Law and Politics in the WTO — Strategies to Cope with a Deficient Relationship

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J.A. Frowein and R. Wolfrum (eds.),
I. Introduction

In modern societies law and politics are different and separate, and yet closely interlinked.¹ One of the great achievements of modern political and legal thought has been the conceptualization of their relationship and the development of stable forms of separation and interaction as essentials for the operation of contemporary societies. The dominant approach theorizes this relationship in the separation of powers doctrine: centralized parliamentary legislation, executive enforcement and judicial review. These three powers are often considered as the institutional basis of a fully fledged legal system.² If international law has been considered as an inferior form of law, it is because it historically lacks such types of institutions and procedures.³

Since World War II, a number of international legal regimes have developed which institutionalize some kind of centralized legislation (rule-making)⁴ or execution or adjudication in an attempt to enhance

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⁴ H. Schermers/ N. Blokker, International Institutional Law, 3rd edition, 1995, paras 389 et seq.; throughout this text, legislation means rule-making. This equation might appear questionable since contemporary political and legal thought often reserves the term legislation for parliamentary rule-making. However, given the function of many WTO provisions to provide for general rules, this equation is defensible. On the transnational level, the terms legislation and legislator are generally applied to any rule-making.