

SGE 0040799

The Rule of Law at the National and International Levels

Contestations and Deference

Edited by
Machiko Kanetake
and
André Nollkaemper

| |
|---|
| Dipartimento di Scienze Politiche Biblioteca |
| Inv. DSP 6725 |
| Coll. INT PUB. 341. II. 2283 |

• HART •

OXFORD • LONDON • NEW YORK • NEW DELHI • SYDNEY

Contents

| | |
|---|----|
| Preface and Acknowledgements | v |
| List of Contributors | ix |

Introduction and Framework

| | |
|---------------------------|---|
| Introduction | 3 |
| <i>André Nollkaemper</i> | |

| | |
|--|----|
| 1. The Interfaces Between the National and International Rule of Law: A Framework Paper | 11 |
| <i>Machiko Kanetake</i> | |

Part I: National Contestations in the Critical Revision of the International Rule of Law

| | |
|--|----|
| 2. Judicial Strategies and their Impact on the Development of the International Rule of Law | 45 |
| <i>Veronika Fikfak</i> | |

| | |
|--|----|
| 3. The Development of the Immunities of International Organisations in Response to Domestic Contestations | 67 |
| <i>Mateja Steinbrück Platiše</i> | |

| | |
|---|----|
| 4. Domestic Review of Treaty-Based International Investment Awards: Effects of the <i>Metalclad</i> Judgment of the British Columbia Supreme Court | 99 |
| <i>Shotaro Hamamoto</i> | |

| | |
|---|-----|
| 5. National Contestation of International Investment Law and the International Rule of Law | 115 |
| <i>Prabhash Ranjan</i> | |

| | |
|--|-----|
| 6. Domestic Non-Judicial Institutions in the Development of the International Rule of Law | 143 |
| <i>René Urueña</i> | |

| | |
|--|-----|
| 7. Interactions Between Domestic Social Norms and International Law over Trade Dispute Resolution | 171 |
| <i>Li</i> | |

Part II: International Deference to the National Legal Order

| | |
|--|-----|
| 8. The Rule of Law Dimensions of Dialogues Between National Courts and Strasbourg | 201 |
| <i>Birgit Peters</i> | |
| 9. Three Interpretive Constraints on the European Court of Human Rights | 227 |
| <i>Shai Dothan</i> | |
| 10. Human Rights, the Margin of Appreciation, and the International Rule of Law | 247 |
| <i>Andrew Legg</i> | |
| 11. Subsidiarity in the Practice of International Courts | 269 |
| <i>Machiko Kanetake</i> | |
| 12. Revisiting the Reservations Dialogue: Negotiating Diversity while Preserving Universality Through Human Rights Law | 289 |
| <i>Ekaterina Yahyaoui Krivenko</i> | |
| 13. Universality, Diversity, and Legal Certainty: Cultural Diversity in the Dialogue Between the CEDAW and States Parties..... | 321 |
| <i>Yvonne Donders and Vincent Vleugel</i> | |
| 14. Domestic Courts Under Scrutiny: The Rule of Law as a Standard (of Deference) in Investor-State Arbitration..... | 353 |
| <i>Hege Elisabeth Kjos</i> | |
| 15. The Rule of Law at the National and International Levels in Post-Conflict Peace Agreements | 383 |
| <i>Jennifer Easterday</i> | |
| 16. The Rule of Law and the Division of Labour Between National and International Law: The Case of International Energy Relations..... | 409 |
| <i>Stephan W Schill</i> | |
| Conclusion | |
| 17. The International Rule of Law in the Cycle of Contestations and Deference..... | 445 |
| <i>Machiko Kanetake and André Nollkaemper</i> | |
| <i>Index</i> | 461 |