
Book Reviews

Andreas F. Lowenfeld, *International Economic Law*. Oxford: Oxford University Press, 2002. Pp. xlv. 776, £80 hardback, £30 paperback (2003).

Mitsuo Matsushita, Thomas J. Schoenbaum and Petros Mavroidis, *The World Trade Organization*. Oxford: Oxford University Press, 2003. Pp. civ. 666. £110 hardback.

There are academic books which become classics in their field shortly after publication. The two books to be reviewed here are such examples. They are already frequently cited and widely held to be authoritative. This prompts the question of what makes a classic in International Economic Law. There is certainly no dearth of literature on the subject. On a worldwide scale, academics, particularly those with an international law background, have identified this area as one with enormous development potential, as a subject where 'real life interests' are perhaps more perceptible than in other branches of international law. International Economic Law also seems to have the potential to act as a set of norms which, in a certain sense, unify large parts of this field of knowledge whose various ramifications seem to drift ever further apart. The new buzzword in international law is 'fragmentation'¹ and reference to International Economic Law, or, respectively, WTO law, lends authority to this concept. The

immediate result of this trend is a burgeoning literature on International Economic Law issues,² among which valuable and less valuable articles and monographs can be discerned. So, what are the elements which distinguish these two volumes and which require that they be listed among the most prestigious contributions to the field in recent years?

Firstly, these two books were written by experts, all of whom can draw on many years of experience in this field, both as academics and practitioners. The authors' lengthy lists of publications give ample proof of their profound knowledge of the fundamental traits characterizing this area. Both of these books may therefore be viewed as a general stock-taking in the course of a longstanding and ongoing process of analysis.

Secondly, the two volumes constitute a healthy antidote to certain deplorable tendencies in the literature, namely the artificial transposition of dogmatic concepts from other branches of law (in Continental Europe especially from national-level Public Law) to International Economic Law, thereby obfuscating our vision of the very bases of this field of law. The authors do not enter into futile generic discussions, but rather assume a very pragmatic attitude. This is very much in the tradition of John H. Jackson, whose seminal contributions to the literature have fundamentally influenced the definition of what today has come to be included under the

¹ As is well known, the ILC has set up a study group on the 'Risks of the Fragmentation of International Law', taking as a basis for their work a feasibility paper prepared by Gerhard Hafner, 'Risks Ensuing from Fragmentation of International Law', UN Doc. ILC(LII)/WG/LT/L.1/Add.1, at 24 (2000), included as Annex to UN Doc. A/55/10 (2000).

² To obtain an empirical basis for this statement, it suffices to look at the very thorough bibliography 'Public International Law', edited by the Max Planck Institute for Public International and Public Comparative Law in Heidelberg, where it can easily be seen how much is published in this field (see, in particular, para. 20 of this bibliography, 'World Economic Order and Social Order').

umbrella term of International Economic Law.³ This does not mean that these contributions lack a theory of International Economic Law; quite the contrary. It is, however, developed in an inductive manner. The authors directly examine the single elements constituting WTO law or, in the broader approach taken by Lowenfeld, International Economic Law, and interpret the relevant provisions. As a result, an image of what constitutes the system as a whole appears. In this, quite significant differences between the two books can be noted. For Matsushita, Schoenbaum and Mavroidis, the law of the WTO constitutes an autonomous, though of course not completely independent system of law. Lowenfeld, on the contrary, treats WTO law as one element of a greater whole, where the single building blocks are interwoven in a clear design. Arguments can be made for both of these approaches, and the debate on whether WTO law should be treated as an autonomous branch of law or as an integral part of International Economic Law is still open in the literature. In the event that the broader approach is adopted, the next question would be what are the outer borders of this discipline. The answer given to this question by Professor Lowenfeld — again not in a dogmatic way but simply through the structure of his book — seems to reflect a wide consensus in the literature. The main chapters of his books comprise a broad outline of the WTO system, international investment, a detailed analysis of the international monetary system and an examination of the role and the limits of economic sanctions. There is no treatment of the so-called private-law aspects of international economic transactions, regulated, for example, by the United Nations Convention on Contracts for the International Sale of Goods. In this manner, an old dispute between advocates of a larger approach and proponents of a more restricted approach seems to

have been decided in favour of the former. To be sure, there have been valuable attempts even recently to develop a comprehensive design of both Public and Private International Economic Law.⁴ The impression of this reviewer is, however, that the more restricted approach has become prevalent. As a consequence, Georg Schwarzenberger could be qualified as a prescient observer when — in 1966! — he wrote: 'International Economic Law is concerned only with such aspects of economic phenomena as come within the purview of Public International Law. The reasons for this delimitation are not metaphysical. They are, partly, doctrinal and, partly, pragmatic.'⁵

With regard to the doctrinal aspects, he asserted that proposals for the delimitation of a separate 'International Business Law', a 'Law of International Transactions', a 'Commercial Law of Nations', an 'International Economic Development Law' or an 'International Economic Law', which were to include any relevant aspects of municipal law, suffered from the common drawback that they did not display a minimum of functional unity to justify an autonomous status. From a pragmatic viewpoint, according to Schwarzenberger, most of the private law aspects of international economic transactions were reasonably well covered by existing branches of law.⁶

The arguments invoked by Professor Schwarzenberger may today no longer fit well into a system of international economic relations which has in recent decades undergone radical transformations. On the other hand, the international community has expanded the field of application of Public International Economic Law in such a dynamic way that it now regulates not only typically public matters but, in line with its

³ See, in this regard, Kennedy, 'The International Style in Postwar Law and Policy: John Jackson and the Field of International Economic Law', 10 *American Journal of International Law & Policy*, at 671 *et seq.*

⁴ See the leading German manual on International Economic Law written by Matthias Herdegen, *Internationales Wirtschaftsrecht* (4th ed., 2003).

⁵ See Schwarzenberger, 'The Principles and Standards of International Economic Law', 117 *RdC* (1966, I) 1, at 7.

⁶ *Ibid.*, at 7.

increased role in general international relations, it has also given some space to private actors. International Economic Law has also become much more detailed and if we look, for example, at the TRIPs Agreement we find provisions that in the past were considered to be part of International Commercial Law.

Notwithstanding these developments, it has never been contested that the most important basis for this branch of law is to be found in Public International Law. At the same time, the developments in the areas forming part of Private International Economic Law have been at least as dynamic. In the same way that public international law scholars seem to have the upper hand in the study of international economic law, it is fair to say that privatists exercise a sort of domination of private international economic law. At the end, the main reason why Private International Economic Law and Public International Economic Law remained separate was one of division of labour. The sheer bulk of information and notions as well as the different methodological approaches pointed towards upholding this division and the much coveted label 'International Economic Law' seems to have been attributed in a factual way to the publicist segment.

It can, therefore, be said that the discipline of International Economic Law, while still keeping its main roots in Public International Law, is increasingly emancipating itself.⁷ The

⁷ Critical in this regard was the late Professor Ignaz Seidl-Hohenveldern, whose pertinent remarks merit citation if only for their ironic undertone:

[...] international economic law thus covers only a part, albeit an important one, of the discipline of public international law as a whole. This statement will be unwelcome to those who maintain that international economic law is or should be a discipline of its own, separate from public international law. Such a claim may be useful as a plea to increase the number of academic posts in the field of international law, yet in our opinion, international economic law is so closely embedded in the discipline of public international law that the latter would be crippled by such a

two books here reviewed have, without doubt, made an important contribution to this process.

If we look more closely at the main characteristics of these two books, we find that they differ in many significant ways. It is manifestly clear that Professor Lowenfeld's *International Economic Law* is the result of many years of experience. It is also written much more from a traditional public international law viewpoint. The parenthood of Public International Law is more clearly evidenced than in *The World Trade Organization*. In the future, Lowenfeld's volume may be used as a reference for those conceiving International Economic Law as an independent branch of law, which is at the same time closely interrelated with Public International Law, while *The World Trade Organization* has surely helped to further free WTO law both from International Economic Law as well as from International Law in general.

These different methodological understandings underlying the two books have further consequences with regard to certain formal aspects. While Lowenfeld's monograph is richly annotated, giving a broad panoply of relevant literature from what could be considered as core international law/international economic law areas, the volume by Matsushita, Schoenbaum and Mavroidis is rather parsimonious in this regard, relying more on jurisprudence. This may, however, be justified by the relative youth of WTO law and by the fact that, although the relevant literature may be broad (not to say overabundant), the real ground-breaking contributions are necessarily small in number. In any case, one gets the impression, reading these two books, that the contributions that have been cited have really been woven into the main text — not an obvious feat in an age in which 'window dressing' of hastily written articles and books has become so common.

separation. Peaceful relations between subjects of international law are, after all, to a very large extent directly concerned with exchanges.

See I. Seidl-Hohenveldern, *International Economic Law* (2nd ed., 1992), at 1.

Which are the chapters that most distinguish these two books? This reviewer appreciated finding extensive examinations of subjects like the international monetary system and economic sanctions in Lowenfeld's volume. These are easily accessible chapters, which can be added without any difficulty to students' reading lists. In the Matsushita, Schoenbaum and Mavroidis volume, this reviewer found the chapters on 'new issues' and those relating to ongoing developments particularly interesting. The authors, being as close as they are to internal developments in the WTO, give very interesting insights.

It follows that the continuously growing number of practitioners and academics interested in International Economic Law and in the WTO in particular have been given two books of extraordinary value. This author knows from personal experience that writing manuals on rapidly changing law subjects can be both a source of joy and pain. Not least it creates responsibilities towards those faithful readers who await a new edition. Of course, there is not yet any need for a new edition of either of these volumes. Indeed, the failure of the WTO Ministerial Conference of Cancun has decisively prolonged the shelf-life of these first editions. This reviewer, however, is certain that both of these volumes have already attracted quite a following that will, when the time comes, encourage the authors to update these books in order to maintain their place, as attributed at the beginning of this review, as classics of International Economic Law.

University of Innsbruck *Peter Hilpold*

Stephen C. Angle. *Human Rights in Chinese Thought. A Cross-Cultural Inquiry*. Cambridge, UK: Cambridge University Press, 2002. Pp. 304. US\$ 65 (hardback).

Errol P. Mendes and Anik Lalonde-Roussy (eds) *Bridging the Global Divide on Human Rights. A Canada-China Dialogue*. Aldershot, UK: Ashgate Publishing Ltd, 2003.

The universality of human rights has been widely discussed and questioned in international fora since the World Conference on Human Rights in Vienna in 1993.¹ During the 1990s, two sets of arguments were among the more substantive challenges to international human rights theory and practice: an economic argument and a cultural argument. The first is internationally related to the North-South divide, while the second links up to a cleavage between East and West. In the first discussion universality is challenged on the ground of the obvious unjust distribution of resources in the world. It is asked if there can possibly be equal rights for people having extremely different conditions of life, and in what way rights protection is influenced by material need. Universality is here addressed in economic and political terms. The second set of arguments pertains to cultural diversity, and the question is whether it is possible to find common values and standards 'in spite of' cultural and philosophical differences. These two discussions were highlighted by the Asian governments in Vienna and continued to be addressed through the 1990s by academics and activists in the so-called 'Asian Values Debate'.

In Vienna, representatives of East and Southeast Asian nations stressed that in the protection of human rights internationally, serious consideration must be given to economic inequality, and national implementation must be done in accordance with the cultural traditions of each region or country. A declaration was formulated at a preparatory meeting in Bangkok in March-April 1993, where both economic and philosophical arguments were brought forward. On economy the Bangkok Declaration strongly protested against attempts to make development assistance contingent on the human rights situation of any particular country and demanded that

¹ Kirsten Hastrup (ed.) (2001) *Human Rights on Common Grounds. The Quest for Universality*. The Hague: Kluwer Law International.