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0521824885 - Conflict of Norms in Public International Law: How WTO Law Relates to other Rules of International Law

Joost Pauwelyn

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Conflict of Norms in Public International Law

How WTO Law Relates to other Rules of International Law

One of the most prominent and urgent problems in international governance is how the different branches and norms of international law interact, and what to do in the event of conflict. With no single ‘international legislator’ and a multitude of states, international organisations and tribunals making and enforcing the law, the international legal system is decentralised. This leads to a wide variety of international norms, ranging from customary international law and general principles of law, to multilateral and bilateral treaties on trade, the environment, human rights, the law of the sea, etc.

Pauwelyn provides a framework on how these different norms interact, focusing on the relationship between the law of the World Trade Organization (WTO) and other rules of international law. He also examines the hierarchy of norms within the WTO treaty. His recurring theme is how to marry trade and non-trade rules, or economic and non-economic objectives, at the international level.

JOOST PAUWELYN is Associate Professor of Law at Duke University School of Law. His areas of interest are public international law and the law of the WTO. He was previously Legal Affairs Officer for the WTO in Geneva (1996–2002).

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Preface

At heart, this book is inspired by a willingness to see more to life than money. Trade is a money-making exercise. The statistics show that trade liberalisation, the WTO's leitmotif, does increase welfare. The WTO is 'good for you'. This cannot be, and has not been, stressed enough. Even if the WTO undoubtedly needs improvement, it would be disastrous to turn back the clock and revert to escalating protectionism. Trade between nations makes the world a better place. It also makes it a safer place. But at the same time, trade is but an instrument to achieve nobler goals: the prevention of war; raising standards of living and the creation of jobs, not just in the rich countries but also in the developing world; political freedom and respect for human rights; social protection and an equitable distribution of wealth; the fight against environmental degradation and the protection of public health; etc. Given the diversity of WTO members, these goals must, in the first place, be set by each member individually, preferably, of course, in co-operation with other members. When genuinely pursued, that is, when not abused as a disguised restriction on trade, such goals must trump the instrument of trade, even if they are not set out in the WTO treaty itself. This should be particularly so in case these goals have been defined in other, non-WTO rules of international law as between WTO members that have agreed to those rules. WTO law is not a secluded island but part of the territorial domain of international law. The WTO, important as it may be, must thus be put in perspective. For public international law at large, this approach pleads for the unity of international law, not its fragmentation. However, to achieve this unitary view, rules must be developed on how norms of international law interact. This is what this study attempts to do.

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I am much indebted to the supervisors of the thesis which is at the origin of this book: Joseph H. H. Weiler, Jan Wouters and, particularly, Petros C. Mavroidis, who has supported me enormously throughout the production of this work. This is an opportunity also to thank those who nurtured my fascination for the law: Alan E. Boyle, Ian Brownlie, William J. Davey and Cornelius Van der Merwe. Thanks also to my former colleagues at the WTO Legal Affairs and Appellate Body divisions. Without the support and motivation offered by Fanny, Luka and Marit, my wife and two daughters, as well as my parents, this book would not have seen the light of day.

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Abbreviations

AD	Annual Digest of Public International Law Cases (now ILR)
AJIL	American Journal of International Law
ASDI	Annuaire Suisse de Droit International
ASIL	American Society of International Law
BISD	Basic Instruments and Selected Documents
BOP	balance of payments
BYIL	British Yearbook of International Law
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMLR	Common Market Law Review
CTE	Committee on Trade and Environment
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EC	European Communities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
EJIL	European Journal of International Law
FAO	Food and Agriculture Organization
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GYIL	German Yearbook of International Law
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly

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ICTY	International Criminal Tribunal for the Former Yugoslavia
IIL	Institute of International Law
ILC	International Law Commission
ILC Draft 1996	Draft Articles on State Responsibility adopted on first reading, ILC 48th session, 1996
ILC Draft 2000	Draft Articles on State Responsibility provisionally adopted by the Drafting Committee on second reading, ILC 52nd session, 2000
ILM	International Legal Materials
ILO	International Labour Office
ILR	International Law Reports
IMF	International Monetary Fund
IRAN-US CTR	Iran–United States Claims Tribunal Reports
ITLOS	International Tribunal on the Law of the Sea
JIEL	Journal of International Economic Law
JWT	Journal of World Trade
MEA	multilateral environmental agreement
MFN	most favoured nation
NAFTA	North American Free Trade Agreement
NBER	National Bureau for Economic Research
NGO	non-governmental organisation
NILR	Netherlands International Law Review
NYIL	Netherlands Yearbook of International Law
OECD	Organization for Economic Cooperation and Development
PCIJ	Permanent Court of International Justice
REC	Recueil of the Judgments of the ECJ
<i>Recueil des Cours</i>	Recueil des Cours de l'Académie de Droit International (The Hague)
RGDIP	Revue Général de Droit International Public
RIAA	Reports of International Arbitral Awards
SCM agreement	Agreement on Subsidies and Countervailing Measures
SPS agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT agreement	Agreement on Technical Barriers to Trade
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Intellectual Property Rights
UN	United Nations

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UNCIO	United Nations Conference on International Organization
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCTAD	United Nations Cooperation on Trade and Development
UNEP	United Nations Environment Programme
UNRIAA	United Nations Reports of International Arbitral Awards
UNTS	United Nations Treaty Series
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
YBILC	Yearbook of the International Law Commission
YIEL	Yearbook of International Environmental Law