

Principles of International Economic Law

MATTHIAS HERDEGEN

OXFORD
UNIVERSITY PRESS

Table of Contents

<i>List of Abbreviations</i>	xv
<i>Table of International Cases</i>	xxi
<i>Table of International Treaties and Conventions</i>	xxxiii
<i>Table of National Legislation</i>	xxxix

PART I. CONTENTS, HISTORY, AND STRUCTURE OF INTERNATIONAL ECONOMIC LAW

I. The Law of International Economic Relations: Contents and Structure	3
1. Understanding and Contents of International Economic Law	3
2. The Interaction between International and Domestic Law	5
3. The Interaction of Different National Laws	7
4. Main Areas of International Economic Law	7
5. The Relationship between International Economic Law and Economic Rationality	11
II. Past and Present of the International Economic Order	13
1. The Historical Foundations of International Economic Law	13
2. The Concerns of Developing Countries and the Call for a 'New Economic Order'	16
3. The System of the World Trade Organization	18
4. The Regional Integration of Markets	19
5. Globalization of Economic Relations: Chances, Risks, and Asymmetries	19
III. The Actors of International Economic Law	25
1. Subjects of International Law vs Actors in International Economic Relations	25
2. States	26
3. State Enterprises	26
4. International Organizations	28
5. Non-institutionalized Forums of Cooperation in Economic Relations	33
6. International Inter-Agency Cooperation	35
7. Non-governmental Organizations	37
8. Private Corporations and Codes of Conduct for Transnational Corporations	38

IV. The Legal Sources of International Economic Law	42
1. International Law as an Order of Transboundary Economic Relations	42
2. The Law of the European Union	46
3. International Agreements on Private Economic Transactions	47
4. 'Transnational Law' and ' <i>lex mercatoria</i> '	48
 PART II. INTERNATIONAL ECONOMIC LAW AS AN ORDER OF RULES AND PRINCIPLES 	
V. Basic Principles of the International Economic Order	53
1. States' Autonomy in Economic Choices	53
2. Trade Liberalization: Reduction of Tariffs and Elimination of Non-Tariff Barriers	54
3. Fair Treatment of Foreign Investors	54
4. Non-discrimination	55
5. Favourable Conditions for Developing Countries	57
6. Sustainable Development	62
7. Respect for Human Rights	63
VI. Sovereignty and International Economic Relations	65
1. A Modern Concept of Sovereignty: Response to Globalization and Deference to Democratic Choices	65
2. The Principle of Non-Intervention	68
3. State Immunity	69
4. The Treatment of Foreign Persons	72
5. Diplomatic Protection	74
6. National Economic Law and its Extraterritorial Application	77
7. Criteria for Exercising Jurisdiction: Legitimizing Links	86
8. The Extraterritorial Application of National Law	88
VII. Human Rights and International Economic Relations	101
1. The Exploitation of Natural Resources	102
2. Treaties on Economic Cooperation and Economic Integration	107
3. The Impact and Liability of Transnational Corporations (TNC)	108
VIII. Environmental Protection and Sustainable Development	118
1. Transboundary Impacts and Transboundary Harm	119
2. Sustainable Development	121
3. The Precautionary Principle	122
4. Treaties on Pollution Control and on the Liability for Environmental Contaminations	124
5. Treaties on the Protection of the Atmosphere and for Climate Protection	126
6. Treaties on Biodiversity, Access to Genetic Resources, and Biosafety	129
7. The Law of Biotechnology	136

IX. Good Governance—The Internal Structure of States and Global Economic Integration	139
1. Standards of Good Governance	140
2. Global Economic Integration: The Relevance of the Constitutional and Economic Order	144
X. Dispute Settlement	147
1. Mechanisms of International Dispute Settlement	147
2. International Commercial Arbitration	151
3. Jurisdiction of National Courts	156
4. Obtaining Evidence Abroad	164
5. Service of Process, Recognition, and Enforcement of Foreign Judgments	166
 PART III. WORLD TRADE LAW AND REGIONAL TRADE AGREEMENTS 	
XI. History and Development of World Trade Law	171
1. Development up to the Uruguay Round	171
2. The Uruguay Round	173
3. Post-Uruguay Perspectives and Challenges for the WTO System	175
XII. The World Trade Organization	178
1. The WTO as Institutional Platform for Trade Relations	178
2. Members	178
3. Organs of the WTO	180
XIII. The Multilateral and the Plurilateral Agreements on Trade	184
1. Multilateral and Plurilateral Trade Agreements: Concentric Circles	184
2. The GATT 1994 and Related Trade Agreements	185
XIV. The GATT	188
1. Objectives and Basic Principles	188
2. Most-Favoured-Nation Treatment	189
3. National Treatment	195
4. General Exceptions (Article XX of the GATT) and Security Exceptions (Article XXI of the GATT)	203
5. Safeguard Measures (Article XIX of the GATT)	212
6. Waivers	213
7. Burden of Proof	213

XV. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)	215
XVI. The Agreement on Technical Barriers to Trade	223
XVII. The General Agreement on Trade in Services (GATS)	225
1. Scope and Relevance	225
2. Telecommunication Services	228
3. WTO Law and Financial Services	230
XVIII. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)	232
1. General Aspects	232
2. Patent Rights	233
3. The Protection of Intellectual Property Rights in Broader International Context	241
XIX. Subsidies and Anti-dumping Measures	245
1. Subsidies and Countervailing Measures (SCM Agreement)	245
2. The Agreement on Agriculture	252
3. Dumping and Anti-Dumping Measures	254
XX. Dispute Settlement in the WTO	256
XXI. WTO Law in Broader Perspective: The Interplay with Other Regimes of International Law	264
XXII. WTO Law in Domestic Law	269
XXIII. The Regional Integration of Markets	274
1. Forms of Regional Market Integration (Free Trade Areas, Customs Unions, and Economic Communities)	274
2. The Free Movement of Goods and Services in the European Union	277
3. EFTA and the European Economic Area	281
4. The North American Free Trade Agreement (NAFTA)	284
5. Regional Integration in South America	286
6. Regional Integration in Central America and the Caribbean	290
7. Regional Integration in Asia and the Pacific	291
8. Regional Integration in Africa	292
9. Bilateral Trade Agreements of the European Union and of the United States	293

PART IV. INTERNATIONAL BUSINESS LAW

XXIV. International Sales and Contract Law	299
1. Introduction	299
2. The Rome Convention, the Rome I Regulation, and the Common European Law on Sales	302
3. UN Convention on Contracts for the International Sale of Goods (CISG)	304
4. Electronic Commerce	316
XXV. Letters of Credit	318
1. Documentary Credit	318
2. Standby Letters of Credit	321
XXVI. International Building and Construction Contracts	323
1. FIDIC Manuals	323
2. Long-term Contracts (BOT, BOO, BOOT, BLOT, BOTT)	324
XXVII. International Company, Competition, and Tax Law	326
1. Relevance	326
2. The Proper Law of a Corporation	326
3. Recognition of Foreign Corporations and Deference to 'Home' Regulation	328
4. EU Company Law: the <i>Societas Europaea</i>	330
5. Corporate Governance	332
XXVIII. International Accounting Standards	334
XXIX. International Competition Law	336
1. National and International Rules against Anti-Competitive Behaviour	336
2. The Application of Competition Law and Extraterritorial Effects	338
3. Bilateral Cooperation	340
4. Convergences and Divergences between EU Competition Law and US Antitrust Law	342
XXX. International Tax Law	346

PART V. THE INTERNATIONAL LAW OF FOREIGN INVESTMENT

XXXI. Foreign Investment in Practice	353
1. Economic and Political Relevance	353
2. Direct and Indirect Investment	354
3. Investors	355
4. The Control of Foreign Investment	357

XXXII. Customary International Law	359
1. Customary Standards and Foreign Investment	359
2. Expropriation and Compensation	360
3. The Extraterritorial Effects of Expropriations	368
XXXIII. Concessions and Investment: Agreements between States and Foreign Companies	375
1. Stabilization and Internationalization	375
2. Concessions	378
XXXIV. Treaties on Investment Protection	380
1. Bilateral and Multilateral Agreements on the Protection of Investments	380
2. Personal Scope of Protection	384
3. Protected 'Investments'	388
4. Modern Standards of Investment Protection	391
5. Dispute Settlement	411
XXXV. The International Centre for Settlement of Investment Disputes	416
XXXVI. Multilateral Investment Guarantee Agency	420
XXXVII. The Interplay of Investment Protection and Other Areas of International Law	422
 PART VI. INTERNATIONAL MONETARY LAW AND THE INTERNATIONAL FINANCIAL ARCHITECTURE 	
XXXVIII. International Monetary Law and International Economic Relations	427
1. The Impact of Monetary Relations on International Trade and Business	427
2. The Bretton Woods System and the Development of Currency Exchange Arrangements	428
3. Currency Exchange Regimes	430
4. Monetary Unions	431
5. 'Eurodollars' and other Eurocurrencies	435
XXXIX. The International Monetary Fund: Objectives, Organization, and Functions	437
1. Objectives	437
2. Membership	438

3. Organization	439
4. Financing of the IMF	439
5. IMF Members' General Obligations and the Surveillance of Exchange Rate Policies: Stability and Fair Competitive Conditions	440
6. Convertibility of Currencies and Restriction of Exchange Controls	444
7. Exchange Control Regulations and their Extraterritorial Effect	446
8. Special Drawing Rights	449
9. Use of the Fund's Financial Resources for Members in Economic Difficulties	450
XL. The World Bank and Other International Financial Institutions	455
1. The World Bank Group	455
2. Regional Development Banks	460
3. The Bank for International Settlements	461
XLI. Debt Crises and State Insolvency	463
1. The International Management of Debt Crises	463
2. For Restructuring Sovereign Debt: The 'Paris Club' and the 'London Club'	465
3. State Insolvency and International Law	465
XLII. International Regulation of the Banking Sector	477
1. The Need for Enhanced Cooperation of Supervisory Authorities and for Harmonized Standards	477
2. Supervisory Authorities and Macro-Prudential Oversight of the Financial System	478
3. Global Regulatory Standards for Adequate Bank Capital and Risk Management: the Basel Accords	480
<i>Index</i>	483