

Netherlands Yearbook of International Law

Volume 48

More information about this series at <http://www.springer.com/series/8913>

Fabian Amtenbrink · Denise Prévost
Ramses A. Wessel
Volume Editors

Netherlands Yearbook of International Law 2017

Shifting Forms and Levels of Cooperation
in International Economic Law:
Structural Developments in Trade,
Investment and Financial Regulation



ASSER PRESS



Springer

Volume Editors

Fabian Amtenbrink
Erasmus School of Law
Erasmus University Rotterdam
Rotterdam
The Netherlands

Ramses A. Wessel
Centre for European Studies
University of Twente
Enschede
The Netherlands

Denise Prévost
Faculty of Law
Maastricht University
Maastricht
The Netherlands

ISSN 0167-6768 ISSN 1574-0951 (electronic)
Netherlands Yearbook of International Law
ISBN 978-94-6265-242-2 ISBN 978-94-6265-243-9 (eBook)
<https://doi.org/10.1007/978-94-6265-243-9>

Library of Congress Control Number: 2018938395

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the authors 2018

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Printed on acid-free paper

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE part of Springer Nature
The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

Board of Editors

Ramses A. Wessel
(General Editor)
University of Twente

Wouter Werner
(General Editor)
VU University, Amsterdam

Fabian Amtenbrink
Erasmus University Rotterdam

Maarten den Heijer
University of Amsterdam

Martin Kuijer
Ministry of Justice and Security
VU University, Amsterdam

Janne Nijman
University of Amsterdam

Denise Prévost
Maastricht University

Nikolas M. Rajkovic
Tilburg University

Otto Spijkers
Utrecht University

Harmen van der Wilt
University of Amsterdam

Managing Editor

Bérénice Boutin
T.M.C. Asser Institute
R.J. Schimmelpennincklaan 20-22
2517 JN The Hague
The Netherlands

Editorial Assistant

Beier Lin

Aims and Scope

The Netherlands Yearbook of International Law (NYIL) was first published in 1970. As a double-blind peer-reviewed publication, the NYIL offers a forum for the publication of scholarly articles of a conceptual nature in a varying thematic area of public international law. In addition, each Yearbook includes a section *Dutch Practice in International Law*. The NYIL is published under the auspices of the T.M.C. Asser Instituut.

T.M.C. Asser Instituut

Located in the ‘international zone’ of The Hague—the City of Justice, Peace and Security, the T.M.C. Asser Instituut is a leading, inter-university research institute operating in the broad field of international law.

Founded in 1965, the Institute’s international community of scholars is engaged in research, postgraduate training and dissemination of knowledge in furtherance of the purposes and principles of international law. This inter-university institute cooperates closely with and supports the Dutch universities’ activities in the relevant disciplines. The academic fields covered by the Institute are Private International Law, Public International Law, Law of the European Union, International Commercial Arbitration, International Humanitarian Law, International Criminal Law and International Sports Law.

The Institute enjoys an excellent reputation at both a national and an international level for its development, organisation and hosting of conferences and academic meetings, demand-driven postgraduate programmes and training. Its ancillary Websites and data collections all contribute to a coherent and integral strategy in the area of knowledge transfer.

The Institute has its own publishing house, T.M.C. Asser Press. T.M.C. Asser Press not only serves the publishing needs of the T.M.C. Asser Instituut, but also those of academics and practitioners worldwide in the fields of International and European Law.

T.M.C. Asser Instituut

Institute for Private and Public International Law

International Commercial Arbitration and European Law

Institute Address:

R.J. Schimmelpennincklaan 20-22

2517 JN The Hague

The Netherlands

Postal Address:
P.O. Box 30461
2500 GL The Hague
The Netherlands
Tel.: +3170 342 0300
Fax: +3170 342 0359
Email: NYIL@asser.nl
Internet: www.asser.nl

Preface

Shifts in International Economic Law: Mapping Trends and Developments

International economic law—understood here as covering trade, investment and financial regulation—is confronted with a number of changes.¹ Many of these changes concern more generally the development of the international legal system and are not limited to international economic law. They include a proliferation of involved actors (including non-state actors in particular),² an increase of instruments (from international agreements to more informal lawmaking and non-legal commitments),³ but at the same time also a stronger influence of regulation (as a result of the need to agree on more standardisation),⁴ as well as a tension between global needs and regional or bilateral pragmatism (resulting in what has been termed ‘fragmentation’ or ‘pluralism’).⁵ There is also a growing awareness of the impact of international rules and agreements on individuals and on developing and least developed countries (leading to new views on democracy and legitimacy in international law).⁶

¹ International economic law is generally seen as regulating the international economic order or the economic relations between nations. It is often defined broadly to include a vast array of topics ranging from public international law of trade to private international law of trade to certain aspects of international commercial law and the law of international finance and investment. See the contributions to the *Journal of International Economic Law* (OUP) as well as Cottier and Nadakavukaren Schefer 2017; Lowenfeld 2008; Picker et al. 2008; Davey and Jackson 2008.

² Noortmann et al. 2015.

³ Pauwelyn et al. 2012 as well as Berman et al. 2012.

⁴ Delimatsis 2015.

⁵ Krisch 2010.

⁶ Wolfrum and Roeben 2008; Wheatley 2010; Kumm 2004.

The changes thus relate to both the levels and the forms of cooperation. As far as the level of cooperation is concerned, we witness a move from multilateral negotiations, in which it is ever harder to reach consensus, to agreements among smaller groups of countries, both within the framework of the multilateral system (plurilateral agreements) and outside of it (regional or bilateral agreements). International trade negotiations may serve as an example.⁷ At the same time, examples of the opposite development can also be observed and show a scaling-up of cooperation in terms of the number of participating states (e.g. the Paris climate change negotiations) or the acceptance of stronger enforcement mechanisms (e.g. financial market regulation in the European Union). As far as the form of cooperation is concerned, we note a shift in both actors and policy instruments. With regard to the former, in institutional terms this may amount to a shift in the relevant international (informal) fora or bodies that actually instigate international cooperation (e.g. the reinforced role of the G20 in the context of the global economic and financial crisis).⁸ In terms of policy instruments, this may indicate a shift in the (preferred) regulatory approach, such as deregulation, reregulation, integration, harmonisation, and public or private enforcement.

As one of the original fields of international cooperation, international economic law is certainly one of the most developed areas in international law. It not only covers a wide range of areas, but also is characterised by a complex set of inter-related norms that find their basis in many different multilateral, plurilateral, regional and bilateral arrangements. While a focus on international economic law may certainly not tell the whole story in relation to shifts in levels and forms of international cooperation, it does allow for a more detailed analysis of some of the important trends we currently witness.

The example of international trade law is very familiar. Arguably, the main multilateral outcome of the World Trade Organization's Doha Round negotiations was the Trade Facilitation Agreement adopted in 2015, which showcases a new approach to variable obligations in response to capacity constraints of developing country Members.⁹ Other important achievements of this Round, such as the extension of the plurilateral agreements on Information Technology and on Government Procurement, are binding only on those Members that are parties to

⁷ Examples of successful plurilateral trade negotiations within the context of the multilateral system of the World Trade Organization are the extensions of the Agreement on Government Procurement (GPA/113) and the Information Technology Agreement (WT/MIN(15)/25), which came into force on 6 April 2014 and 16 December 2015, respectively. Examples of successful bilateral trade negotiations outside the WTO framework are the Comprehensive Economic and Trade Agreement between the European Union and Canada, which entered into force provisionally on 21 September 2017. Other trade agreements currently being negotiated outside the WTO framework are the Trade in Services Agreement (TiSA) involving 23 countries that account for 70% of trade in services and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

⁸ Martha 2009; Amténbrink et al. 2015.

⁹ Finger 2014; Hoekman 2014.

those agreements.¹⁰ Most trade negotiations now occur on a regional or bilateral level.¹¹ These shifts in levels of cooperation may be traced back to characteristics specific to the policy area at issue. The sophisticated enforcement regime, and the initial ‘single undertaking’ approach to negotiations in the World Trade Organization, may be among the reasons why, after 15 years of negotiations, arguably very little was agreed at the multilateral level.¹² These days, trade liberalisation objectives are increasingly pursued at plurilateral, regional or bilateral levels.¹³

At the same time, international economic law is characterised by a continuous further sophistication. This is particularly evidenced by the many new regimes that are active in the area of financial market regulation.¹⁴ Similar developments can be seen in (bilateral or regional) standardisation and regulation processes as a result of a desire to facilitate trade and investment.¹⁵ What is more, it becomes clear that international economic law is no longer solely in the hands of states.¹⁶ The influence of non-state actors, both in the creation of (ever more technical) norms (by a large number of international standard-setting bodies) and in the supervision and enforcement of norms (e.g. in relation to investor-state disputes), has transformed the nature of international economic law. And it is these processes in particular that have made the general public aware of the impact and thus the relevance of international economic law, which arguably resulted in calls for more legitimacy and transparency.¹⁷

The present Yearbook aims to explore emerging trends in international economic law. Its contributions examine shifts in the levels of cooperation (from multilateral to plurilateral, regional or bilateral—or vice versa) and shifts in the forms of cooperation (changing actors and instruments for cooperation). These trends are analysed hereafter from both a conceptual and a practical perspective. Conceptually, this Yearbook aims to explain the drivers for the trends observed. Inter alia, it addresses the progression in the underpinnings for regionalism and the role of policymakers and stakeholders as drivers of changes in the level of cooperation pursued by states. In addition, conceptual questions relate to the historical development of international economic law, its future in the context of other structural developments in international law and the impact on individuals. From a practical perspective, this Yearbook explores the shifts in levels and forms of

¹⁰ Nakatomi 2013. See, at an earlier date, Mavroidis and Hoekman 1999.

¹¹ Leal-Arcas 2011.

¹² For an alternative view of the causes of the failure of the Doha Round negotiations, see Wolfe 2013.

¹³ Gantz 2013. See also, earlier, De Lombaerde 2006.

¹⁴ Donnelly and Wessel 2018.

¹⁵ Rigod 2013; Menkes 2017.

¹⁶ Cafaggi 2015. See also Dilling 2012.

¹⁷ See also Tietje and Lang 2016.

cooperation that can be identified in a number of specific policy fields. In sum, the main purpose of this Yearbook is to map some of the key developments we witness in international economic law and to provide a conceptual backdrop for discussions in various fields of international economic law and beyond.

Rotterdam, The Netherlands
Maastricht, The Netherlands
Enschede, The Netherlands

Fabian Amtenbrink
Denise Prévost
Ramses A. Wessel

References

- Amtenbrink F, Blokker N, Van den Bogaert S, Cuyvers A, Heine K, Hilion C, Kantorowicz J, Lenk H, Repasi R (2015) The European Union's Role in the G20. Study for the ECON Committee, European Parliament. <http://www.euro-cefg.eu/uploads/cefg/attachments/EURO-CEFG%20Study%20on%20the%20EU%20in%20G20.pdf>. Accessed 22 January 2018
- Berman A, Duquet S, Pauwelyn J, Wessel RA, Wouters J (eds) (2012) *Informal International Lawmaking: Case Studies*. Torkel Opsahl Academic EPublisher, The Hague
- Cafaggi F (2015) The Many Features of Transnational Private Rule-Making: Unexplored Relationships between Custom, *Jura Mercatorum* and Global Private Regulation. *University of Pennsylvania Journal of International Law* 36(4):875–938
- Cottier T, Nadakavukaren Schefer K (eds) (2017) *Elgar Encyclopedia of International Economic Law*. Edward Elgar, Cheltenham
- Davey WJ, Jackson J (eds) (2008) *The Future of International Economic Law*. Oxford University Press, Oxford
- De Lombaerde P (ed) (2006) *Multilateralism, Regionalism and Bilateralism in Trade and Investment*. Springer, Berlin/Heidelberg
- Delimatsis P (ed) (2015) *The Law, Economics and Politics of International Standardisation*. Cambridge University Press, Cambridge
- Dilling O (2012) From Compliance to Rulemaking: How Global Corporate Norms Emerge from Interplay with States and Stakeholders. *German Law Journal* 13:381–418
- Donnelly S, Wessel RA (2018) The Global Financial Stability Architecture and EMU: The Interplay between Global Financial Institutions and the EU. In: Amtenbrink F, Herrmann C, Repasi R (eds) *The EU Law of Economic and Monetary Union*. Oxford University Press, Oxford, forthcoming
- Finger MJ (2014) The WTO Trade Facilitation Agreement: Form without Substance Again? *Journal of World Trade* 48(6):1279–1287
- Gantz D (2013) *Liberalizing International Trade after Doha: Multilateral Plurilateral, Regional and Unilateral Initiatives*. Cambridge University Press, New York
- Hoekman B (2014) The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage? Robert Schuman Centre for Advanced Studies Research Paper. <http://hdl.handle.net/1814/33031>. Accessed 22 January 2018
- Krisch N (2010) *Beyond Constitutionalism: The Pluralist Structure of Postnational Law*. Oxford University Press, Oxford
- Kumm M (2004) The Legitimacy of International Law: A Constitutionalist Framework of Analysis. *European Journal of International Law* 15(5):907–931
- Leal-Arcas R (2011) Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism? *Chicago Journal of International Law* 11(2):597–629
- Lowenfeld AF (2008) *International Economic Law*. Oxford University Press, Oxford

- Martha RSJ (2009) International Organizations and the Global Financial Crisis: The Status of their Assets in Insolvency and Forced Liquidation Proceedings. *International Organizations Law Review* 6(1):117–154
- Mavroidis P, Hoekman B (1999) The World Trade Organization's Agreement on Government Procurement: Expanding Disciplines, Declining Membership? World Bank Policy Research Working Paper. <https://doi.org/10.1596/1813-9450-1429>. Accessed 22 January 2018
- Menkes M (2017) Regulatory Cooperation Under TTIP. If You Can Read This, You're Too Close. In: Czarny E, Kuźnar A, Menkes J (eds) *The Impact of the Transatlantic Trade and Investment Partnership on International Cooperation*. Peter Lang, Frankfurt am Main, 55–63
- Nakatomi M (2013) Plurilateral Agreements: A Viable Alternative to the World Trade Organization? ADBI Working Paper. <http://hdl.handle.net/11540/1201>. Accessed 22 January 2018
- Noortmann M, Reinisch A, Ryngaert C (eds) (2015) *Non-State Actors in International Law*. Hart Publishing, Oxford
- Pauwelyn J, Wessel RA, Wouters J (eds) (2012) *Informal International Lawmaking*. Oxford University Press, Oxford
- Picker CB, Bunn ID, Arner DW (eds) (2008) *International Economic Law: The State and Future of the Discipline*. Hart Publishing, Oxford/Portland
- Rigod B (2013) Trade in Goods Under the EU–Korea FTA: Market Access and Regulatory Measures. In: Harrison J (ed) *The European Union And South Korea*. Edinburgh University Press, Edinburgh, 66–86
- Tietje C, Lang A (2016) Community Interests in World Trade Law. *Beiträge zum Transnationalen Wirtschaftsrecht*, Heft 141. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2884378. Accessed 22 January 2018
- Wheatley S (2010) *The Democratic Legitimacy of International Law*. Hart Publishing, Oxford
- Wolfe R (2013) First Diagnose, then Treat: What Ails the Doha Round? Robert Schuman Centre for Advanced Studies, EUI. Global Governance Programme Working Paper. http://cadmus.eui.eu/bitstream/handle/1814/28963/RSCAS_2013_85.pdf?sequence=1. Accessed 22 January 2018
- Wolfrum R, Roeben V (eds) (2008) *Legitimacy in International Law*. Springer, Berlin/Heidelberg

Contents

Part I Shifting Forms and Levels of Cooperation in International Economic Law

1	The Development of the US and the EU Preferential Trade Agreement Networks: A Tale of Power and Prestige	3
	Panayotis M. Protosaltis	
1.1	Introduction	4
1.2	The Establishment of the Preferential Trade Agreement Networks	8
1.2.1	The Use of Power and Prestige in the US FTA Negotiations	10
1.2.2	The Use of Power and Prestige in the EU EPA and Association Agreement Negotiations	14
1.3	The Effects of the Preferential Trade Agreement Networks	18
1.3.1	The Asymmetric Trade Liberalisation	19
1.3.2	The Vertical Forum Shifting	24
1.4	Conclusion	30
	References	32
2	From the Tripartite to the Continental Free Trade Areas: Designs, Outcomes and Implications for African Trade and Integration	37
	Gerhard Erasmus and Trudi Hartzenberg	
2.1	Background	38
2.2	Launching the Tripartite and Continental FTAs	40
2.3	Outcomes of the TFTA Negotiations	42
2.4	The TFTA as a Legal Construct	46
2.5	The AfCFTA and Existing African Trade Regimes	52
2.6	Concluding Observations	54
	References	56

3	From TRIPS to FTAs and Back: Re-Conceptualising the Role of a Multilateral IP Framework in a TRIPS-Plus World	57
	Henning Grosse Ruse-Khan	
3.1	Introduction	58
3.2	The Context: Problems Arising from Detailed TRIPS-Plus Provisions as Trade-Offs in Bilateral and Regional Agreements	61
3.3	Articles 7 and 8 TRIPS as Patrons of a Flexible Global IP Framework	65
3.3.1	The Basic Idea of Tailoring IP Protection to Domestic Needs, and Mindful of the Wider Public Interest	66
3.3.1.1	Negotiation History	67
3.3.1.2	Balancing Objectives and Public Interest Principles: Exploring Possible Meanings	70
3.3.2	Articles 7 and 8 in the Doha Declaration on TRIPS and Public Health	74
3.3.3	Discretion for Balancing in Domestic Implementation of TRIPS	78
3.3.4	Collective Calls to Retain and Protect TRIPS Flexibilities	82
3.4	Limits on Modifying TRIPS Inter Se	85
3.4.1	More Extensive IP Protection Under Article 1(1) TRIPS	86
3.4.2	Inter Se Modifications Under Article 41 VCLT	89
3.4.2.1	Applicability in the WTO Context	90
3.4.2.2	Operationalising the Principles in Article 41 VCLT	92
3.5	Conclusion: Arguing for a More Resilient Multilateral IP Framework	102
	References	105
4	External Consultants as Actors in European Trade and Investment Policymaking	109
	Fernando Dias Simões	
4.1	Introduction	110
4.2	The Role of Policy Consultants in Contemporary Governments	114
4.3	Consultants and Trade and Investment Policymaking	120
4.3.1	Independence and Autonomy of Consultants	120
4.3.2	Impact Assessment as a Legitimacy Tool?	124

4.3.3	Between Technical Advice and Political Judgment	126
4.4	Concluding Remarks	130
	References	132
5	Prosumers: New Actors in EU Energy Security	139
	Rafael Leal-Arcas, Feja Lesniewska and Filippos Proedrou	
5.1	Introduction	140
5.2	Drivers of Change	142
5.2.1	Energy Security Challenges	142
5.2.2	Climate Change and Sustainable Development	143
5.2.3	The ‘Gig’ Economy and New Technologies	145
5.3	EU Energy Law Reform: Decentralisation	148
5.4	Energy Actors: Old and New	154
5.4.1	Old Actors	154
5.4.2	New Actors	156
5.5	Prosumers: Key Issues	160
5.5.1	Supply Security	160
5.5.2	Sustainability	163
5.5.3	Digital Security	164
5.6	Conclusion, Recommendations and a Future Research Agenda	166
	References	169
6	The Evolving Role of Sub-National Actors in International Economic Relations: Lessons from the Canada-European Union CETA	173
	Ohiocheoya Omiunu	
6.1	Introduction	174
6.1.1	Aims, Objectives, and Scope of the Chapter	177
6.2	Contextualising the Analysis: Federal Sub-National Governments in International Economic Law	178
6.3	Shifting Forms of Cooperation: Sub-National Governments and National Governments	181
6.3.1	Sub-National Participation in CETA: The Canada Perspective	181
6.3.2	Sub-National Participation in CETA: The EU Perspective	188
6.4	Shifting Forms of Cooperation: Sub-National Governments and Non-State Actors (NGOs)	193
6.4.1	Social Movement Mobilisation Against CETA Within Canada	194
6.4.2	Social Movement Mobilisation Against CETA Within the EU	196

- 6.5 CETA and Implications for the Future 198
 - 6.5.1 Traditional Federal Systems Acting as Checks and Balance for New Styled Deep Integration PTAs? 198
 - 6.5.2 Need for Review of the EU’s System of Internal Dialogue During the Negotiation of International Trade Deals 199
 - 6.5.3 The Evolution of Social Movement Mobilisation Across the Atlantic 200
 - 6.5.4 Excluded Stakeholders and the Opt-Out Option from Mega-Regional Trade Agreements 201
- 6.6 Conclusion 202
- References 203
- 7 The Potential of Transnational Regulations: The Interactions Between Traditional and Non-Traditional Sources of International Economic Law 207**

Gabriel Webber Ziero

 - 7.1 Introduction 208
 - 7.2 A Short Account of Transnational Regulations 210
 - 7.3 Transnational Regulations as a Non-Traditional Source of International Economic Law 214
 - 7.4 The Interactions Between Traditional and Non-Traditional Sources of International Economic Law 216
 - 7.5 Non-Traditional Sources of International Economic Law and Social Aspirations: Building Bridges? 221
 - 7.6 The Empowerment of Socially Vulnerable Actors as a Trigger for Interactions Between International Economic Law and Transnational Regulations 223
 - 7.7 Conclusion 226
 - References 227
- 8 International Regulatory Cooperation in the Field of Sanitary and Phytosanitary Measures: Drawing Multilateral Lessons from the Regional Dimension 231**

Svetlana Chobanova

 - 8.1 Introduction 232
 - 8.2 Shifting Forms and Levels of Cooperation: The Multilateral and the Regional Dimensions 235
 - 8.2.1 Regulatory Cooperation Methods at the Multilateral Level 235
 - 8.2.2 Regulatory Cooperation Methods at the Regional Level 241
 - 8.3 Challenges at the Multilateral Level and Lessons from the Regional Level 249

8.3.1	Achievements and Challenges at the Multilateral Level	250
8.3.2	Multilaterising Lessons from the Regional Level	256
8.4	Conclusion	262
	References	263
9	The Growing Tendency of Including Investment Chapters in PTAs	267
	Maksim Usynin and Szilárd Gáspár-Szilágyi	
9.1	Introduction	268
9.2	Is There a Growing Tendency of Including Investment Chapters in PTAs?	269
9.2.1	How is the Data Gathered?	270
9.2.2	The North-Atlantic	272
9.2.3	Asia-Pacific	277
9.2.4	Latin America	283
9.2.5	Africa	285
9.2.6	Interim Conclusions	288
9.3	Potential Drivers behind the Inclusion/Exclusion of Investment Chapters in/from PTAs and Their Implications	288
9.3.1	Readily Apparent Drivers	289
9.3.2	Drivers that Require a More Thorough Discussion	290
9.3.2.1	Low-Capacity Governments Accepting/Using Existing Templates	291
9.3.2.2	Pursuing More Comprehensive and Resource-Friendly Negotiations	293
9.3.2.3	A More Coherent Application of International Economic Law?	296
9.4	Conclusions	300
	References	301
10	Trade in the Digital Era: Prospects and Challenges for an International Single Window Environment	305
	Abhinayan Basu Bal and Trisha Rajput	
10.1	Introduction	306
10.2	Contribution of International Institutions to Create ISWE	309
10.3	ASW—Interoperability in Operation	314
10.4	Integration of Commercial Requirements in ISWE	316
10.5	Governance Responses—Forms and Levels of Cooperation in International Economic Law	320
10.5.1	Living Apart Together	320

10.5.2	Converging Trends	321
10.5.3	Greater Role of Industry Bodies	323
10.6	Concluding Remarks	324
	References	325
11	Between Shifts and Continuum in Cooperation: The International Securities Regulatory Regime and its Gradual Evolution	327
	Monique Egli Costi	
11.1	Introduction	328
11.2	International Financial Architecture and Securities Regulatory Regime	329
11.2.1	Architecture and Regime Characterised by Informality	330
11.2.2	GFC as Catalyst for Reforms	334
11.2.3	Global Governance Norms	336
11.3	Institutional Dynamics and Changes in Decision-Making Processes	339
11.3.1	Inclusiveness of the Plenary Body	340
11.3.2	Practical Power and Influence of the Plenary Body	342
11.3.3	Representation and Participation in the Key Decision-Making Body	345
11.3.3.1	IOSCO Board Constitution Determined by the Presidents Committee	347
11.3.3.2	Eligibility Criteria Introduced	348
11.3.3.3	Mix of Nominated and Elected Members	349
11.3.3.4	Increased Regional and Emerging Markets Representation	352
11.3.3.5	Expansion of Observing Members	354
11.3.4	Elections and Decision-Making Processes	355
11.3.4.1	Electing Office-Holders and Representatives to the IOSCO Board	355
11.3.4.2	Voting on Policy Matters	356
11.3.4.3	Risk of Eroding Consensus in Matters of Regulatory Policy?	356
11.4	Regulatory Philosophy and Cooperation in Policy-Making	358
11.4.1	Legitimate Difference and Pluralism	358
11.4.1.1	Effects of IOSCO Reforms	358
11.4.1.2	IOSCO Principles and IOSCO MMOU	359
11.4.1.3	The Challenges of Cross-Border Regulation	360

11.4.2	Cooperation and Positive Comity	362
11.4.3	Shifting Levels of Cooperation?	365
11.4.3.1	Cross-Border Initiatives in Asia	365
11.4.3.2	Recent IOSCO Developments	368
11.4.3.3	Final Observations Regarding Cooperation	371
11.5	Some Tentative Conclusions	371
11.5.1	Clarity of Function and Focus for Appropriate Governance Arrangements	372
11.5.2	Complementary and Possibly Mutually Reinforcing Norms	373
	References	374

Part II Dutch Practice in International Law

12	The UN Guiding Principles on Business and Human Rights in (National) Action: The Dutch Agreement on Sustainable Garment and Textile	381
	Antoine Duval and Enrico Partiti	
12.1	Introduction	382
12.2	The International Regulation of Global Value Chains Through Due Diligence	384
12.2.1	The Concept of Human Rights Due Diligence in the United Nations Guiding Principles on Business and Human Rights	386
12.2.2	Operationalising Due Diligence Through the Work of the OECD	389
12.3	The Dutch Agreement on Sustainable Garment and Textile	391
12.3.1	Background and Goals	392
12.3.2	The Commitments Made by the Enterprises in the Framework of Their Due Diligence Obligations	394
12.3.3	Institutional Features and the Mechanism for Review of Companies' Action Plans	396
12.3.4	The Dispute Settlement Provisions	399
12.3.4.1	The Dispute Procedure	400
12.3.4.2	The Complaint Procedure	401
12.3.4.3	Does the Agreement's Grievance Mechanism Fall Short of the UNGPs' Effectiveness Requirements Enshrined in Principle 31?	402
12.4	Conclusion	404
	References	407

**13 Recognition of Sign Language Under International Law:
A Case Study of Dutch Sign Language in the Netherlands 411**
 Swen Meereboer, Kika Meereboer and Otto Spijkers

13.1 Introduction 412

13.2 Dutch Sign Language, the Personal Experience
of a Deaf Person 412

13.3 Recognition of Dutch Sign Language in the Netherlands 415

13.4 The Government’s Position on the Recognition of Dutch
Sign Language 416

13.5 The UN Convention on Rights of Persons
with Disabilities 418

13.6 Recognition of Dutch Sign Language Following
Ratification of the Convention 427

13.7 The Future Ahead 429

References 430

Table of Cases 433

Index 435