TABLE OF CONTENTS

Introduction	1
I.1 The WTO and general international law	2
I.2 Scope of the research	7
I.3 Methodology and structure	13
Chapter 1. The identification of international custom and general principles of law	f
1.1 Introduction	17
1.2 Customary international law	20
1.2.1 The method of identification of international custom in the works of the ILC	24
1.2.2 Criticisms and shortcomings on the identification of CIL in	47
international adjudication	26
1.3 General principles of law	32
1.3.1 Classification, method of identification of GPL and the works)2
of the ILC	36
1.3.1.1 General principles of law from the domestic and the	70
international legal system	37
1.3.1.1.1 General principles of law derived from national legal	71
systems	39
1.3.1.1.2 General principles of law formed within the international	,,
legal systems	40
1.3.1.2 General principles of substantive law and general principles	
of procedural law	44
1.3.2 Criticisms and shortcomings in ascertaining GPL in	
international adjudication	45
1.3.2.1 General principles deriving from domestic law: the two-step	
methodology in the practice of international courts and tribunals	46
1.3.2.2 Controversies surrounding 'general principles of	
international law'	48
1.4 International custom and general principles of law: from the ICJ	
statute to WTO dispute settlement	51

VIII TABLE OF CONTENTS

Chapter 2. General principles	and customary lau	governing the law of treaties

2.1 Concepts of treaty law within and beyond the VCLT	57
2.2 Principles of treaty interpretation in WTO adjudication	59
2.3 The principle of good faith	62
2.4 The principle of non-retroactivity and Article 28 of the Vienna	
Convention	76
2.5 <i>In dubio mitius</i> : the exception that confirms the rule	80
2.6 Overview of WTO resort to general rules on the law of treaties	84
2.6.1 Methodology of resort to GPL and CIL on the law of treaties	86
2.6.2 Qualification of treaty law concepts as 'customary international	
law'	89
Chapter 3. General international law on state responsibility: contribution to	the
ARSIWA	
3.1 The law of state responsibility and the multilateral trading system	93
3.2 Attribution	97
3.2.1 Early panel and AB reports and the rules on attribution	99
3.2.2 The US — AD and CVD (China) reports and subsequent	
reference to general rules on attribution	101
3.2.3 Overview of resort to ARSIWA provisions on attribution	107
3.3 Impairment of benefits and assessment of damage: ARSIWA	
Article 14	108
3.4 Circumstances precluding wrongfulness	110
3.4.1 Circumstances precluding wrongfulness: fall-back or	
derogation?	110
3.4.2 Resort to circumstances precluding wrongfulness in WTO	
adjudication	112
3.5 Substantive and procedural limitations for countermeasures	118
3.5.1 Reference to general rules on countermeasures within	
suspension of concessions	121
3.5.2 Proportionality in attributing damage for the imposition of	
safeguards	125
3.6 The ARSIWA in WTO adjudication: patterns and contribution	132
3.6.1 The determination of customary international law in the	
ARSIWA	136

	TV
TABLE OF CONTENTS	IΧ

3.6.2 Instances of resort and contribution to the practice of the ARSIWA	138
Chapter 4. General principles of procedural law and WTO adjudication	
4.1 A 'common law of international adjudication'?	145
4.2 General principles of law and the limits of jurisidiction	147
4.2.1 Kompetenz-kompetenz	147
4.2.2 Res judicata	152
4.3 Evidence and burden of proof	155
4.4 The principle of due process	161
4.5 Procedural good faith and estoppel	167
4.5.1 Procedural good faith and DSU provisions	167
4.5.2 Specific (non-)application of procedural good faith: estoppel	169
4.6 Assessing general principles of procedural law in the WTO	175
4.6.1 The resort to procedural GPL in WTO adjudication	175
4.6.2 The contribution of WTO adjudication to general principles of	
law	180
4.6.2.1 WTO resort to procedural principles and the meta-law of	
domestic GPL	182
4.6.2.2 Procedural GPL: general principles of international law?	186
4.6.2.3 Procedural GPL: customary international law?	190
Chapter 5. General principles stemming from substantive international law	
5.1 General principles of substantive law	195
5.2 The precautionary principle	196
5.2.1 The authoritative AB statement in EC – Hormones	198
5.2.2 A general principle of international law? The EC – Biotech case	204
5.3 The principle of sustainable development	211
5.4 'Widely recognized principles of taxation'	216
5.5 A methodology for principles stemming from specific fields of	
international law	218
5.5.1 The methodology of general principles of international law in	
WTO adjudication	219
5.5.2 The precautionary principle and the AB hesitancy on customary	
international law	224

X TABLE OF CONTENTS

\sim 1 .			, ,
Chapter	6	Concl	211011211
Ciscipici	٠.	Conver	00300103

6.1 The WTO approach: 'not clinically isolated', yet 'self-contained'	227
(i) Parties do not submit a detailed methodology when invoking CIL	
or GPL	237
(ii) Adjudicators cannot engage due to jurisdictional limitations to the	
assessment and employment of CIL and GPL	239
(iii) Adjudicators refrain from engaging in the assessment of CIL and	
GPL	241
6.2 The WTO contribution to general international law	244
6.2.1 The content of customary international law: clarification and	
crystallization	245
6.2.2 The content of international procedural law: from general	
principles to international custom	247
6.2.3 The meta-law of general principles of law	250
6.3 On transparency and the way forward	254
BIBLIOGRAPHY	261