1 Introduction

> [C]an we refer to a rule of general international law such as good faith? Can we have a legal system without the rule of good faith? . . . Can there be any system of law that can work without a reasonable concept of proportionality?
>
> Professor Georges Abi-Saab, Appellate Body member, World Trade Organization[1]

1.1 Beyond the ostensible

Having passed its thirteenth anniversary, the World Trade Organization (WTO) has become one of the most important international organisations in existence. As the only global intergovernmental organisation concerned with the rules of trade between nations, it is the leading forum for trade negotiations and for the resolution of trade disputes. Its dispute settlement system has attracted enormous interest because of its binding, rule-oriented nature and its well-established appeals system, both a rarity at the international level. More than 360 disputes have been brought to the WTO since its creation in January 1995,[2] and the recommendations of WTO Panels and the Appellate Body frequently generate intense controversy. These recommendations often require Members to change their measures[3] to bring them into

[1] Georges Abi-Saab, 'The WTO Dispute Settlement and General International Law' in Rufus Yerxa and Bruce Wilson (eds.), *Key Issues in WTO Dispute Settlement: The First Ten Years* (2005) 7, 11.

[2] WTO Secretariat, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/31 (22 August 2007) ii.

[3] 'In principle, any act or omission attributable to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings': Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, [81]. See generally Alan Yanovich and Tania Voon, 'What Is the Measure at Issue?' in Andrew Mitchell (ed.), *Challenges and Prospects for the WTO* (2005) 115.

compliance with WTO obligations, which may have significant economic consequences for companies, consumers and workers, as well as major political implications for governments. Panel and Appellate Body reports are therefore carefully scrutinised, and WTO Members and academics alike are quick to pounce on perceived failures in the resolution of disputes under the Dispute Settlement Understanding (DSU).

The Appellate Body has traditionally adopted a conservative approach to interpreting and applying the WTO agreements, perhaps in view of the vigorous debates surrounding its decisions and in order to maintain legitimacy of the organisation in the minds of the various WTO players. Several years ago, Weiler referred to the 'almost obsessive attempts of the Appellate Body to characterize wherever possible . . . wide-ranging, sophisticated, multifaceted and eminently legitimate interpretations of the Agreement as "textual" resulting from the ordinary meaning of words'.[4]

However, no complex legal system can provide clear textual answers to every issue or dispute that falls within its scope as time goes by. Like any other such system, the WTO agreements contain some provisions that are ambiguous, contradictory, or silent on particular questions. This is becoming increasingly apparent. In early 2005, the first dissenting opinion of an Appellate Body member appeared in *US – Upland Cotton*, in relation to whether Article 10.2 of the Agreement on Agriculture exempts export credit guarantee programmes from export subsidy disciplines.[5] The dissenting member stated: 'I recognize that the language of this provision is not free from ambiguity. As noted by my colleagues on the Division, the drafters could have – dare I say, should have – made their intentions even more plain.'[6] With the expiry of the peace clause,[7] the number, scale and complexity of disputes about

[4] Joseph Weiler, 'The Rule of Lawyers and the Ethos of Diplomats – Reflections on the Internal and External Legitimacy of WTO Dispute Settlement' (2001) 35 *Journal of World Trade* 191, 206.

[5] Appellate Body Report, *US – Upland Cotton*, [631]–[641] ('separate opinion'). Previously, one Appellate Body member had issued a 'concurring statement' in Appellate Body Report, *EC – Asbestos*, [149]–[154]. Such opinions have been more common at the Panel level. See, e.g., Panel Report, *EC – Tariff Preferences*, [9.1]–[9.21]; Panel Report, *US – Softwood Lumber V*, [9.1]–[9.24]; Panel Report, *EC – Poultry*, [289]–[292].

[6] Appellate Body Report, *US – Upland Cotton*, [634].

[7] Agreement on Agriculture, art. 13; Appellate Body Report, *US – Upland Cotton*, [310], n. 311; Richard Steinberg and Timothy Josling, 'When the Peace Ends: The Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge' (2003) 6 *Journal of International Economic Law* 369.

agricultural products of vital interest to developed and developing countries are set to grow. Other recent disputes also demonstrate the absence of textual answers to every issue, particularly in interpreting Members' schedules (which do not necessarily adopt uniform language or concepts),[8] or where the negotiating history is unclear.[9]

In addition to explicit legal rules, broader principles regularly embody fundamental rights and obligations and provide critical guidance in understanding individual legal provisions, particularly where the text is silent or ambiguous. An understanding of legal principles that underlie or influence the WTO system is therefore essential to enable Panels and the Appellate Body to discharge their function. Furthermore, the consistency and 'correctness' of Panel and Appellate Body decisions can be better evaluated against a backdrop of principles, which should themselves be subject to critical scrutiny. In 2000, Howse suggested that the Appellate Body had increased coherence and integrity in the interpretation of WTO provisions by using the treaty text 'as the necessary beginning point for an interpretative exercise that includes teleological dimensions', taking into account the 'diverse, and possible competing, values' of the WTO agreements rather than assuming that the prevailing value is 'free trade',[10] as some General Agreement on Tariffs and Trade (GATT) and WTO panels had a tendency to do.[11] As discussed further in Chapter 3, the provisions of the DSU provide a legal basis for a teleological approach to interpretation, creating one path through which 'principles' may enter WTO dispute settlement. Specifically, principles may assist in identifying and balancing the various interests affected by international trade.

Frequently, the most relevant and valid principles in WTO disputes will be derived partly or wholly from sources of law beyond the WTO agreements themselves. For example, the Appellate Body was recently asked to address 'the principle of good faith', 'the principle of estoppel', and the 'principle of judicial economy' in *EC – Export Subsidies on Sugar*.[12]

[8] See, e.g., Appellate Body Report, *EC – Chicken Cuts*, [142]–[147]; Appellate Body Report, *EC – Export Subsidies on Sugar*, [173]–[174], [186]; Appellate Body Report, *US – Gambling*, [176], [179], [182].

[9] See, e.g., Appellate Body Report, *EC – Export Subsidies on Sugar*, [223]; Appellate Body Report, *US – Upland Cotton*, [623], [636].

[10] Robert Howse, 'Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence' in Joseph Weiler (ed.), *The EU, the WTO and the NAFTA: Toward a Common Law of International Law* (2000) 35, 54.

[11] Ibid. 52–3.

[12] Appellate Body Report, *EC – Export Subsidies on Sugar*, [304], [307], [321].

For Members such as the United States, the inclusion of non-WTO law in WTO disputes may raise longstanding fears of overreaching by Panels and the Appellate Body. In the Special Session of the Dispute Settlement Body (DSB), which is dedicated to improving the DSU, the United States has recently identified several issues on which it suggests Members could 'provid[e] some form of additional guidance to WTO adjudicative bodies'.[13] These issues include: the role of WTO Tribunals in interpreting the WTO agreements, particularly where the agreements are silent on an issue; whether WTO Tribunals can use 'public international law other than customary rules of interpretation'; and the content of public international law that could be so used.[14] As explained further below, the use of principles from various sources of law and the continued integration of the WTO dispute settlement system into the general framework of public international law will in fact increase the legitimacy of the system and provide greater consistency and transparency to decision-making.

Remarkably little has been written on the use of principles in WTO dispute settlement. An exploratory article by Hilf in 2001 is perhaps the most significant. In this article, Hilf describes a number of principles that could be used in WTO disputes, dividing the principles into three broad categories: principles internal to the WTO; principles of public international law that are external to the WTO; and '[p]rinciples common to the internal legal regimes of WTO Members'.[15] This article provides a useful overview of a variety of principles and introduces some of the theoretical issues surrounding their use. However, it does not examine any of the principles in depth; nor does it offer a detailed analysis of the legal basis for WTO Tribunals to use principles in WTO disputes or the manner in which they could do so. In the same year, Cameron and Gray also wrote an article on principles in WTO disputes. This article is essentially a catalogue of previous dispute settlement decisions in which WTO Tribunals have used 'principles of international law'.[16] Certain other articles and other works have examined individual concepts that may be principles

[13] DSB Special Session, *Contribution by the United States*, TN/DS/W/74 (15 March 2005) 1.
[14] Ibid. 2–3.
[15] Meinhard Hilf, 'Power, Rules and Principles – Which Orientation for WTO/GATT Law?' (2001) 4 *Journal of International Economic Law* 111, 124.
[16] James Cameron and Kevin Gray, 'Principles of International Law in the WTO Dispute Settlement Body' (2001) 50 *International and Comparative Law Quarterly* 248.

relevant to WTO dispute settlement, including good faith,[17] due process,[18] proportionality,[19] special and differential treatment,[20] the

[17] Marion Panizzon, *Good Faith in the Jurisprudence of the WTO* (2006); Helge Zeitler, '"Good Faith" in the WTO Jurisprudence – Necessary Balancing Element or an Open Door to Judicial Activism' (2005) 8 *Journal of International Economic Law* 721; Durval De Noronha Goyos, 'Brazil: Duty of Good Faith in International Services Negotiations' (2005) 11 *International Trade Law & Regulation* N15; Yenkong Ngangjoh, '*Pacta Sunt Servanda* and Complaints in the WTO Dispute Settlement' (2004) 1 *Manchester Journal of International Economic Law* 76; Donald Regan, 'Do WTO Dispute Settlement Reports Affect the Obligations of Non-Parties?' (2003) 37 *Journal of World Trade* 883; Youngjin Jung and Sun Hyeong Lee, 'The Legacy of the Byrd Amendment Controversies: Rethinking the Principle of Good Faith' (2003) 37 *Journal of World Trade* 921; Aditi Bagchi, 'Compulsory Licensing and the Duty of Good Faith in TRIPS' (2003) 55 *Stanford Law Review* 1529; Thomas Cottier and Krista Schefer, 'Good Faith and the Protection of Legitimate Expectations in the WTO' in Marco Bronckers and Reinhard Quick (eds.), *New Directions in International Economic Law: Essays in Honour of John H Jackson* (2000) 47.

[18] Panagiotis Delimatsis, 'Due Process and "Good" Regulation Embedded in the GATS – Disciplining Regulatory Behaviour in Services through Article VI of the GATS' (2007) 10 *Journal of International Economic Law* 13; Ana Frischtak, 'Balancing Judicial Economy, State Opportunism, and Due Process Concerns in the WTO' (2005) 26 *Michigan Journal of International Law* 947; John Gaffney, 'Due Process in the World Trade Organization: The Need for Procedural Justice in the Dispute Settlement System' (1999) 14 *American University International Law Review* 1173; David Palmeter, 'The Need for Due Process in WTO Proceedings' (1997) 31 *Journal of World Trade* 51.

[19] Thomas Sebastian, 'World Trade Organization Remedies and the Assessment of Proportionality: Equivalence and Appropriateness' (2007) 48 *Harvard International Law Journal* 337; Mads Andenas and Stefan Zleptnig, 'Proportionality and Balancing in WTO Law: A Comparative Perspective' (2007) 20 *Cambridge Review of International Affairs* 71; Facundo Perez-Aznar, *Countermeasures in the WTO Dispute Settlement System: An Analysis of Their Characteristics and Procedure in the Light of General International Law* (2006); Federico Ortino, 'From "Non-Discrimination" to "Reasonableness": A Paradigm Shift in International Economic Law?' (Working Paper No 01/05, Jean Monnet Centre for International and Regional Economic Law & Justice, 2005); Federico Ortino, *Basic Legal Instruments for the Liberalisation of Trade: A Comparative Analysis of EC and WTO Law* (2004) ch 4; Jan Neumann and Elisabeth Türk, 'Necessity Revisited: Proportionality in World Trade Organization Law after *Korea – Beef*, *EC – Asbestos* and *EC – Sardines*' (2003) 37 *Journal of World Trade* 199; Meinhard Hilf and Sebastian Puth, 'The Principle of Proportionality on Its Way into WTO/GATT Law' in Armin von Bogdandy, Petros Mavroidis and Yves Mény (eds.), *European Integration and International Co-Ordination: Studies in Transnational Economic Law in Honour of Claus-Dieter Ehlermann* (2002) 199; D. A. Osiro, 'GATT/WTO Necessity Analysis: Evolutionary Interpretation and its Impact on the Authority of Domestic Regulation' (2002) 29 *Legal Issues of Economic Integration* 123; Axel Desmedt, 'Proportionality in WTO Law' (2001) 4 *Journal of International Economic Law* 441.

[20] Amin Alavi, 'On the (Non-)Effectiveness of the World Trade Organization Special and Differential Treatments in the Dispute Settlement Process' (2007) 41 *Journal of World Trade* 319; Alexander Keck and Patrick Low, 'Special and Differential Treatment in the WTO: Why, When and How?' in Simon Evenett and Bernard Hoekman (eds.), *Economic Development & Multilateral Trade Cooperation* (2006) 147; William Kerr, 'Special and

precautionary principle,[21] and non-discrimination.[22] Primarily, these focus on the principles within the WTO while paying little attention to their definition or their meaning under international law, and they are largely concerned with the operation of the principle in question rather than its implications for the use of principles in WTO dispute settlement more generally.

This book goes beyond the two previous studies of the use of principles in WTO disputes by defining and critically examining the categories of principles addressed. It also includes a thorough assessment of the legal basis for using different types of principles in WTO disputes, and the limitations on such use. Rather than merely describing the ways in which WTO Tribunals have used principles in their decisions to date, it evaluates these decisions in light of the principles used, the basis for using them, and the meaning of these principles outside the WTO. It also considers how principles could have been used in some decisions to confirm the result reached or to reach a better result. The four individual principles addressed in detail are assessed in terms of their meaning, validity, and scope. This analysis is conducted not only to understand these particular principles but also to provide a solid foundation for envisaging how WTO Tribunals could use principles more frequently, accurately, and legitimately in future.

I now turn to examine in more detail the nature of legal principles as distinct from rules.

Differential Treatment: A Mechanism to Promote Development?' (2005) 6 *Estey Centre Journal of International Law and Trade Policy* 84; Bernard Hoekman, 'Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment' (2005) 8 *Journal of International Economic Law* 405.

[21] Ilona Cheyne, 'Gateways to the Precautionary Principle in WTO Law' (2007) 19 *Journal of Environmental Law* 155; Ilona Cheyne, 'Risk and Precaution in World Trade Organization Law' (2006) 40 *Journal of World Trade* 837; Gabrielle Marceau, 'La jurisprudence sur le principe de précaution dans le droit de l'OMC' (Paper presented at the Inaugural Professorial Lecture, Faculty of Law, University of Geneva, 19 May 2005); Christiane Gerstetter and Matthais Leonhard Maier, 'Legalise It, or Criticise It? Debating the Precautionary Principle in and around the WTO' (Working Paper, Universität Bremen, 2004); Jan Bohanes, 'Risk Regulation in WTO Law: A Procedure-Based Approach to the Precautionary Principle' (2002) 40 *Columbia Journal of Transnational Law* 323.

[22] T. Srinivasan, 'Nondiscrimination in GATT/WTO: Was There Anything to Begin with and Is There Anything Left?' (2005) 4 *World Trade Review* 69; WTO Secretariat, 'The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency', WT/WGTCP/W/114 (14 April 1999).

1.2 The nature of principles

1.2.1 Distinguishing principles from rules

The existence of principles of law as distinct from rules is widely recognised, both in jurisprudential thought and in the standard legal methodologies of academics, judges, and lawyers.[23] Both principles and rules are species of norms (standards for how one ought to act).[24] Typically, principles are seen as general, basic or underlying assumptions or precepts.[25] They embody fundamental regulatory purposes or values and provide a broad guide for the development of legal rules, which are directed towards specific behaviour and can be used to resolve particular problems.[26] Thus, principles are the 'intellectual foundations of any legal order',[27] while rules are the precise laws that implement them and are explicit in the legal corpus.[28] Put differently, a 'rule answers the question "what": a principle in effect answers the question "why".'[29] This distinction seems more useful than one focusing simply on the breadth of the law in question. As Hart points out, the suggestion that principles are expressed in general or abstract terms is unhelpful, because all laws have a core of settled meaning and an uncertain penumbra.[30] The content of principles may not be as

[23] Larry Alexander and Ken Kress, 'Against Legal Principles' (1997) 82 *Iowa Law Review* 739, 745–54.

[24] Joseph Raz, *Practical Reason and Norms* (rev. edn, 1999) ch 1; Brian H. Bix, *A Dictionary of Legal Theory* (2004) 149.

[25] '5. a. A fundamental truth or proposition, on which many others depend; a primary truth comprehending, or forming the basis of, various subordinate truths; a general statement or tenet forming the (or a) ground of, or held to be essential to, a system of thought or belief; a fundamental assumption forming the basis of a chain of reasoning': John Simpson and Edmund Weiner (eds.), *The Oxford English Dictionary* (2nd edn, 1989) vol. XII, 499.

[26] Neil MacCormick, *Legal Reasoning and Legal Theory* (1994).

[27] Sujit Choudhry, 'Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation' (1999) 74 *Indiana Law Journal* 819, 843. See also Antonio Cassese, *International Law* (2nd edn, 2005) 46: 'Principles are the pinnacle of the legal system and are intended to serve as basic guidelines for the life of the whole community.'

[28] See also Fallon who uses the terms 'first principles' and 'doctrine': Richard Fallon, 'Foreword: Implementing the Constitution' (1997) 111 *Harvard Law Review* 54, 60–1.

[29] Gerald Fitzmaurice, 'The General Principles of International Law Considered from the Standpoint of the Rule of Law' (1957-II) *Recueil des Cours* 1, 7.

[30] H. L. A. Hart, *The Concept of Law* (1961) 120. The view that all law has a settled core and an uncertain penumbra has been taken further in Timothy A. O. Endicott, *Vagueness in Law* (2000). Endicott argues that all rules are radically indeterminate owing to the vagueness of legal language and concepts.

'narrow' as rules, but this does not mean that they are without a definable content.[31]

Dworkin suggests that rules generally operate in a binary manner.[32] When the conditions for the application of a given rule have been satisfied, the rule operates to provide a determinative result to the legal problem; when the conditions for the application of the rule have not been satisfied, the rule has no operation.[33] Principles do not have this kind of binary operation.[34] A principle cannot lead to a determinative result or solution, because it must be applied together with other principles and taking account of the particular situation in dispute. In some circumstances, this may involve balancing and weighing different principles.[35] In other circumstances, principles may represent values that are incommensurable and unable to be weighed against each other, for example liberty and equality.[36] Thus, Eckhoff and Sundby state that rules either apply or do not apply, whereas principles are guidelines that are more or less relevant and persuasive in determining the preferable solution.[37]

However defined, it is clear that the categories of principles and rules overlap to some extent, and it is often difficult to determine where a principle ends and a rule begins. In many circumstances the line drawn between principles and rules may be somewhat subjective and dependent on the language used to describe the relevant laws. For example, one might contend that a principle of equality exists in

[31] Robert Kolb, 'Principles as Sources of International Law' (2006) 53 *Netherlands International Law Review* 1, 7.

[32] Ronald Dworkin, *Taking Rights Seriously* (1977) 24–8.

[33] 'A "rule" . . . "is essentially practical and, moreover, binding . . .; there are rules of art as there are rules of government" while principle "expresses a general truth, which guides our action, serves as a theoretical basis for the various acts of our life, and the application of which to reality produces a given consequence."': The Umpire in the *Gentini Case* of the Italian–Venezuelan Mixed Claims Commission (H Ralston and W Doyle, *Venezuelan Arbitrations of 1903, etc* (1904) 720, 725) quoted in Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1987) 376.

[34] Ronald Dworkin takes a different view in *Law's Empire* (1986), but this is not widely shared.

[35] Dworkin, *Taking Rights Seriously*, 24–8.

[36] On the incommensurability of values, see generally: Isaiah Berlin, *Four Essays on Liberty* (1969) ch 3; Joseph Raz, *The Morality of Freedom* (1986) ch 13; Ruth Chang (ed.), *Incommensurability, Incomparability and Practical Reason* (1997); William Lucy, 'Adjudication' in Jules Coleman and Scott Shapiro (eds.), *The Oxford Handbook of Jurisprudence & Philosophy of Law* (2002) 206, 234–47.

[37] See Martti Koskenniemi, *General Principles: Reflexions on Constructivist Thinking in International Law* (1985) 135.

European Union law. This principle is reflected in certain rules of the Treaty of Rome such as Article 12, which prohibits discrimination on the basis of nationality, and Article 141, which requires equal pay for equal work by men and women. Based on this description, the difference between the underlying principle and the implementing rules seems fairly clear. However, is the notion in Anglo–American contract law that a binding contract requires consideration – that is, something of value flowing from the promisee to the promisor – better characterised as a principle or a rule? On one hand, it seems like a principle, in that it provides the context for more specific rules, such as the rule that past consideration (consideration that passed before the relevant promise was made) is inadequate. On the other hand, as it can be expressed not as a purpose but as a specific legal requirement, perhaps it could also be called a rule.

The distinction between principles and rules may be even harder to apply in international law. O'Connor states that a 'principle is a common denominator for a number of related rules and a principle functions through the application of rules singly or in combination to relevant situations'.[38] In national law, a given principle is often reflected in numerous detailed rules.[39] But the customary international law principle of non-intervention, for example, is not reflected in any more detailed rules. As will be discussed, the International Court of Justice (ICJ) has often looked for principles only when it cannot find rules to resolve a particular case.[40] However, the fact that the ICJ has used principles at all suggests that they may be useful in understanding or interpreting international law (including WTO law).[41] For instance, the ICJ may be seen as balancing several principles to find an equitable solution to a continental shelf delimitation problem.[42]

For the purpose of this book, I need not offer any new way of distinguishing between principles and rules in the abstract. Instead, in Chapter 2 I identify three broad types of principles that may be particularly useful in WTO disputes. These three types, at least, are capable of fairly precise definition and justification. In the following section,

[38] J. O'Connor, *Good Faith in International Law* (1991) 122.
[39] Koskenniemi, *General Principles*, 132.
[40] See, e.g., Fisheries *(United Kingdom* v. *Norway)* [1951] ICJ Rep 116.
[41] Principles 'do not normally entail rights and obligations; rather, they are to be considered in the interpretation of rules': Albrecht Randelzhofer, 'Article 2' in Bruno Simma (ed.), *The Charter of the United Nations: A Commentary* (2nd edn, 2002) vol. I, 63.
[42] Koskenniemi, *General Principles*, 135.

I put the distinction between different types of principles to one side and explain certain generic ways in which principles may be used in understanding legal systems such as the WTO.

1.2.2 Normative and descriptive aspects of principles

Two different theories about principles can help explain their relevance and potential use in dispute settlement. The first is a normative theory, under which principles are norms or standards used to judge or direct human conduct.[43] Principles are higher norms that influence the rest of the legal system, including other norms such as rules. Principles are distinguished 'from "ordinary" norms through some criteria, for example their general character, their binding nature or their position in a norm hierarchy'.[44] According to this theory, principles can justify rules, but rules cannot justify principles.[45] Seen in this light, principles 'guide State behaviour and . . . explain judicial decision-making'.[46] Under a normative theory, principles are determined through a process of deduction from a set of premises. The set of premises may be based on, for example, the nature of legal systems or natural law.

The second theory of principles is a descriptive theory, under which principles are simply inductive generalisations of rules (that is, inferences from particular to general). In other words, principles are descriptions of groups of rules. While principles in this sense may have useful systematic or didactic purposes and may help promote coherence, they do not possess any independent legal content.[47] Thus, Schwarzenberger maintains that principles are only 'abstractions and generalizations from legal rules or individual cases'.[48] For him, at least in the context of international law, 'rules . . . are the only legally binding norms'.[49]

These two theories are not necessarily mutually exclusive. In the chapters that follow, I identify certain principles using both theories. For example, in Chapter 7, I address the principle of special and differential treatment in WTO law, which is reflected both in the express

[43] Ted Honderich (ed.), *The Oxford Companion to Philosophy* (1995) 626.
[44] Koskenniemi, *General Principles*, 128.
[45] Stephen Perry, 'Two Models of Legal Principles' (1997) 82 *Iowa Law Review* 787, 787–8.
[46] Koskenniemi, *General Principles*, 128. See also David Walker, *The Oxford Companion to Law* (1980) 989–90.
[47] Koskenniemi, *General Principles*, 126.
[48] Georg Schwarzenberger, *The Inductive Approach to International Law* (1965) 50.
[49] Georg Schwarzenberger and E. D. Brown, *A Manual of International Law* (6th edn, 1976) 17.