

437

2024



ACADEMIE DE DROIT INTERNATIONAL

FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE
ACADEMY OF INTERNATIONAL LAW

2024

Tome 437 de la collection

BRILL | NIJHOFF

Leiden/Boston

CORTE SUPREMA BIBLIOTECA	
SIG. TOPOGRAFICA	INVENTARIO

GENERAL TABLE OF CONTENTS

The Aims and Methods of Postcolonial International Law, by Chin Leng LIM, Professor at the Chinese University of Hong Kong	9-193
The Principle <i>Jura Novit Curia</i> in International Judicial and Arbitral Pro- ceedings, A Window on International Adjudication, by Attila M. TANZI, Professor at the University of Bologna.	195-382



TABLE OF CONTENTS

Chapter I. The question of universality	21
A. Introduction	21
B. Treaty and territorial principles were inadequate	31
C. Sovereignty and civilisation	35
D. Law-giver to colonial adventurers	41
E. The savage and the wild and barbarous	43
F. Illegitimate conquest	46
G. Modern international law	50
H. The English commentators	55
Chapter II. How the aims and methods have evolved.	57
A. The Berlin Conference (1884-1885)	57
B. Rejecting international law's promise	60
C. The cultural thesis	63
D. Did they go far enough?	67
E. Revolutionary	67
F. Democrat	70
G. Optimist	77
H. Rejectionism today	81
I. The quest for colonial redress	83
Chapter III. Rights of the post-colonial State	88
A. To prevent injustice recurring	88
B. Tariffs and reprisals.	89
C. Commerce.	92
D. From Berlin to Bretton Woods	94
E. Rewriting trade rules	97
F. Foreign ownership	101
G. Occupation, protectorates and the penetration of civilisation	107
H. Legislative agenda for colonial redress	114
Chapter IV. Arbitration's gilded age	116
A. Foreign commercial interests	116
B. An open delocalised system and internationalised contracts	120
C. Libya's challenge	123
D. Jumping the species barrier.	128
E. Faith in treaties	132
F. Arbitrators.	136
G. Liberalism, autonomy, delocalisation.	138
Chapter V. Aims and methods of postcolonial international law	144
A. Universal legal order	144
B. Refashioning doctrine.	146
C. The necessity of international law	149
D. Puccini's Third World critics	151
E. Revolutionary views	154
F. Quarrel over methods.	157
G. The return of naturalism, the significance of decolonisation and a controversy in Paris.	158
H. Reparations	162
I. Temporal and intertemporal problems	164
J. The aims and methods of postcolonial international law	167

Case law and arbitral awards	171
Legal, official and institutional materials	173
Bibliography	176



TABLE OF CONTENTS

Chapter I. Introduction	213
A. The choice of the topic and outline	213
B. A working definition of <i>jura novit curia</i>	216
C. Applying and developing the law	219
1. Exclusive relevance of <i>ratio decidendi</i> reasoning	222
D. Research questions	224
E. On methodology and structure	226
F. Different international adjudication contexts: Three areas	227
1. Inter-State litigation	229
(i) Remarks on investment arbitration	238
(ii) Remarks on the WTO dispute settlement system	239
2. Human rights litigation	241
3. International criminal proceedings	243
G. Concluding remarks	244
Chapter II. The legal source of <i>jura novit curia</i>	245
A. Introduction	245
B. The legal basis, or source, of <i>jura novit curia</i>	245
1. Treaty law	248
2. Customary law	251
3. General principles of law and general principles of international law	257
4. An implied, or inherent, power	263
C. A composite unwritten rule of adjudication stemming from multiple sources	272
D. Concluding remarks	276
Chapter III. <i>Jura novit curia</i> and the assessment of jurisdiction of international courts and tribunals	278
A. Introductory remarks	278
B. The adjudicator's power to assess its jurisdictional competence and <i>jura novit curia</i>	281
C. The adjudicator's power to recharacterise the dispute: The blurred line dividing the jurisdictional and merits phases	285
1. Inter-State adjudication	285
2. Investor-State arbitration	291
3. Human rights adjudication	295
4. International criminal adjudication	299
D. Concluding remarks on <i>jura novit curia</i> and the assessment of the jurisdiction of international courts and tribunals	303
Chapter IV. Problematic aspects curtailing <i>jura novit curia</i> in the merits phase	306
A. Introduction	306
B. <i>Jura novit curia</i> and the enabling role of the prohibition of <i>non liquet</i> or the obligation to decide the dispute falling with the jurisdiction of the court or tribunal	307

C. The fine line between facts and the law	311
1. Technical facts and domestic law	313
D. <i>Interpretation v. application of the law</i>	321
1. Article 31 (3) (c) VCLT	323
2. Article 293 UNCLOS	326
3. Equity	329
(i) Equity as a general principle of law	329
(ii) Equity in maritime and land delimitation	333
E. <i>Jura novit curia</i> and the time element	339
1. Intertemporal law	339
(i) Composite acts in the law of State responsibility	343
(ii) Non-retroactivity in international criminal law	346
2. Concluding remarks	347
Chapter V. <i>Jura novit curia</i> and reparation	348
A. Reparation and the assessment of compensation	348
B. The choice of the forms of reparation in inter-State and investor-State litigation	349
1. Inter-State adjudication	349
2. Investment arbitration	357
C. Compensation	359
1. Inter-State litigation	359
2. Investment arbitration	363
D. Judicial assessment of the forms of reparation and of compensation by human rights courts	366
E. Reparation and compensation in international criminal justice	370
F. Concluding remarks	370
Chapter VI. Conclusion	372
Bibliography	376