

Contents

| | |
|--|----|
| 1 Introduction | 1 |
| References | 8 |
| Part I Elements of a New Complexity and Its Reflections in the Internationalization of Law | |
| 2 Factors and Actors Behind Greater Complexity in Contemporary International Law | 11 |
| 2.1 Political and Economic Multipolarity in the Twenty-First Century | 12 |
| 2.1.1 Political Multipolarity with Degrees of Coordination and the Possibility of Constructing Power Through International Law | 12 |
| 2.1.2 Economic Multipolarity in the Context of Liberalism | 16 |
| 2.2 Notions of Space and Time Fading Due to New Technologies | 22 |
| 2.3 Densification of Involuntary Transnational Communities Arising from Crises | 26 |
| 2.3.1 Necessity of Crises for Breaking Down Barriers Created by the Legal System | 26 |
| 2.3.2 Creation of Involuntary Communities for Crisis Management | 29 |
| 2.3.3 Crises Based on the Globalization of Organized Crime, Terrorism, and Health and Environmental Problems | 34 |
| 2.4 The Rise of Economic, Civic, and Scientific Actors | 41 |
| 2.4.1 Rise of Economic Actors | 42 |
| 2.4.2 Rise of Civic Actors | 46 |
| 2.4.3 Rise of Scientific Actors | 50 |
| References | 53 |

| | | |
|----------|---|------------|
| 3 | The Greater Complexity of International Law with the Intensification of Relations Among States and International Organizations | 57 |
| 3.1 | The Influence of Nonnational Law | 59 |
| 3.1.1 | International Law as an Inspiration for Domestic Law | 60 |
| 3.1.2 | Foreign National Law as Source of Inspiration for Domestic Law | 64 |
| 3.1.3 | Transnational Private Law as a Source of Inspiration of State Law | 67 |
| 3.2 | Integrative Influences of Regional and Global Legal Systems | 70 |
| 3.2.1 | Systems of Sectoral Integration as Intermediate Steps in Global Integration | 72 |
| 3.2.2 | The European Laboratory | 75 |
| 3.2.3 | MERCOSUR | 85 |
| 3.3 | Imposing International Law: <i>Jus Cogens</i> and Other Irrefutable Norms | 89 |
| 3.3.1 | Expansion Rules that Are by Nature Irrefutable | 90 |
| 3.3.2 | Expansion of <i>Jus Cogens</i> | 92 |
| 3.4 | The Extraterritorial Influence of Major Powers' National Standards | 95 |
| 3.4.1 | Extraterritoriality in Fighting Terrorism and Corruption | 97 |
| 3.4.2 | Extraterritoriality in Protecting Health and the Environment | 100 |
| 3.4.3 | Extraterritoriality in Human Rights | 105 |
| 3.4.4 | The Internationalization of Law in Collapsed States | 109 |
| | References | 111 |
| 4 | The Internationalization of Law from the Perspective of Infra- and Nonstate Actors | 115 |
| 4.1 | The Construction of a Common Legal Grammar | 117 |
| 4.2 | The Constitutional Confluence | 122 |
| 4.3 | Enhanced Dialogue Among Judges | 124 |
| 4.3.1 | Dialogue Among National Judges | 126 |
| 4.3.2 | Dialogue Between National and International Courts | 134 |
| 4.3.3 | Dialogue Among International Courts | 149 |
| 4.4 | The Emergence of a Global Public Sphere | 157 |
| 4.4.1 | Spontaneous Dialogue Among Public Agents | 158 |
| 4.4.2 | Dialogue Led by International Organizations | 159 |
| 4.4.3 | Necessary Dialogue Between Economic and Scientific Actors | 161 |
| 4.5 | The Emergence and Proliferation of Autonomous Regulatory Regimes with a Private Nature | 167 |
| 4.5.1 | Differences in Construction and Validation | 168 |
| 4.5.2 | Differential Deployment, Control, and Legitimacy | 172 |
| | References | 179 |

Part II The Features of an Internationalized and Complex Law

5 New Features of the Internationalized Legal System: Expansion, Consolidation, Plurality, and Effectiveness 185

5.1 Expansion, Densification, and Effectiveness in Humanitarian Law: Using Force on Behalf of the International Community 186

5.1.1 New Concepts from Old Agreements 186

5.1.2 Difficulties with Legitimation 192

5.2 Expansion, Densification, and Effectiveness of International Criminal Law: Attempts to Construct Common Values 196

5.2.1 International Law Constructed by Executives and Legislatures: Reinforcing the Inhuman 196

5.2.2 International Law Reconstructed by Judiciaries: The Indemnity of the Inhuman through National Tribunals 200

5.2.3 Difficulties in Legitimizing a System of Universal Claims 204

5.3 Expansion, Densification, and Effectiveness of International Trade Law: Creativity and Order Through a New Central Body . . . 206

5.3.1 The Legitimization of New Universal Organizations 207

5.3.2 Innovation in the Pursuit of Effective Norms 209

5.4 Expansion, Densification, and Effectiveness of Environmental Law: Law Constructed Through Voluntary Mechanisms 212

5.4.1 The Construction of New Concepts Through Common Values 213

5.4.2 Characteristics That Hinder Integration with Other Subsystems 219

5.5 Expansion, Consolidation, and Effectiveness of Human Rights: The Duality Between National, European, and International Standards 221

5.5.1 The Proliferation of Issues and Actors in the Protection of Human Rights 222

5.5.2 The Strengthening of New and Old Courts Through Renewed Discussion of the Cornerstones of Democracy . . . 234

5.5.3 The Protection of Autonomous Dimensions of Human Rights 244

References 247

6 Challenges with Complexity: New Sources, Private Regimes, and the Proliferation of Conflict Resolution Mechanisms 251

6.1 The Challenge of Understanding the Multiplication of Normative Sources 252

6.1.1 Review of the Concept of Sources of International Law or the Construction of Sources of Postnational Law 253

6.1.2 Difficulties Incorporating New Normative Manifestations as Sources 260

- 6.2 The Challenge of Accepting Private Normative Regimes with Claims of Autonomy 265
- 6.3 The Challenge of Coordinating Multiple Mechanisms of Conflict Resolution 271
 - 6.3.1 The Increase in the Number of Courts and Their Competencies at the International Level 273
 - 6.3.2 Differing Levels of Interaction 277
 - 6.3.3 Disputes over Powers and Pursuits of More Appropriate Forums 280
- References 287
- 7 The Problems of New and Old Concepts of International Law 291**
 - 7.1 The Difficulties of Traditional Approaches to the Legal Order . . . 292
 - 7.1.1 The Idea of an International Legal Order and Its Relationship with Domestic Law 293
 - 7.1.2 The Contemporary International Law in Light of Theoretical Models and the Idea of Networks 305
 - 7.1.3 The Limitations of Judges as Bridges for Dialogue 310
 - 7.2 Difficulties with the Notion of a Global Law 314
 - 7.3 Difficulties with the Concept of Constitutionalization 320
 - 7.4 Difficulties with the Ideas of Universalism and Relativism 328
 - 7.5 Difficulties of Establishing a Global Republic 333
 - References 338
- 8 Conclusions 341**