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978-0-521-86007-9 - Sovereignty, the WTO and Changing Fundamentals of International Law

John H. Jackson

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## **Sovereignty, the WTO and Changing Fundamentals of International Law**

The last decade of the twentieth century and the first of the twenty-first century will certainly rank high as a challenging period for the generally accepted assumptions of international law. The forces of “globalization,” accompanied by striking changes in government institutions, a remarkable increase in NGO activity and advocacy, an intense emphasis on market economic ideas and a backlash against them, have chipped away at the fragile theoretical foundations of the international legal system as it has been generally accepted for centuries. The objective of this book is to explore the relationship between general international law (and its sovereignty-based assumptions) with the legal “constitution,” jurisprudence, and practice of the WTO as an empirical case study of international economic law, all in the context of these twenty-first-century developments.

JOHN H. JACKSON is University Professor of Law at the Georgetown University Law Center. He joined the Georgetown Faculty after a distinguished career as Hessel E. Yntema Professor of Law at the University of Michigan. He has advised the United States and other governments and international organizations on international trade law, and has published widely in the area. In June of 2003, Professor Jackson was awarded the honorary degree, “Doctor Iuris Honoris Causa” from Hamburg University Faculty of Law. Also in June 2003, he was appointed by WTO Director-General, Dr. Supachai Panitchpadki, to the WTO Consultative Board, composed of eight “eminent persons,” and chaired by Peter Sutherland. The Board released a report entitled “The Future of WTO: Addressing Institutional Challenges in the New Millennium,” in January 2005. He has published widely in the area of international trade law, including his book *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge University Press).

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To Joan, who deserves much for constant support and intellectual companionship.

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## *Preface*

When I was invited in May 2001 to deliver the annual international law lecture series at the Cambridge University Lauterpacht Research Centre in November 2002, I was honored and also challenged to pursue further some thinking and writing about the interrelationship of international law and international economic law which I had already begun.

Little did I then realize, however, how complex and elaborate a preoccupation this task would be. At the time of the invitation, the events of September 11, 2001, had not yet occurred, and those events suddenly created an eruption of thinking and writing about general international law and its meaning for twenty-first-century international relations.

By the time I had prepared the lectures, it was apparent to me that there were added dimensions to the landscape which required exploration. The intellectual journey became longer, more perilous, and yet more interesting. The book is therefore substantially longer than the lectures, but still pursues the goal of being relatively compact.

Chapter 1 sets forth the overall logical structure of the book, and outlines the roadmap for the intellectual journey it represents, so that these need not be repeated here. However, a few general remarks may alert the reader to certain features of this book. For example, it is not designed to be a complete text on its subjects (international law and international economic law as represented by the World Trade Organization). This book only purports to provide an overall framework for thinking about those two subjects and how they interrelate, and an overview of their numerous conceptual problems and puzzles. In some sense this is two books pasted together, with bridges between them. It was not an easy project.

This book also is not designed to provide any “grand theory” of these subjects, but as stated several times in the text is about “queries rather

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than theories.” Its logic rests a great deal on empirical observation of one very complex, relatively new, and decidedly important international law institution, namely the World Trade Organization and particularly its dispute settlement system. The book’s objective (hopefully at least partly realized) is to outline fundamental logical problems about existing international law concepts, and to use the WTO legal system as a source of empirically observed data to shed light on those logical problems of international law generally. The journey herein ends with Chapter 8, which reviews the way this is accomplished.

I wish to express my gratitude to the Cambridge University Lauterpacht Research Centre for inviting me to deliver the annual series of international law lectures which occurred in November 2002. The delightful hospitality both physical and intellectual of the Lauterpacht center for those lectures, and of its founder Professor Sir Elihu Lauterpacht and its director Professor James R. Crawford, as well as some of their colleagues such as Professor Phillip Allott, provided an extraordinary and memorable launch for further struggles with the conceptual difficulties of the subject of general international law and its relationship with international economic law. Certainly the Center and its colleagues truly represent the best perspectives of its namesake, Judge Sir Hersch Lauterpacht, who has inspired so many thoughtful participants and observers of international relations and its relation to legal norms.

I am also grateful for the support of the Georgetown University Law Center, its Dean Judy Areen, dean during most of the efforts for this book, and the remarkable GULC library regarding its subject. In addition I wish to recognize the support of the University of Michigan School of Law (where I continue to hold the title of Emeritus Professor) for many decades of sustenance in the then novel and difficult task of exploring the minefields (and boiler room) of international economic law.

In addition I particularly want to recognize and appreciate the remarkable and diligent assistance of my principal editorial and administrative assistant, Joanna Sokolow. Her research ability and computer command, as well as her constantly pleasant demeanor and interaction with others including my students, are hard to replicate in any environment. I also express my appreciation and gratitude to several student research assistants, particularly Isabelle Van Damme and Helge Zeitler.

Likewise I am indebted intellectually to many colleagues and other professional friends and associates, long conversations with whom have helped shape my thinking. In particular, some of the editors of the *Journal*

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*of International Economic Law* and the *American Journal of International Law* with which I am associated, have assisted my thinking.

Over many decades of activity, observation, and thinking concerning international law and economic law I have benefited enormously from many profound and interesting writings of authors of many viewpoints, as well as numerous intense discussions (over dinners or otherwise) with friends and colleagues too numerous to mention here. Likewise I am grateful to a number of students and their work and discussions with me. Many of these students have gone on to remarkable careers in subjects related to these discussions, and maintain close contact with me so as to continue the learning process on both sides.

Finally, but distinctly not least, I thank my wife Joan not only for the family support and sustenance, but for the intellectual companionship she has provided, often stimulating directions of my thinking.

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