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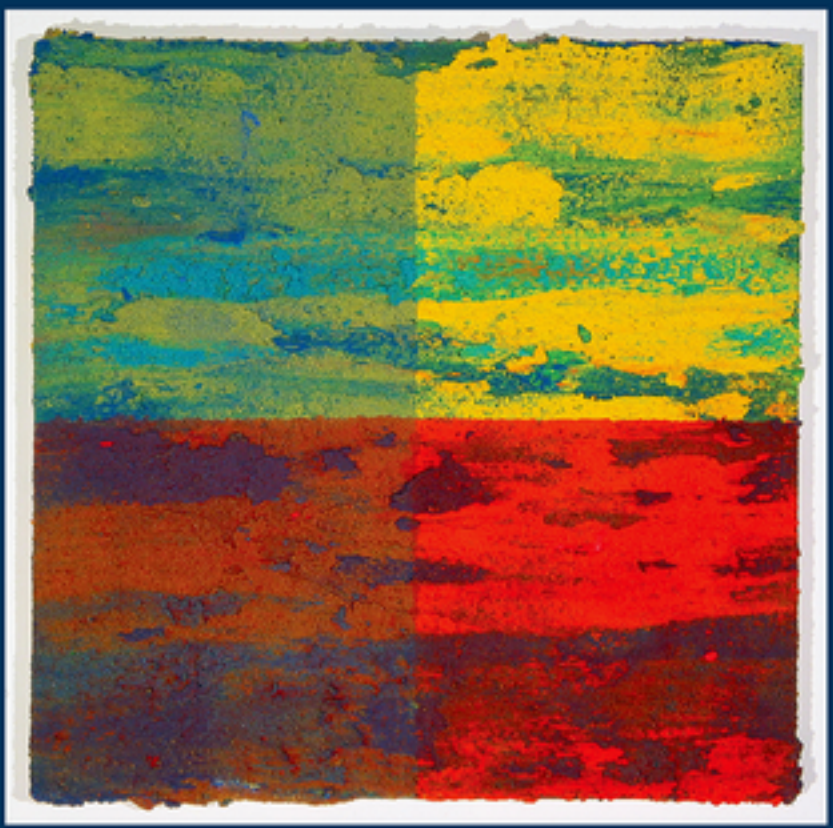

Edited by Lukasz Gruszczynski and Wouter Werner

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Standard of Review and Margin of Appreciation

Edited by
LUKASZ GRUSZCZYNSKI
and
WOUTER WERNER

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WTO Agreement *See* Marrakesh Agreement Establishing the World Trade Organization

List of Abbreviations

AC	Appeal Chamber
ACHR	American Convention on Human Rights
AJIL	American Journal of International Law
Anti-Dumping Agreement	Agreement on Implementation of Article VI of GATT 1994
BIT	bilateral investment treaty
BYIL	British Yearbook of International Law
CJEU	Court of Justice of the European Union
CLJ	Cambridge Law Journal
CMLR	Common Market Law Review
DARSIWA	Draft Articles on Responsibility of States for Internationally Wrongful Acts
DMA	doctrine of the margin of appreciation
DOJ	Department of Justice
DRC	Democratic Republic of Congo
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EHRR	European Human Rights Reports
EJIL	European Journal of International Law
ELJ	European Law Journal
ELR	European Law Review
ESCR	economic, social and cultural rights
EU	European Union
FCC	Federal Constitutional Court
FET	fair and equitable treatment
FRY	Federal Republic of Yugoslavia
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GLJ	German Law Journal
GM	genetically modified
GMO	genetically modified organism
GPA	Agreement of Government Procurement
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICJ	International Court of Justice
ICLQ	International & Comparative Law Quarterly
ICSID	International Centre for the Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the former Yugoslavia
IEL	international economic law
IAHRS	Inter-American Human Rights System
ITLOS	International Tribunal for the Law of the Sea
IUU	illegal, unregulated and unreported (fishing)
JIDS	Journal of International Disputes Settlement
JIEL	Journal of International Economic Law
JWT	Journal of World Trade
LOSC	Law of the Sea Convention
LGBT	lesbian, gay, bisexual, transsexual
MEA	multilateral environmental agreement
MERCOSUR	Mercado Común del Sur (Common Market of the South)
MOA	margin of appreciation
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OAS	Organization of American States
OJLS	Oxford Journal of Legal Studies
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
OUP	Oxford University Press
PCIJ	Permanent Court of International Justice
PTC	Pre-Trial Chamber
SC	Security Council
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT Agreement	Agreement on Technical Barriers to Trade
TEU	Treaty on European Union
TFCN	Treaty of Friendship, Commerce and Navigation
TFEU	Treaty on the Functioning of the European Union
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Charter	Charter of the United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNTS	United Nations Treaty Series
PMRA	Pest Management Regulatory Agency (Canada)
VCLT	Vienna Convention on the Law of Treaties
VMS	vessel monitoring system
WA	Warrant of Arrest
WTO	World Trade Organization
WTR	World Trade Review
YILC	Yearbook of the International Law Commission

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1

Introduction

Lukasz Gruszczynski and Wouter Werner

Rights and obligations of States are determined by rules of international law. Indirectly, however, they may be also controlled by specific legal methodologies used by international courts and tribunals when adjudicating matters involving States' measures and actions. Both the standard of review and/or margin of appreciation are examples of such methodological devices. International courts use them, implicitly or explicitly, as tools to determine the degree of deference that is granted to States in their implementation of international legal obligations. Although the issue may appear to be of a technical nature, in practice it can have far-reaching consequences, determining the extent of international obligations and, as a consequence, the outcomes of adjudications. Surprisingly, the applicable standard of review (or margin of appreciation) is almost never articulated in the provisions of relevant treaties (with the World Trade Organization (WTO) Anti-Dumping Agreement being a notable exception), and its determination by a court is seen as an expression of the Court's prerogative to define its own procedures.[1]

The concept of standard of review has its roots in common law tradition and it is employed in two different contexts. First, it is used by the courts in their examination of actions of other branches of government, eg as to the constitutionality of legislative acts (by US Congress), or of governmental agencies as to their compliance with delegated powers. Secondly, it also describes the extent of scrutiny applied by a higher court over a decision of a lower court. In all these instances the question is how much deference is (or should be) granted by the reviewing body to the decisions or other actions of other bodies (legislative, executive or judicial). In theory, standard of review may range from very intrusive to very deferential, with many intermediate variations in between. Depending on the level of intrusiveness one may distinguish various specific standards: such as *de novo*, substantial evidence, reasonableness, abuse of discretion, clearly erroneous. The *de novo* standard of review is the most intrusive, with

[1] Jean-Pierre Cot, 'Margin of Appreciation' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law*. Online version available at <http://opil.ouplaw.com/home/epil> (accessed 18 March 2014), para 12.

a court able to reassess and overturn any determination made by a body whose act is reviewed, while the 'clearly erroneous' standard is usually the least intrusive with a court upholding the decision or act under review unless it is clearly erroneous. Deferential standards of review are justified by various reasons, ranging from the epistemic superiority of the initial decision-maker (which is considered to be in a better position to make a particular decision or determination) through to considerations of democratic legitimacy and to the specific allocation (and balance) of powers between different branches of government in a particular constitutional setting.[2] Sometimes, a pragmatic argument is also made for reducing the workload for a reviewing body (a lower, ie more deferential, standard of review will discourage appeals/challenges), thus allowing it to concentrate on the most important cases.[3]

In the international context, standard of review can be defined as 'the nature and intensity of review by [an international] court or tribunal of decisions [or other actions that involve some form of prior determination] taken by governmental authority'.[4] Standard of review therefore determines the extent of discretionary powers enjoyed by national authorities in making certain decisions, and affects the allocation of power between national and international levels. Similarly, as in the case of domestic practice, it may concern factual determinations (eg deciding whether a national measure is supported by sufficient scientific evidence), legal determinations (eg as to the compliance of national legislative measures with international obligations), or mixed questions of fact and law (eg the correlation between the justification of the legal norm at stake and scientific expert opinions). At the same time, the concept of standard of review is not explicitly recognized by all international courts. While some of them address the issue directly (eg WTO panels and the Appellate Body and some international investment tribunals), others do so only implicitly by simply showing various degrees of deference to domestic authorities (eg the International Court of Justice (ICJ)). Nevertheless, as discussed in the specific contributions in this volume, the rationale that stands behind the self-restraint of international judicial organs, as well as the way it is used, is strikingly similar, irrespective of whether a particular body addresses the concept of standard of review or not in its analysis. The fact is that international courts, depending on the obligation in question and their institutional setting, afford various levels of deference to governmental authorities.

[2] As discussed by several authors in this volume, similar second-order reasons are used to justify deferential standards of review at the international level (cf eg Chapter 7 by Caroline Henckels, Chapter 6 by Michael Ioannidis, and Chapter 12 by Alexia Herwig and Asja Serdarevic).

[3] For more detailed discussion in the US context, see eg Kelly Kunsch, 'Standard of Review (State and Federal): A Primer', 18 *Seattle University Law Review* 11 (1994–1995); Thomas W. Merrill, 'Judicial Deference to Executive Precedent', 101 *Yale Law Journal* 969 (1992); Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking*, 4th edn (Chicago, IL: ABA Publishing, 2006).

[4] Jan Bohanes and Nicolas Lockhart, 'Standard of Review in WTO Law', in Daniel Bethlehem et al (eds), *The Oxford Handbook of International Trade Law* (Oxford: Oxford University Press, 2009), 379.

While the legal doctrine concerning standards of review arises from common law, the concept of margin of appreciation[5] is rooted in the European legal tradition. For example, French administrative law uses the concept *marge d'appreciation*, while German law recognizes a similar notion of administrative discretion (*Ermessensspielraum*).[6] At the international level, 'margin of appreciation' is normally associated with international human rights law,[7] but many commentators see it as a methodology (or doctrine) of general application which is used by different international courts.[8] What is generally agreed upon is that it was developed by the European Court of Human Rights (ECtHR) in the context of the European Convention on Human Rights (ECHR)[9] and later used by other international human rights judicial bodies, such as the Inter-American Court of Human Rights (IACtHR).[10] Although the concept can be traced back to the activities of the European Commission of Human Rights in the 1950s (eg *Greece v UK* (1958)), the fundamental case in this regard is *Handyside v UK* (1976), where the ECtHR held that:

> [b]y reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements [rights provided by the Convention] as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them.[11]

The margin of appreciation concept is based on the recognition that the international obligations contained in the ECHR can be legitimately complied with in different ways. One may therefore define it 'as the breadth of deference that the Court is willing to grant to the decisions of national legislative, executive, and judicial decision-makers'[12] or the 'room for manoeuvre the Strasburg institutions are prepared to accord national authorities in fulfilling their obligations'.[13]

[5] For more detailed discussion on margin of appreciation, see Chapter 13 by Mónika Ambrus (Section I), Chapter 8 by Erlend Leonhardsen (Section III), and Chapter 16 by Bernard Duhaime (Section IV).

[6] Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR* (Oxford: Intersentia, 2002) 2–3.

[7] For criticism of margin of appreciation as applied in the human right context see eg Eyal Benvenisti, 'Margin of Appreciation, Consensus and Universal Standards', 31 *International Law and Politics* 843 (1999).

[8] Arai-Takahashi, *The Margin of Appreciation Doctrine*, 4; Yuval Shany, 'Toward a General Margin of Appreciation Doctrine in International Law?', 16(5) *EJIL* 907 (2006).

[9] For details of the historic developments, see Dean Spielmann, 'Allowing the Right Margin: The European Court of Human Rights and the National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?', 14 *Cambridge Yearbook of European Legal Studies* 381 (2011–2012).

[10] See the discussion in Chapter 16 by Bernard Duhaime (Section IV). But note that the concept of margin of appreciation was explicitly rejected by the United Nations Human Rights Committee (Communication No. 511/1992, *Ilmari Lansman et al v Finland*, Communication No. 511/1992, UN Doc. CCPR/C/57/1 (1996).

[11] *Handyside v the United Kingdom* (app. no. 5493/72), ECtHR 1976, para 48.

[12] William W. Burke-White and Andreas von Staden, 'Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations', 35 *Yale Journal of International Law* 283 (2010).

[13] Steven Greer, *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights* (Strasbourg: Council of Europe Publishing, 2000), 5.

Of course, the above does not mean that deference granted to States under margin of appreciation is unlimited. To the contrary, the Court is consistent in holding that its role as a supervisory organ requires assessing whether a State acted within the boundaries of its authority protected by the margin of appreciation. The scope of deference granted by the Court is also very context-specific and varies according to the circumstances of a case and the specific ECHR provision(s) under consideration. In some cases, Member States are given only a narrow margin of appreciation (eg with respect to rights provided in Arts 2–3 ECHR), while in others a wide margin of appreciation is granted (eg with respect to national security justifications or the protection of public morals). Margin of appreciation, similarly to standard of review, may relate to factual determinations, legal determinations, or mixed questions of fact and law (eg whether a public emergency exists and whether the measures taken are strictly necessary as provided by Article 15 ECHR).[14]

The two concepts may therefore be regarded as referring to the same thing, although in reverse fashion (ie a wide margin of appreciation equals a low standard of review, and vice versa). The way they are applied determines the degree of deference granted by international courts to States' actions, with the margin of appreciation explicitly acknowledging the existence of such deference, while standard of review is, on its face, a procedural tool that in and of itself does not mandate any specific level of deference. Both of them however operate (or may operate) as a tool for either judicial self-restraint or judicial 'activism'. As a consequence, margin of appreciation can be understood as a methodological approach employed by a court that is simply one of the forms (albeit with its own particularities) of a standard of review.[15]

The deference that is shown by international courts and tribunals through application of a deferential standard of review or wide margin of appreciation is explained by various reasons. Some authors argue that deference reflects, or should reflect, the respect of international courts for national sovereignty and self-determination, and may be connected with the *dubio mitius* principle,[16] which requires international courts to choose, from among several admissible interpretations, the one that involves the minimum of obligations for the parties to the dispute. This also corresponds with the recognition that normative requirements in international treaties can usually be met by a range of measures that are within the legal parameters of international obligations. Others argue that

[14] Arai-Takahashi, *The Margin of Appreciation Doctrine*, 2 (note however that some second-order reasons differ between margin of appreciation and deferential standard of review, see eg the discussion by Erlend Leonhardsen in Chapter 8).

[15] Cot, 'Margin of Appreciation', paras 2 and 11. A similar stance is also taken by Shany, 'Toward a General Margin of Appreciation'; Burke-White and von Staden, 'Private Litigation', 304–11. Others however see it as a unique approach (doctrine) taken by courts in the field of international human rights law (eg Andrew Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (Oxford: Oxford University Press, 2012) 2). See also Chapter 17 by Chiara Ragni in this volume (Section V).

[16] Steven P. Croley and John H. Jackson, 'WTO Dispute Procedures, Standard of Review and Deference to National Governments', 90 *AJIL* 193 (1996).

national governments are better placed to make complex factual determinations and political choices than international tribunals (because of the superior democratic legitimacy enjoyed by domestic decision-makers, or resulting from their greater expertise in ascertaining complex factual and political situations). In the context of margin of appreciation a respect for plurality among Member States is also frequently referred to (ie lack of common practice among Member States, which would indicate a lack of universal consensus on a specific matter).[17]

Standard of review also needs to be distinguished from the burden of proof and standard of proof. The first is a procedural rule indicating which party to a dispute bears the burden of persuasion with regard to establishing (disputed) facts and/or mixed questions of fact and law. On the other hand, the standard of proof can be defined as 'the threshold of probability that must be exceeded in the adjudicator's evaluation of the evidence in order for the adjudicator to reach judgments about the existence of historical facts and to apply legal concepts to historical facts to reach legal conclusions.'[18] The most common standard of proof in international adjudication is 'preponderance of the evidence' (ie a determination that 'the evidence adduced by one party weights heavier, on the basis of reasonable probability, than the evidence produced by the other side'), with occasional reliance on proof beyond a reasonable doubt.[19] Although the both concepts are analytically distinct, in practice they cannot be completely separated from each other. While the standard of review defines the extent to which an appellate or supervisory court can interfere in particular matters, the rules regarding the burden and particularly the standard of proof are inherently applicable in determining which matters fall within or outside the scope of the Court's sphere of review.[20]

This brings us to the core of this book. The initial idea of having a collection of articles on deference in different international settings was conceived in the course of the research undertaken within the COST Action IS1003 'International Law between Constitutionalisation and Fragmentation: The Role of Law in the Post-national Constellation'. The call for papers for a kick-off conference organized at the end of 2012 attracted many interesting proposals and eventually brought a diverse group of international law scholars to the University of Seville. Despite all the existing differences, the discussion also showed that various international courts, when it comes to the issue of deference, are confronted with the same problems and use similar methods to deal with them. This was a promising

[17] Legg, *The Margin of Appreciation*, 27–31.

[18] John J. Barcelo III, 'Burden of Proof, Prima Facie Case and Presumption in WTO Dispute Settlement', 42(1) *Cornell International Law Journal* 23 (2009) at 30; see also Katherin Del Mar, 'The International Court of Justice and Standards of Proof', in Karine Bannelier, Theodore Chistakis and Sarah Heathcote (eds), *The ICJ and the Development of International Law. The Lasting Impact of the Corfu Channel Case* (New York: Routledge, 2011).

[19] Rüdiger Wolfrum, 'International Courts and Tribunals, Evidence', in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law*. Online version available at <http://opil.ouplaw.com/home/epil> (accessed 18 March 2014), paras 75–7.

[20] For a more extensive discussion on the relationship between standard of review and standard of proof, see Chapter 13 by Mónika Ambrus and Chapter 14 by Uladzislau Belavusau, both in this volume.

sign for a collective edition that would discuss two specific mechanisms that are used in this context—standard of review and margin of appreciation. We also noted that while the literature on standard of review used in national courts (particularly with respect to the USA and some European countries) was considerable, there were only a few books that analysed this problem in the context of international courts and tribunals.[21] At the same time, there was a growing interest in the scientific community on the topic, although most authors concentrated on the activities of a specific international court, thus providing only a fragmentary picture of current trends in international law. The follow-up meeting in 2013 at the Lund University confirmed that this initial idea could be turned into reality. Most of the participants saw the scientific potential of the topic and expressed their interest in participation in the editorial project. This group was subsequently supplemented with some additional authors that could cover the practice of other international courts and tribunals. And after more than a year of intense work, the book has been finally born.

The aim of this collection is therefore to look at two concepts that are conventionally used by international courts and tribunals in order to grant deference to national governments. The discussion is organized around two issues put forward by the editors: (i) relevance of the concept of standard of review/margin of appreciation in the jurisprudence of specific courts and the mode of its application; and (ii) extent of (ie more intrusive or less intrusive) scrutiny and reasons for deference granted by a specific international court to a respondent State. These issues are also used as guides to integrate different contributions into a study, and provide readers with a basis for making both theoretical and practical comparisons between the practices as developed and applied in different international legal regimes. In addition, all the comparative chapters also analyse existing convergences and divergences in the practice of different courts and tribunals and attempt to identify their underlying reasons.

The selection of the specific courts and tribunals discussed here, as well as the space dedicated to them, was based on two factors. First, it reflects the actual or potential prominence of applicable standards of review/margin of appreciation within a specific adjudication system. While the issue is frequently addressed by both adjudicators and scholars in the context of WTO and EU law, it has only started to be recognized by international investment tribunals, and in the case of the ICJ, ITLOS (International Tribunal for the Law of the Sea) and the International Criminal Court (ICC), it still remains underappreciated. Secondly, it reflects the specific interests of contributing authors, who in principle remained free to choose, within designated limits, both their research question and method of analysis. As editors, we also preferred contributions that transcend the

[21] In the 'older' literature this includes the monographs by Arai-Takahashi, *The Margin of Appreciation Doctrine and Matthias Oesch, Standards of Review in WTO Dispute Resolution* (Oxford: Oxford University Press, 2004); more recently, Ross Becroft, *The Standard of Review in WTO Dispute Settlement, Critique and Development* (Cheltenham: Edward Elgar Publishing, 2012), and Legg, *The Margin of Appreciation*.

traditional analysis used in the context of standards of review/margin of appreciation (especially in those fields where substantial scholarship already exists). This is the case, for example, for the chapters by Ambrus and Belavusau, both of which look at standard of review (margin of appreciation) through the lens, respectively, of standard of proof and expert participation. As a consequence, while the scope of the book is comprehensive, it does not pretend to exhaust all relevant topics. The volume should be seen as a collection of essays on the topic of deference in international law (as expressed in two mechanisms: margin of appreciation and standard of review) rather than as a companion or a handbook.

This also means that the book is characterized by a plurality of approaches taken by the contributing authors. Granting such a freedom was our deliberate decision, as we believe that some variety in approaches helps to highlight the complexities involved in any discussion on deference and gives the reader different perspectives on the topic. However, while we have supported diversity in approaches, we have also been aware that the reader must be oriented to the interconnections between the various approaches. Consequently, all authors were instructed to disclose their basic assumptions and define the concepts that are central for their arguments.

The volume is divided into five parts. Part I includes four contributions and looks at the concepts of standard of review from a more general or theoretical perspective and explores the 'external limits' of judicial review, such as principles of democracy, good faith, and public policy. All chapters in this section take a comparative approach, examining the practices of different international tribunals. Part I begins with Chapter 2 (immediately after this introduction), in which Ernst-Ulrich Petersmann analyses the inherent powers of international courts, as recognized in the customary law requirements of interpreting international treaties and settling related disputes in conformity with the principles of justice and international law. He argues that multilevel trade and investment adjudication lacks a coherent 'constitutional justification' and often neglects the 'cosmopolitan functions' of modern economic law and adjudication. In this context, he proposes a more coherent 'judicial methodology' in multilevel economic adjudication in order to protect human rights, principles of justice, 'judicial comity' and the transnational rule of law for the benefit of citizens, thus setting the limits for both the scope of judicial review and the deference that is awarded to States by international tribunals. According to him, by acknowledging the 'dual nature' of modern legal systems and protecting the 'object and purpose' of economic rules, not only in terms of rights of governments but also of citizens and other economic actors, economic adjudication can become more legitimate and more coherent.

In Chapter 3 Ilona Cheyne examines whether a State has the power to choose its own public policy, a step which logically precedes any evaluation of the measure used to implement that policy and the corresponding problem of the character and intensity of the review applied in this context. She notes that the choice of applicable standard of review is normally shaped by the substantive content of defined legal obligations, but in the case of public policy such content remains open-ended, and there are only few obvious legal markers to offer guidance. Cheyne identifies different methodological approaches taken by EU courts, WTO dispute settlement

bodies and investment tribunals when dealing with public policy exceptions, each of them providing a different level of deference. Deference appears most restricted in the case of the EU and more liberal in the WTO, and there is significant variation in the practice of arbitral tribunals. Substantive and threshold controls act as filters in the EU, and to a lesser extent in the WTO. Investment treaties, on the other hand, apparently pose a much higher barrier to unilateral public policy acts by making public policy a criterion of lawful expropriation rather than a defence against compensatory liability. On the other hand, according to Cheyne, evidential and procedural controls are a common form of test, certainly at the basic level of reviewing a public policy measure on the grounds of good faith. She concludes that overall there appears to be significant convergence of practices in reviewing measures justified as public policy.

Chapter 4, authored by Benedikt Pirker, proposes Ely's procedural democracy doctrine as a possible approach to justifying and evaluating the legitimacy of different standards of review used by international courts and tribunals in cases of value conflicts. The procedural democracy doctrine inquires into whether specific values, such as constitutional rights, are under-represented in a democratic political system, and the extent to which this under-representation requires virtual representation of these values by means of judicial review. Based on this theorem, backed up by some insights into the doctrine of procedural democracy in United States constitutional law, the chapter examines the practical potential of international adjudicators such as the Court of Justice of the European Union (CJEU), the WTO Appellate Body, and international investment tribunals to apply the procedural democracy doctrine. It identifies two variables that can help determine the intensity of the review: values that are central to the system of democratic process in which adjudicating bodies participate as institutions; and the nature of the violation of such values.

Andrei Mamolea in Chapter 5 examines the relevance of good faith review in establishing a breach of international obligations. Mamolea argues that in practice international courts and tribunals frequently engage in good faith reviews, even where the applicable legal rule does not include a 'psychological' element. Open-textured standards permit the consideration of a State's intent as an aggravating factor and there are three ways that a State's intent can be found improper. In particular, an improper intent may be discriminatory, it may fall outside the permissible intents described in the 'clawback clause' of a treaty, or it may be described broadly as arbitrary and unreasonable. Mamolea also notes that, unlike with some other questions of fact, international courts and tribunals actually grant no deference to a State's *post hoc* characterizations of its own intent. Instead, a State benefits from a historic presumption against bad faith that manifests itself as a high standard of proof for the claimant. Mamolea concludes by stating that apart from this presumption, there are no brakes on the intrusiveness of an international court or tribunal regarding subjective facts.

Part II concentrates on the problem of the applicable standards of review in the practice of WTO dispute settlement bodies, North American Free Trade