

Cambridge University Press 978-0-521-51682-2 - Optimal Protection of International Law: Navigating between European Absolutism and American Voluntarism Joost Pauwelyn Table of Contents More information

CONTENTS

	Table of cases [viii]
	Table of treaties [xiii]
	Table of international documents [xvi]
	Acknowledgments [xviii]
	Abbreviations [xix]
	Foreword [xxv]
	Introduction [1]
1	Overview and relevance of the analysis [5]
2	The two extremes of European absolutism and American voluntarism [16]
3	Allocation, protection and back-up enforcement of entitlements [26] 1 The basic model, its advantages and limitations [26] 2 Step 1: allocation of entitlements [30] 3 Step 2: protection of entitlements [32] 4 Step 3: back-up enforcement [36] 5 A framework for the protection of international law entitlements [38]
4	How should international law entitlements be protected? [45] 1 The argument for a default rule of property protection [46] (a) Contractual freedom and welfare maximization [47] (b) Property protection requires less intervention [49]



Cambridge University Press 978-0-521-51682-2 - Optimal Protection of International Law: Navigating between European Absolutism and American Voluntarism Joost Pauwelyn Table of Contents More information

CONTENTS

	2 When to protect entitlements as inalienable [50] (a) Significant externalities [51]
	(b) Moralisms and incommensurability [52]
	(c) Paternalism [54]
	3 When to protect entitlements under a liability rule [55]
	(a) Hold-out [56]
	(b) Free-load [59]
	(c) High transaction costs [62]
	4 Arguments for a lower level of protection in
	international law [66]
	(a) The need for flexibility to attract participation and
	prevent exit [67]
	(b) The consent rule as well as uncertainty may require
	incomplete contracting and flexibility [68]
	(c) Legitimacy concerns [72]
	5 Arguments for a higher level of protection in
	international law [75]
	(a) Absence of collective valuation [77]
	(b) The cost and possible errors of collective valuation [79]
	(c) International entitlements as unique goods [83]
	(d) Stability and the need to make credible commitments [85]
	(e) Inequalities between states [90]
	(f) States may not internalize costs or maximize welfare [93]
	(g) States are not unitary actors [98]
	6 A matrix to decide on how to protect international law
	entitlements [102]
	chiticinents [102]
5	How are international law entitlements currently
	protected? [107]
	1 International law is, in principle, not inalienable [108]
	2 International law is, by default, protected by a property
	rule, not a liability rule [111]
	3 An evaluation of inalienability in current international
	law [117]

(a) The need for a more objective analysis [117]

vi



Cambridge University Press
978-0-521-51682-2 - Optimal Protection of International Law: Navigating between
European Absolutism and American Voluntarism
Joost Pauwelyn
Table of Contents
More information

CONTENTS

- (b) Collective obligations through the lens of externalities, incommensurability and paternalism [122]
- 4 An evaluation of liability rules in current international law [128]
 - (a) Cross-border environmental damage [130]
 - (b) Liability rules in the GATT/WTO [134]
 - (c) Investor protection under NAFTA and BITs [145]
- 6 Back-up enforcement in international law [148]
 - 1 The puzzle of property protection backed-up by "mere" compensation and proportional countermeasures [150]
 - (a) Good reasons to limit countermeasures to 1:1 retaliation [157]
 - (b) How 1:1 retaliation can achieve property protection: the "kicker" of community costs [163]
 - (c) Community costs in a property regime as opposed to a liability regime [172]
 - (d) How 1:1 retaliation can achieve property protection: the hidden force of 1:1 retaliation itself [178]
 - 2 The puzzle of *jus cogens* and collective obligations benefiting from the weakest form of back-up enforcement [185]
 - (a) Default rules of back-up enforcement for community obligations [187]
 - (b) An assessment: be careful what you wish for [194]
- 7 Conclusion [198]

References [207]
Index [220]

vii