

Armin von Bogdandy · Ingo Venzke (eds.)

International Judicial Lawmaking

Table of Contents

I. Framing the Issue	1
<i>Armin von Bogdandy & Ingo Venzke</i>	
Beyond Dispute: International Judicial Institutions as Lawmakers	3
<i>Marc Jacob</i>	
Precedents: Lawmaking Through International Adjudication	35
<i>Karin Oellers-Frahm</i>	
Lawmaking Through Advisory Opinions?	69
<i>Eyal Benvenisti & George W. Downs</i>	
Prospects for the Increased Independence of International Tribunals	99
II. Judicial Lawmaking for Economic Governance: The ICSID and the WTO	131
<i>Stephan W. Schill</i>	
System-Building in Investment Treaty Arbitration and Lawmaking	133
<i>Ingo Venzke</i>	
Making General Exceptions: The Spell of Precedents in Developing Article XX GATT into Standards for Domestic Regulatory Policy	179

Michael Ioannidis

- A Procedural Approach to the Legitimacy of International
Adjudication: Developing Standards of Participation in
WTO Law 215

Thomas Kleinlein

- Judicial Lawmaking by Judicial Restraint? The Potential of
Balancing in International Economic Law 251

III. Judicial Lawmaking to Protect the Individual: The IACtHR, the ECtHR, and the ICTY 293

Christina Binder

- The Prohibition of Amnesties by the Inter-American Court
of Human Rights 295

Markus Fyrnys

- Expanding Competences by Judicial Lawmaking: The Pilot
Judgment Procedure of the European Court of Human
Rights 329

Milan Kubli & Klaus Günther

- Judicial Lawmaking, Discourse Theory, and the ICTY on
Belligerent Reprisals 365

IV. Further Fields of Judicial Lawmaking: The ICJ and the CAS 387

Karin Oellers-Frahm

- Expanding the Competence to Issue Provisional Measures –
Strengthening the International Judicial Function 389

Niels Petersen

- Lawmaking by the International Court of Justice –
Factors of Success 411

Lorenzo Casini

- The Making of a *Lex Sportiva* by the Court of Arbitration
for Sport 439

V. Strategies in Response: Concluding Considerations and Outlook	471
<i>Armin von Bogdandy & Ingo Venzke</i>	
On the Democratic Legitimation of International Judicial Lawmaking	473