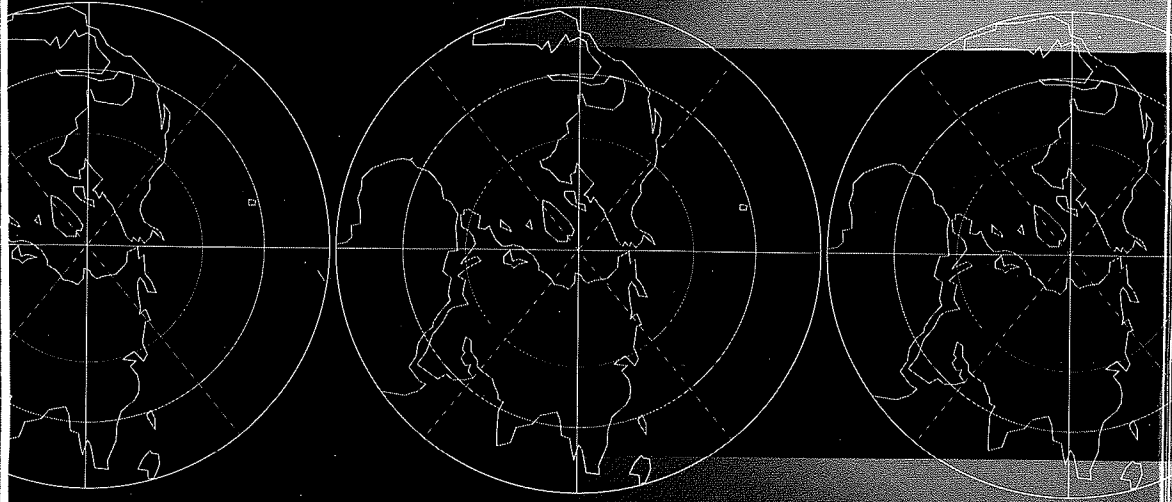


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CAMBRIDGE STUDIES IN INTERNATIONAL AND COMPARATIVE LAW

# **Conflict of Norms in Public International Law**

How WTO Law Relates to Other Rules of  
International Law



JOOST PAUWELYN

# **Conflict of Norms in Public International Law**

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is for the party claiming that a treaty has 'contracted out' of general international law to prove it. In other words, the party claiming that there should *not* be a 'fall-back' on general international law bears the burden of proof.

### 'Contracting out' is a question of degree

#### *The need to examine provision by provision*

The question of contracting out, or determining the extent to which a treaty is *lex specialis* vis-à-vis general international law (say, most parts of the Vienna Convention on the Law of Treaties and the law on state responsibility), is one of degree. It is not one of black and white, everything 'in' or everything 'out'. As noted in chapter 2, the WTO treaty is *not* a self-contained regime in the sense that it was created *outside* the system of international law. Nor has the WTO treaty contracted out of *entire fields* of international law such as the law of treaties or state responsibility. All fields of general international law, to the extent relevant to the WTO treaty, continue to play a role. The extent of this role cannot be determined without looking at each and every WTO provision in detail. Only this type of detailed treaty interpretation can determine the extent to which the WTO treaty 'contracted out'. It is of no use to say: the WTO is *lex specialis* in terms of the law on treaties, state responsibility or the settlement of disputes. Of course it is. But the question is: *to what extent?* Nor is it really enlightening to say: WTO law is part of international law. Of course it is. But the question is: *to what extent* is this international law relevant in the WTO?

As Art. 55 of the 2001 Draft Articles on State Responsibility (entitled '*lex specialis*') provides, in respect of treaties contracting out of general international law on state responsibility: 'These articles do not apply where and *to the extent that* the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are *governed by special rules* of international law.'<sup>134</sup>

To discover the 'extent' to which a treaty has contracted out of general international law, each and every treaty norm must be examined pursuant to normal rules of treaty interpretation and each time the extent of conflict and contracting out must be determined. For that reason, the statement made at the Sixth Committee of the UN General Assembly that the ILC Draft Articles on State Responsibility 'would not apply to

<sup>134</sup> See also Art. 5 of the Vienna Convention.