

Sovereignty, the WTO and Changing Fundamentals of International Law

JOHN H. JACKSON



CAMBRIDGE
UNIVERSITY PRESS

Contents

<i>Preface</i>	xi
<i>Table of statutes and regulations</i>	xiv
<i>Table of cases</i>	xx
Part I Challenges to fundamental assumptions of international law	
1 Introduction: international law and international economic law in the interdependent world of the twenty-first century	3
1.1 A time of challenge and changing assumptions	3
1.2 Facts on the ground: the world situation landscape – change, interdependence, globalization, adjustment	8
1.3 Implications for international law and its role for international relations: challenges to the fundamental logic and axioms of international law (a brief overview of things to come)	13
1.4 Contours and road map – the structure of this book	15
2 The real world impinges on international law: exploring the challenges to the fundamental assumptions of international law and institutions	18
2.1 Introduction to exploring the challenges and their impacts on international law	18
2.2 Circumstances and conditions	20
2.3 International law and its discontents	32
2.4 International economic law	46

2.5	International institutional law	49
2.6	Some conclusions: the international law system challenged	54
3	Sovereignty-modern: a new approach to an outdated concept	57
3.1	Sovereignty and the fundamental logic of international law	57
3.2	Traditional Westphalian sovereignty concepts: outmoded and discredited?	62
3.3	Potentially valid policy objectives of sovereignty concepts	70
3.4	Perceptions and reflections for Part I: changing fundamentals of international law	76
 Part II The WTO		
4	The WTO as international organization: institutional evolution, structure, and key problems	81
4.1	The WTO as international economic law and its relationship to general international law	81
4.2	The policy objectives and preferences for a WTO	84
4.3	Historical background: from Bretton Woods to Cancún and Hong Kong	91
4.4	The World Trade Organization: structure of the treaty and the institution	104
4.5	Institutional problems of the WTO	110
4.6	WTO Rules and members' domestic legal systems	122
4.7	Scope of the subject matter agenda for the WTO: the question of competence	128
5	The WTO dispute settlement system	134
5.1	The WTO dispute settlement system – unique, a great achievement, controversial	134
5.2	The bottom-up trial and error history of the GATT dispute settlement system and the Uruguay Round makeover	137
5.3	The multiple policy goals of international dispute settlement: dilemmas, balancing, and competing principles	145

Contents

5.4	The current structure and operation of the WTO dispute settlement system	152
5.5	A decade of WTO dispute settlement activity, 1995–2005	159
5.6	Key jurisprudential questions I: the relation of WTO law to international law – sovereignty tensions	163
5.7	Key jurisprudential questions II: structural doctrines channeling juridical techniques of decision	173
5.8	Key jurisprudential questions III: treaty interpretation	182
5.9	Key jurisprudential questions IV: dispute settlement reports and national law	192
5.10	Key jurisprudential questions V: compliance and implementation	195
5.11	Dispute settlement structural problems and proposed reforms	199
5.12	Perspectives and conclusions for Part II: the lessons of the GATT/WTO system	204

Part III The search for solutions

6	Policy analytical approaches and thought experiments	211
6.1	Introduction to Part III and Chapter 6	211
6.2	The sovereignty conundrum: slicing the concept	214
6.3	Towards a policy analysis matrix: a three-dimensional puzzle (at least)	217
6.4	Economics and markets: a thought experiment about market failure in the era of globalization	220
6.5	Thinking constitutional	222
6.6	The growing importance of juridical institutions	227
6.7	Interface theory: managing globalization in a world of wide variation	230
7	Illustrative applications	234
7.1	Illustrative applications – grappling with detail and diversity	234
7.2	The WTO and its “constitution”: institutional detail and dynamic evolution	236
7.3	Investments and international rules	240

Contents

7.4	Environmental policies	243
7.5	Health, globalization, and international institutions	245
7.6	Human rights and nation-state sovereignty	248
7.7	Federalism examples: US and EU struggles with the allocation of power	252
7.8	The United Nations and the use of force: constitutionalism evolving	256
8	Perspectives and implications: some conclusions	258
	Appendix: Outline of the Uruguay Round treaty establishing the World Trade Organization	269
	<i>Notes</i>	271
	<i>Index</i>	353