

Video Transcript

International Economic Law – Gleider Hernández

International economic law is the name that we use now to describe a number of institutions, a number of phenomena, that international lawyers have sought to regulate and that we've done in different ways, some in more systematic ways, some in more piecemeal and issue-specific modes of regulation.

One thing, though, that I'd like to emphasise from the outset, is that the way that economic law is institutionalised in international law today is the product of a very particular political economy. It's a historically specific set of legal and institutional arrangements that reflect a broadly capitalist, liberal-democratic mode of governance that suggests that free trade and open trade and the movement of capital around the world are in many respects the preferred mode of development. And that, itself, is a political choice I want to remind readers to think about and to reflect on, that is not necessarily one that is objective, or that is the preferred mode for everybody and I think reflects a very specific ideological strand of thought. So as students survey this chapter, I hope you'll bear that in mind as you understand the genealogy and the history of the institutions that have come to take place.

So in this chapter, we take you through the foundations of the international economic legal regimes. There are a number of them: one of the most important ones is the international monetary and finance regime. Now, in the news the International Monetary Fund and the World Bank come up very often. So the first part of this chapter seeks to describe the Bretton Woods Accord, whence they sprang, and also their institutional functioning, their contemporary importance, and their role in the global economy, because these international financial institutions function, effectively, as banks—as investment banks that states have recourse to, but also that control state activities, and that can dictate where money can be invested.

A large part of the chapter also concerns the international trade law regime. And that trade law regime is very interesting because it emerged from a number of arrangements that, over time, took greater and greater regulatory importance, until the creation of the World Trade Organization, a global international trading organisation that centralised a number of modes of lawmaking, of modes of participation but also of dispute settlement, and to date remains one of the only systems of compulsory dispute settlement where both the United States and

China, the world's two largest economies and foremost military powers, are members. Neither of them, for example, accept the jurisdiction of the International Court of Justice. So the World Trade Organization is, depending on your metric, a very successful, or a very efficient organisation, at the very least.

In addition, we will explore the regime of international investment law. Now, this can only be done in an introductory manner because it is a wide regime with a long-standing history because the protection of aliens from certain standards of treatment abroad (and 'aliens', we refer to non-nationals, of course), but the protection of aliens has a long pedigree. But recently the language has been used more as investors and investment rights than the language of investment protections. Under the international, the ICSID convention, so the International Convention on the Settlement of Investment Disputes, a decentralised network of arbitral tribunals, investment tribunals, has been set up where private investors can read disputes against states when there's an enabling treaty that allows us to happen. And the case law that has emerged from that far exceeds the classic state-to-state international law cases and a great number of principles have been articulated, refined, and developed, through which international investment law has been crystallizing and thickening. This chapter cannot serve but as a survey of these various regimes, these interesting and powerful regimes within international legal governance, but it is hoped that by situating it within the wider public international law family, some sense can be made of that.

And finally, the final section of this chapter deals with the law on economic development and the initiatives and mechanisms that less developed countries, newly decolonized states, have used to try to claim a share in global prosperity and in trying to stake a claim to a more developed future. And so all of these fit together in a very dynamic interaction, both within international economic law and within wider public international law.

Thank you.