and management regimes

Truyol y Serra's Doctrines of International Law Robert Kolb, Inspired by Antonio Truyol y Serra a classic work *Doctrines sur le fondement du Droit des gens* this book offers a fully revised and updated examination and discussion of the various doctrines forming the foundations of international law It offers an accessible insight into the theoretical background of the various legal constructions that characterize the relationship between both international and national legal orders

The Law, Politics and Theory of Treaty Withdrawal Frederick Cowell, 2023-11-16 This book explores how the law of treaty withdrawal operates Many commentators have observed a wider sense of crisis in international law as governments of different ideological stripes withdraw or threaten to withdraw from international organisations and treaties There are different political forces behind all of these cases but they all use the same basic device in international law a treaty withdrawal clause This book focuses on withdrawal clauses within multilateral treaties providing a detailed overview of their operation drawing on a range of case studies including Brexit nuclear weapons treaties and investment arbitration agreements The obligations a withdrawal clause places on a withdrawing state help regulate the withdrawal process providing a notional form of stability Using insights from international relations theory and legal theory this book unpacks how and why the law of withdrawal operates and what its limitations are

Beyond Consent Relja Radović, 2021-06-29 Conventional wisdom in the theory and practice of investment treaty arbitration says that the jurisdiction of arbitral tribunals is regulated by party consent In *Beyond Consent Revisiting Jurisdiction in Investment Treaty Arbitration* Relja Radović investigates the formation of another layer of jurisdictional regulation which is developed by arbitral tribunals The principle that the jurisdiction of arbitral tribunals is governed by party consent stems from the foundations of the international legal order Against that background Radović surveys case law and analyses the development of arbitrator made jurisdictional rules which complement those defined by disputing parties He then argues in favour of recognising the regulatory function of arbitral tribunals in the jurisdictional structure of investment treaty arbitration

Renegotiating Westphalia C.L. Lim, Christopher Harding, 1999-07-01 This collection of papers addresses two main themes firstly whether there is a distinctively European contribution to or even leadership in the contemporary formation and evolution of international law secondly the extent to which non governmental actors e.g NGOs international organizations companies individuals contribute decisively to the formation of international law at the present time These issues are explored within a number of different contexts of contemporary significance in particular the protection of human and minority rights protection of the environment control of transnational organized crime prosecution of war crimes and crimes against humanity the definition of statehood and the right to self determination transnational commercial and economic activity The

discussion is firmly located within the theory of international law and relations and also the continuum of international history Comparisons are drawn with both global and other regional developments to test the hypothesis of a European international law The work will be of interest to teachers students and practitioners legal and otherwise in the field of international law and relations

The Interpretation of International Law by Domestic Courts Helmut Philipp Aust, Georg Nolte, 2016 The Interpretation of International Law by Domestic Courts assesses the growing role of domestic courts in the interpretation of international law It asks whether and if so to what extent domestic courts make use of the international rules of interpretation set forth in the Vienna Convention on the Law of Treaties Given the expectation that rules of international law are to have a uniform interpretation and application throughout the world the practice of domestic courts is considerably more diverse The contributions to this book analyze three key questions first whether international law requires a coherent interpretive approach by domestic courts Second whether a common or convergent methodological outlook can be found in domestic court practice Third whether a common interpretive approach is desirable from a normative perspective The book identifies a considerable tension between international law's ambition for universal and uniform application and a plurality of different approaches This tension between unity and diversity is analyzed by a group of leading international lawyers from a wide range of geographical disciplinary and methodological approaches Drawing on domestic practice of number of jurisdictions including among others Colombia France Japan India Israel Mexico South Africa the United Kingdom and the United States the book puts the interpretative practice of domestic courts in a wider context Its chapters offer doctrinal practical as well as theoretical perspectives on a central question for international law

Reciprocity in International Law Shahrar Nasrolahi Fard, 2015-12-22 In international relations reciprocity describes an environment in which States support one another for short or long term advantage through the balancing of rights duties and interests This book examines reciprocity in the context of international law It considers the role reciprocity plays in the creation and development of international law as well as in the interpretation and application of international law The book illuminates the reciprocal framework of international law and international relations by examining the role reciprocity plays in different types of States obligations including bilateral bilateralisable multilateral non bilateralisable multilateral and obligations erga omnes The book examines how reciprocity is intertwined with the principle of equality as the rights and obligations of States are equal irrespective of size and economic or military strength and the beneficial effects of reciprocity in creating stability and cooperation amongst States

The Function of Public International Law Jan Anne Vos, 2013-02-26 This book addresses fundamental aspects of the concept of public international law in both theory and practice The argument developed by the author is that underlying the traditional horizontal structure of public international law a vertical structure of the concept of law may be discerned This vertical structure is seen unfolding into two mutually exclusive frameworks a framework of obligation accounting for obligations and a framework of authorization accounting for

rights The problem then arising is that a concept of public international law which only admits either rights or obligations cannot be regarded as coherent The author however takes and substantiates the position that coherence can be achieved by suppressing the mutual exclusivity of both frameworks This move paves the way to formulating the function of public international law in terms of the constituting of international society Since in public international law the theoretical aspects profoundly affect practice this book is not only of interest to academics but also for practitioners such as officials of foreign offices and international institutions

Global Anti-Terrorism Law and Policy Victor V. Ramraj, Michael Hor, Kent Roach, 2009-04-09 All indications are that the prevention of terrorism will be one of the major tasks of governments and regional and international organisations for some time to come In response to the globalised nature of terrorism anti terrorism law and policy have become matters of global concern Anti terrorism law crosses boundaries between states and between domestic regional and international law They also cross traditional disciplinary boundaries between administrative constitutional criminal immigration and military law and the law of war This collection is designed to contribute to the growing field of comparative and international studies of anti terrorism law and policy A particular feature of this collection is the combination of chapters that focus on a particular country or region in the Americas Europe Africa and Asia and overarching thematic chapters that take a comparative approach to particular aspects of anti terrorism law and policy including international constitutional immigration privacy maritime aviation and financial law

Necessity and National Emergency Clauses Diane A. Desierto, 2012-01-05 Unveiling the complex dynamic between State sovereignty and necessity doctrine as historically practiced in international political relations this book proposes analytical criteria to assess the lawfulness and legitimacy of interpretations of necessity and national emergency clauses in specialized treaty regimes

Treaty Interpretation by the WTO Appellate Body Isabelle Van Damme, 2009 This book analyses how the Appellate Body uses particular principles of general international law in interpreting the WTO covered agreements It deals equally with general international law and WTO law The aim is to explain how the Appellate Body interprets and applies customary international law on treaty interpretation in dealing with the WTO covered agreements The main concern is to analyse the judicial reasoning and ways of justifying judicial decision making In particular it answers the question of how the Appellate Body explains its reading of WTO treaty language It is argued that the Appellate Body has interpreted the WTO covered agreements in a contextual and effective manner an approach that corresponds with general international law The character of the WTO covered agreements has nevertheless confronted the Appellate Body with some questions of interpretation that were until recently unexplored or neglected by other courts and tribunals In that sense the Appellate Body has contributed to the development of general international law on treaty interpretation or at least to its practice WTO law is primarily treaty law but increasingly soft law and broader themes and values from other disciplines such as governance variable geometry and legitimacy are introduced and discussed Customary international law with the exception of the principles of treaty

interpretation and general principles of law are often seen as excluded entirely An ancillary theme of this proposed monograph is the extent to which customary international law and general principles of law have penetrated WTO law through the technique of treaty interpretation **Forthcoming Books** Rose Arny,1998-04 **Netherlands Yearbook of International Law 1997** T. M. C. Asser Instituut,1998-07-15 Contains an extensive review of Dutch state practice from the parliamentary year 1998 1999 **Climate Engineering and the Law** Michael B. Gerrard,Tracy Hester,2018-04-12 Climate change is increasingly recognized as a global threat and is already contributing to record breaking hurricanes and heat waves To prevent the worst impacts attention is now turning to climate engineering the intentional large scale modification of the environment to reduce the impact of climate change The two principal methods involve removing some carbon dioxide from the atmosphere which could consume huge amounts of land and money and take a long period of time and reducing the amount of solar radiation reaching the earth s surface perhaps by spraying aerosols into the upper atmosphere from airplanes which could be done quickly but is risky and highly controversial This is the first book to focus on the legal aspects of these technologies what government approvals would be needed how liability would be assessed and compensation provided if something goes wrong and how a governance system could be structured and agreed internationally Current Publications in Legal and Related Fields ,1999

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