

Redefining Sovereignty in International Economic Law, Wenhua Shan, Penelope Simons and Dalvinder Singh [Oxford and Portland, Oregon: Hart Publishing, 2008, 470 pp, hardcover, HK\$756]. ISBN 978 184 113701 8

Sovereignty is a fundamental concept in traditional international law. It serves as the essential basis for international peace and security. However, in the past few decades we have witnessed a trend towards national sovereignty being exchanged for a common or harmonised economic policy at regional and / or international levels. Such an exchange, as explained by Professor Jackson, involves some gradation of “ceding of sovereignty” as a matter of degree, not kind.¹ So the question is to what extent States should cede control over their economic and social policies to achieve global economic efficiency. This is exactly the topic explored in this edited book.

This book compiles essays on sovereignty and international economic law under the editorship and direction of three renowned international economic lawyers, reflecting the successful results of the Society of Legal Scholars Symposium 2006 organised at Oxford Brookes University, Oxford. An examination of the book reveals that it is one of the most thorough and probing academic works on the above subject by leading scholars in the field. The book is also timely as the subject matter is under heated discussion both in international institutions and in academia.

Following the structure of the Symposium, the book consists of five parts. Part One offers a general discussion in the topic and serves as a basis for further analysis in specific areas. Notably, two new concepts are explored, enriching the discussion of the sovereignty issue in international economic law. Resonating discussions on other occasions (p 3), Professor Jackson again identifies the notion of “Sovereignty-Modern” and the adoption of “power allocation analysis” (or “government legal decision-making power”). Similarly Professor Petersmann explores the notion of “constitutionalisation” or “constitutionalism”: answering the question whether there is really the process of constitutionalisation in international economic law and if so, how it happens. The discussion in this part defines the basic tone of the book.

The following four parts deals with four neatly selected areas relating to international economic law: trade, investment, banking and human rights. As a result, this book probes the sovereignty issue in the major pertinent international economic arena. The papers in these four parts

¹ John H. Jackson, *Sovereignty, The WTO, and Changing Fundamentals of International Law* 215 (Cambridge University Press, 2006).

present diversified perspectives and raise serious concerns over the ongoing process of economic globalisation and its impact on traditional national sovereignty.

The world trading system set up after World War II has been able to successfully promote unprecedented trade development and improve the social welfare of its members. The WTO continues its task in trade liberalisation and is ambitious to expand its subject matter to all trade-related matters. Such an ambition poses severe challenges to the continuous application of the traditional concept of State sovereignty. It is interesting to note that “development sovereignty” is raised in Part Two. Whilst this is put forward in the context of WTO dispute settlement, this concept is seemingly applicable to the trading system in general. As confirmed in the book, “the interface between development sovereignty and the dispute settlement system can be augmented . . .” (pp 168–169)

Investment treaties set up the basic framework for international investment and constantly include arbitration clauses to protect the interests of those investors. As a private means to resolve disputes between investors and host states, arbitration has a special role to play in relation to State sovereignty and international economics. States are the masters of these investment treaties and thus have the final say on the option to address arbitration-related sovereignty concerns (p 244). It has been correctly pointed out that certain elements of such concrete sovereignty, as opposed to abstract sovereignty, can be activated or deactivated over time, but States may remain sovereign in the abstract level (p 312).

Part Four is most relevant to the current financial situation. Rightly argued in the book, there is a need for an effective oversight of the banking system to improve depositor confidence. Furthermore, the activities of the banks and international financial intermediaries should also be closely supervised and regulated domestically and internationally. The arguments in this part have been well testified in the financial crisis we are currently experiencing.

The last part examines the human rights issue in the international economic context. We have witnessed the so-called “trade-related, market-friendly human rights” (p 430) in the era of economic globalisation. However, the realisation of such rights is to be closely related to the issue of trade and development. The above economic-oriented “trade-related, market-friendly human rights” should not overlook the right to development. However, as correctly pointed out, the pretence of a development agenda has long since been dropped and once again the human rights of the hungry are not adequately addressed (p 427). In the investment area, the suggestion has been made that investment rules should not be available to hinder or frustrate transitions to a better

future, even those only slightly more tolerable than the present (p 444). I believe this suggestion also applies to the international economic rules. Whilst making new rules or progress in the WTO liberalisation process, we should always keep in mind the vital importance of the balance between trade liberalisation and the protection of human rights in general.

This book is successful in well documenting the emergence of problems associated with redefining national sovereignty in view of the rapid development of international economic laws and institutions. While four traditional areas have been selected for discussion in the book, it would be interesting to see how the development of other international economic areas or new areas affects the functioning of State sovereignty. For example, with the rapid technological development, electronic commerce has become commonplace in our daily life. Doing business online easily transcends national borders and has brought drastic changes to the traditional economic model and conception. Serious examination of its development and impact on State sovereignty would be instrumental to future trade liberalisation process and the promotion of human rights in cyberspace. Intellectual property rights could be another area for further discussion. The discussion of these and other international economic areas are crucial for the purpose of determining whether the theoretical discussion in Part One in fact represents and / or applies to the operation of international economic laws and institutions in other new economic areas.

As said, the book is a collection of essays, each chapter by one renowned expert in the field. Each chapter represents an effective “stand-alone” legal section, so that one can get a well-balanced perspective on different subject areas due to the sheer diversity of the various authors.

Overall, this book is a valuable contribution both to the general theoretical literature regarding international economic law, and to the current heated discussion on the impact of economic globalisation on State sovereignty. This book will be highly beneficial for anyone interested in international economic law and concerned about the prospect of the application of State sovereignty in international economics.

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