

**Principles of International Economic Law.** By MATTHIAS HERDEGEN, Oxford: Oxford University Press, ISBN 978-0-19-879056-3, 2nd edition, 2016. 574 pp.

Matthias Herdegen, Professor for Public, European and International Law at the University of Bonn (Germany) has published the second edition of his manual on *International Economic Law*, which builds upon a German manual entitled *Internationales Wirtschaftsrecht* published in 2014 in its 10th edition with Beck.

In Germany, Matthias Herdegen has been a pioneer for current academic research and teaching that started in the early 1990s as a small, exotic subject. Since then, it has become a well-established discipline in many universities in German-speaking countries. Professor Herdegen did not invent this discipline out of the blue, but he has continued research that dates far back in German academic literature. In this context, the manual by Georg Erler (1905–81), *Grundprobleme des internationalen Wirtschaftsrechts* (1956) stands out. Erler pursued an all-encompassing approach, arguing that IEL should take into consideration both elements of public international law and elements of the national legal orders (both private and public), as long as their purpose should be ‘the regulation of the international economy’. Erler emphatically stated that: ‘International Economic Law was not the international law of the economy but rather the law of the international economy.’ His direct opponent was Georg Schwarzenberger (1908–91), who saw International Economic Law (IEL) as a special field of public international law. Schwarzenberger’s reasons for this restrictive approach seem convincing, particularly when he states that the broader, comprehensive vision would lead to a too variegated picture with no real internal cohesion and structure. Furthermore, he voiced the opinion that private law norms are sufficiently covered and examined by other disciplines.<sup>1</sup> Ignaz Seidl-Hohenveldern (1918–2001) followed a similar line of reasoning in his 1989 book, *International Economic Law*.

Herdegen follows the Erler approach, explaining that ‘[a] concept restricted to the rules governing the relations between States would provide a most fragmentary understanding of the modern order of economic relations and would fully ignore many sets of rules essential to the status of private actors engaged in transnational activities.’<sup>2</sup>

Surely, such a comprehensive approach will bring about most interesting results. However, the decisive question in this situation must be: is such an approach implementable? Herdegen demonstrates that it is, even though to bring about this result requires some compromise as to the extent and the depth of the treatment. The parts of the book on private law (business law) aspects of IEL are far shorter and have a stricter overview character than those concerning international public subjects. And rightly so, one would be inclined to say, as there is sufficient literature examining all details of the former areas.

1 See G. Schwarzenberger, ‘The Province and Standards of International Economic Law’, 2 *The International Law Quarterly* (1948) at p. 402.

2 M. Herdegen, *Principles of International Economic Law*, 2nd ed. (Oxford: Oxford University Press, 2016) at p. 4.

With regard to the other parts of the book, the author reveals himself to be more of a traditional public international lawyer than most of the other authors dealing with IEL exclusively from the public international law perspective. In the best German international law tradition, this is on many accounts a very dogmatic, 'European', 'continental' opus deriving international economic concepts from a formal source-of-law vision. In Anglo-American manuals on this subject, which have become very numerous in the last years, these considerations are widely missing. They usually give primary consideration to GATT/WTO law and enter directly into the technical details with a short nod to public international law when they discuss its relationship to WTO law. In this sense, this manual is an important enrichment of the available literature.

Differing from the German edition, the title of the English version refers to the 'principles' of IEL. This title can be seen as a humble reference to the fact that a manual, at more than 500 pages, could never treat the whole of IEL in great detail. It could, on the other hand, also be interpreted as a quest by the author to lay bare the real essence of IEL. This second intent is most probably the one pursued by Herdegen. One is to believe that this intent is a serious, deeply felt one when the author writes '... the whole international law focuses less on economic rationality and economic incentives, but on the respect for the human person and its autonomy as well as on States' responsibility for welfare and social balance. ... the concept of the human person underlying and characterizing the legal order directs the normative framework for economic relations.'<sup>3</sup>

This position reflects the best of the German international law tradition as it is primarily cultivated at the Max Planck Institute for Public International Law in Heidelberg, where the whole discourse about a 'constitutionalization of International Law (IL)', a 'humanization of IL' and the attribution of international subjectivity to the individual finds a focal point. It is no small wonder that Herdegen is influenced by this philosophy, as he himself started his academic career at that same institute.<sup>4</sup>

*The Principles of International Economic Law* requires an intense engagement not only with IEL, but also with IL, international politics, philosophy, and legal theory. As a result, a seasoned IEL expert will probably benefit more from this book than a student. In any case, a beginner who studies this book in all its details will learn an enormous amount about IEL. What is more, the reader will not only become an IEL 'technician', but will also be furnished with a set of values that are essential for the creation of an international economic order guided by the respect of basic human rights and the rule of law.

But is this value orientation already existing law, or rather a goal to be achieved in the future? The reader who approaches this question in an unprejudiced manner without having spent much thought on this issue before might be inclined to adopt the former position. Anyone who knows Professor Herdegen personally understands

3 Ibid., p. 12.

4 To a certain extent, there are parallels with the work of Ernst-Ulrich Petersmann, although the publications (and in particular his more recent publications) by this latter author, who is also a former MPIL scholar, are more philosophically oriented.

that this world vision is deeply felt by this author. He is an academic who transmits a highly contagious optimism. If a situation is open to several diverging assessments he will surely opt for the one that offers most confidence in the present status and the future of mankind. What is more, the relevant arguments are in no way haphazardly made, but are well reasoned and well constructed.

Herdegen delivers a plethora of arguments sustaining the view that a solid framework protecting core values in the field of IEL is already in force but can be built upon for further improvements in the international economic order. The subject of 'good governance' is broadly treated in this book (p. 158ss.). The norms and institutions of IEL are examined as to their capacity to promote human rights and the rule of law. If the relationship between IEL and human rights is becoming an autonomous subject of studies, this book is a worthy contribution to this field.

To this reviewer's knowledge, there is no subject of IEL that the author could be accused of having neglected. Even the highly topical issue of the so-called 'mega-regionals' [in particular Comprehensive and Economic Trade Agreement (CETA), Trans-Pacific Partnership (TPP), and Transatlantic Trade and Investment Partnership (TTIP)] is addressed (pp. 341–345). Broad consideration is given to WTO law and also to International Investment Law, two subjects, which for some experts of IEL, seem to be the only relevant areas of this discipline. Herdegen demonstrates that these areas are important, but that they are not the only ones our eyes should be directed to if we really want to understand how IEL works.

Of course, the enormous dimension of the subject treated in this publication required the author to be succinct in several parts. However, he nonetheless managed to provide a good overview on any subject and to cite the most relevant literature so that this book is also a good starting point for further research on the most diverging issues of IEL.

One remains puzzled as to how Professor Herdegen manages to bring forth so many publication projects. His manual on *Völkerrecht* is in its 15th edition (2016), while his manual on *Europarecht* is in its 18th edition (2016). At the same time, he continues to publish articles and other contributions on German public law, international law, and European law. Without a doubt, this is the result of a rare conjunction of intellectual capacity and an ironclad discipline, both of which can be found throughout this book.

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