Ernst-Ulrich Petersmann, International Economic Law in the Twenty-First Century: Constitutional Pluralism and Multilevel Governance of Interdependent Public Goods

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The legal framework governing international economic relations and transboundary business transactions has, in general, always—or at least already for quite some time—been a rather contested area of law. One only needs to refer to the position held by many Latin American countries on issues like the international protection of foreign investments already in the nineteenth century, as well as the intensive and controversial discussions concerning the creation of a so-called New International Economic Order since the 1960s, in order to illustrate that the disputed character and "politicization" of many aspects of international economic law, in principle, hardly constitutes a new phenomenon. Nevertheless, it is also fair to say that broader popular as well as scholarly debates over the virtues and vices of the international economic system and, in particular, its legal order have gained considerable momentum only in the last two decades. The reasons for the increasing attention devoted by scholars and civil society to the legitimatory basis and the functions as well as the limits of legal rules in international economic relations are manifold. Aside from the various processes of economic globalization and the resulting enhanced factual relevance of the regulatory object "transboundary economic relations," attention might be drawn, inter alia, to the ever-growing normative influence exercised by the requirements and restrictions stipulated by current world trade and investment law with regard to the domestic legal orders of and—closely related—the policy spaces enjoyed by individual states.

It hardly needs to be emphasized that the author of the present work under review, Ernst-Ulrich Petersmann, is already for quite some time surely among the very prominent participants in the respective global discourses. Many of the truly numerous articles and contributions published by him in recent decades focus on and provide an often in-depth analysis of what he perceives to be the overarching deficits or weaknesses of the international economic order's current regulatory framework, as well as in particular of possible remedies in the form of what

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would amount to nothing less than a fundamental reorientation—and ultimately reconceptualization—of the normative ordering structures governing the global economic system.

In light of the findings and concepts as developed and advocated by Petersmann in many of his previous publications, it hardly comes as a surprise to the informed reader that his observation with regard to the framework of the international economic law system established after the Second World War as currently facing "an unprecedented crisis requiring 'new thinking'" (p. 1) also serves as the central starting point for the quite comprehensive and 520-page strong analysis provided in his work "International Economic Law in the 21st Century." In the course of ten individual chapters—including from a qualitative as well as quantitative perspective rather substantial introduction and conclusion—the author enters and scientifically "plows" the indeed very wide field of whether and, in the affirmative, how to reform and reconceptualize the legal regimes governing the international economic system in order to more appropriately adjust them to the changing normative structures of, as well as the purposes pursued by, the global legal system as a whole. Thereby, Petersmann addresses and elaborates on a truly broad range of individual—but nevertheless from an overarching perspective often closely interrelated—issues, at least some of which should be mentioned and commented on in the course of this review.

In line with the increasingly shared perception that international law, in general, is today more and more independent of the will and interests of individual states with its substantive norms increasingly focusing on the realization of community interests, the author rightly—and frequently—emphasizes that also the global economic system and, in particular, its legal order are in need of what he characterizes as a "paradigm shift" (see, e.g., pp. 2 and 71) from the classical "Westphalian conceptions of international law among sovereign states" (see, e.g., pp. 2, 504 and 508) to the creation of a transnational legal order whose normative orientation is shaped by processes of constitutionalization (p. 113 ff.) in the sense of its regulatory structures being first and foremost also aimed at the promotion and protection of global public goods (see, e.g., pp. 25 f., 43 f.), such as the protection of human rights and the environment, the promotion of sustainable development, consumer rights, good governance, as well as core labor and social standards.[1] In this regard, it is for example worth noticing that Petersmann, in his analysis of what he identifies as the "five competing conceptions of IEL [international economic law]" (p. 78 f.), convincingly highlights one of the major shortcomings of the more recently emerging and by now well-known "global administrative law" (GAL) approach (pp. 84 f., 498 f.). Indeed, the emergence of a "global *administrative* law" as an overarching ordering idea for the processes of global economic governance suffers from too

[1] See also, for example, p. 11. ("This study argues that the human rights obligations of all UN member states require reinterpreting and redesigning IEL for the benefit of citizens and their reasonable self-interests in more effective protection of human rights and other, national and international public goods").

narrow understanding of the underlying functions and purposes of the respective regulatory processes. It wrongly neglects—as also rightly emphasized by the author[2]—the first and foremost also value-creating and thus not administrative but in fact *constitutional* dimension of the increasingly diverse normative steering processes in the global economic system.

In order to facilitate the respective processes of transforming "power-oriented Westphalian conceptions of IEL [international economic law] into cosmopolitan and constitutional conceptions focusing on cosmopolitan rights, democratic self-government and transnational rule of law" (p. 509), the author stresses, inter alia, the importance of creating effective judicial remedies for individuals in order to foster the judicial accountability not only of states but—in recognition of the "dominant role of non-state actors in the worldwide division of labour" (p. 14)—also of private entities such as large business enterprises (p. 224 f.).

Nevertheless, aside from these and numerous other surely well-argued and thought-provoking opinions and conceptual approaches brought forward by the author in his treatise, a certain formal weakness of the work is at least indirectly hinted at by Petersmann himself: "[T]his book – which was drafted during my busy years as head of the Law Department of the European University Institute at Florence, when the dramatic changes in the international financial, trading and environmental systems required ever more revisions of the text – evolved, unfortunately, into a much longer manuscript than originally envisaged" (p. 41).[3] And indeed, whereas it is well known that the length or brevity of a scientific publication does not automatically serve as a decisive indicator of its intellectual richness and readability, one cannot but notice considerable—and at times to a certain extent distracting—repetitions with regard to certain findings made and highlighted by the author, repetitions that are not resulting from the overall structure of the work itself.[4] Moreover, occasional inaccuracies in the—again formal—realm of cross-references in the footnotes (see, e.g., p. 229) might also possibly be attributed to the above-mentioned "drafting history" of the book.

Furthermore, and from a content-oriented perspective, the text of the book at least sporadically also displays certain assertions and findings that many readers might consider to be slightly irritating. This applies, for example, to the evaluation of the leadership exercised "by the United States, Europe, Brazil, India or China (= the 'BRICs')" (p. 51). In addition, to mention but one further example, the statement that "[u]p until the First World War, the classical 'Westphalian conceptions' (e.g., by Grotius) of international law among sovereign states did not envisage permanent international institutions" (p. 17) could potentially be perceived either as disregarding

[2] See p. 85 ("GAL without constitutional restraints?").

[3] See also, e.g., p. 487 ("As this study evolved into a much longer manuscript than initially envisaged, [...]").

[4] On the last-mentioned aspect, see the explanation given by the author himself: "Each chapter begins with short summaries and overviews of the main arguments so that each chapter can be read as a complementary essay; the disadvantage of this conception of the eight chapters is some repetition of the 'cosmopolitan premises' of each chapter" (p. 41).

the fact that certain so-called administrative unions like the International Telegraph Union or the Universal Postal Union were already founded in the nineteenth century or, alternatively, as not taking sufficient notice of the overwhelmingly shared perception that international governmental organizations were, in principle, only recognized as subjects of international law following the end of the Second World War. Although Petersmann repeatedly and rightly emphasizes that his work does not fall into the category of modern textbooks of international economic law and is thus not primarily intended to provide something of a systematic description of, inter alia, its origins, actors, and normatively relevant steering mechanisms (see, e.g., pp. 12 and 38), a heightened level of precision would have occasionally been wished for and might have even further enhanced the force of his argumentation.

These more or less minor points of criticism notwithstanding, the work "International Economic Law in the 21st Century" by Ernst-Ulrich Petersmann overall distinguishes itself, first, by challenging in a lucid and often innovative manner the current foundations of international economic law and, second, through a wealth of new perspectives and approaches on how to reform its normative structures, rich and thought-provoking ideas of an overall more citizen-oriented understanding of international economic law that are surely impossible to comprehensively comment on and do justice to in a rather short book review. Regardless of whether the author's suggestions are going to be implemented in the regulatory structures of the international economic order any time soon and even if one should not always easily agree with all of his well-argued positions, it is most certainly a great intellectual experience to read this very stimulating book. In sum, Petersmann's recent work is undoubtedly a significant contribution to the indeed indispensable global discourses on the future directions to be taken by the lawmaking as well as law enforcement processes in the international economic system, and it is thus highly recommended to scholars and practitioners interested in this important issue of our time.