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SOVEREIGNTY, THE WTO, AND CHANGING
FUNDAMENTALS OF INTERNATIONAL LAW*
BY JOHN H. JACKSON
REVIEW

ANDRÉS TÉLLEZ-NÚÑEZ**

ABSTRACT

The last book of Professor John H. Jackson, distinguished professor of law at Georgetown University Law Center, and current director of the Institute of International Economic Law at that same school, compiles a series of lectures Professor Jackson delivered at the University of Cambridge's Lauterpatch Research Centre, and they summarize the evident existing tension *between* the concepts of sovereignty and international economic relations (including thereby the General Agreement on Tariffs and Trade "GATT", the World Trade Organization, dispute settlement mechanisms, etc.) regulated and legally dealt with by what is known today as International Economic Law and the bases and foundations of Public International Law. Professor Jackson's last book is not as large and ample as his pivotal work entitled "Legal

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* John H. Jackson, *Sovereignty, the WTO, and Changing Fundamentals of International Law* (1st Edition, Cambridge University Press, Cambridge, 2006, 361 p.).

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Problems of International Economic Relations”, but it deals – masterly – with the juridical, philosophical and legal problems posed today by the effort to better understand Public International Law.

Key words author: Sovereignty; International Economic Law; Jackson; GATT; Public International Law; International Economic Relations.

Key words plus: Jackson-John Howard; 1932; Criticism and interpretation; Public International Law; International Law (Philosophy); International Economy.

SOBERANÍA, ORGANIZACIÓN MUNDIAL DEL COMERCIO Y PRINCIPIOS CAMBIANTES DEL DERECHO INTERNACIONAL, DE JOHN H. JACKSON

RESUMEN

La última obra de John H. Jackson, profesor de Derecho Internacional de la Universidad de Georgetown y director del Instituto de Derecho Económico Internacional de esa misma universidad, recoge una serie de conferencias dictadas por él en el “Lauterpatch Research Centre” de la Universidad de Cambridge, y sintetiza la tensión evidente entre los conceptos de soberanía y relaciones internacionales económicas (incluyendo, claro está, el Acuerdo General sobre Tarifas y Comercio, GATT por sus siglas en inglés, la Organización Mundial de Comercio, la resolución de disputas, etc.) reguladas y normadas por lo que se conoce como “derecho internacional económico” (“DEI”), con las bases y fundamentos del derecho internacional público. El manuscrito no es tan extenso ni amplio como la obra cumbre del profesor Jackson (Legal Problems of International Economic Relations), pero trata de manera magistral los

problemas jurídicos, filosóficos y legales que plantea hoy el esfuerzo por mejor entender el derecho internacional público.

Palabras clave autor: *soberanía; derecho internacional económico; Jackson; GATT; derecho internacional público; relaciones económicas internacionales.*

Palabras clave descriptores: *Jackson-John Howard; 1932; crítica e interpretación; derecho internacional público; derecho internacional (filosofía); economía internacional.*

Sumario: I. Introduction.- II. Chapter and Analysis.- A. Chapters.- B. Analysis.

I. INTRODUCTION

John H. Jackson, former Hessel E. Yntema Professor of Law at the University of Michigan and currently distinguished professor of International Law at Georgetown University Law Center is perhaps the world's most reliable source in matters of International Economic Law and Public International Law.

Professor Jackson has served as adviser to the Government of the United States and other governments and international organizations. He as well worked as General Counsel of the Office of the United States Trade Representative. In 2003, he was appointed by World Trade Organization Director-General, to the World Trade Organization Consultative Board. He has also published very widely in the area of International Law.

His latest book, *Sovereignty, the WTO, and Changing Fundamentals of International Law* is the result of a series of lectures Professor Jackson was invited to deliver at the Cambridge University Lauterpatch Research Centre in November 2002. As acknowledged by him in the Preface, at the time of the invitation (May 2001) the September 11, 2001 events had not yet occurred and therefore new insights had to be added to the lectures.

The book is interesting in the sense that it is a more general approach to International Law than his remarkable and landmark co-authored work *Legal Problems of International Economic Relations* published by West and now by its fourth edition. The close relationship between International Economic Law (IEL) and Public International Law that Jackson has presented very clearly during and throughout the years acquires a new dimension with this book. It shall be noted however, that being Professor Jackson an expert on International Economic Law (IEL), his views and opinions reflect his deep and profound knowledge of the experience and reality of the legal and juridical aspects of economic relations. However, for anyone who is interested in the dynamic and static elements of Public International Law, Professor Jackson's latest US\$ 90.00 book is a must-read even as he said to me in August 2007 one almost has to "mortgage" property in order to buy it.

II. CHAPTERS AND ANALYSIS

A. CHAPTERS

The book is divided into three grand parts. The first grand part is entitled *Challenges to fundamental assumptions of international law* and is divided too into three sub-parts. The first one addresses the relationship between Public International Law and International Economic Law in the world of the XXI Century. It is sort of a general presentation of the book. It is worth noting the part related to the huge role international relations theory and practice play in better understanding Public International Law. Phenomena such as *change, interdependence, globalization* and *adjustment* are treated and dealt with. The second one is devoted to deal with how International Law is perceived, utilized and what challenges exist and are ahead in the horizon. A special reference of interest for *philosophers of International Law* may be his presentation about the *discontents* related to International Law. Not less his conclusions which may be summed up as the need to revise those challenges but also question whether the institutional ("*constitutional*")

International Law is or not useful for the current state of affairs. The third part involves in some way the first and second parts but this time by presenting a reflection regarding the concept of sovereignty and how it may have changed or needs to be changed, that is, how the Westphalian conception may need to be rethought and rebuilt.

The second grand part is entitled *The WTO* and is divided into two parts. As Professor Jackson is an expert on International Economic Law (IEL), this without question may be the most valuable part of the manuscript and material that is of obligatory reference for professors and researchers interested in understanding first the basic and most important juridical and legal elements of IEL. The questions and issues addressed in the first sub-part (4 in the book) may be summarized as follows:

- The WTO as international economic law and its relationship to general international law.
- The policy objectives and preferences for a WTO.
- Historical background: from Bretton Woods to Cancun and Hong Kong.
- The World Trade Organization: structure of the treaty and the institution.
- Institutional problems of the WTO.
- WTO Rules and members' domestic legal systems.
- Scope of the subject matter agenda for the WTO: the question of competence.

A synthesis of the underlying elements of this second grand part and what is more striking, Jackson's mentioning of the realistic approach to international relations (87), something that at least in Colombia has not been analyzed in-depth not only from the institutional (legal) point of view, but also, from the philosophical point of view are presented too. Something that as well, has not been addressed deeply by scholars and theorists in Colombia is the intrinsic relationship between policy approaches and objectives and legal elements. None the less, the presentation of those elements does not present a key tool other authors have used for example in Roman-Germanic systems such as that of the pivotal Thomistic

distinction between what is *just* and what is *legal*, between the world of the *is* and the world of the *ought*, between what is *legal* and what is *juridical*.

The second sub-part studies a very important and essential element of the WTO system: the dispute settlement system scope and rules. Its treatment may be outlined as follows:

- The WTO dispute settlement system presented and featured as great and unique, but at the same time, as controversial.
- The Uruguay Round rule in “*making over*” the dispute settlement system.
- Underlying policies: dilemmas, balancing and competing principles.
- The current reality of the WTO system.

Next, perhaps if this can be said from a formal logic point of view, a value-added to the always value-added that Jackson’s manuscripts represent, “*key jurisprudential questions*” are outlined, divided as follows:

- Sovereignty tensions.
- Structural doctrines channeling juridical techniques of decision.
- Treaty interpretation.
- Dispute settlement reports and national law.
- Compliance and implementation.

Finally, an examination of settlement structural problems and reforms that have been proposed are extrapolated.

The third grand part is entitled *The search for solutions* and is divided into three sub-parts. The first one deals with policy analytical approaches. Elements presented are all very useful and interesting and the sixth sub-part entitled *The growing importance of juridical institutions* is worth mentioning as Professor Jackson presents the dichotomy between the rule of law oriented approaches and the political or policy oriented approaches. This contribution for rationales and mind settings is without question very useful for philosophers of International Law. The seventh sub-part is

denominated *Illustrative applications* and outlines topics such as the dynamic evolution of the WTO “*Constitution*”, investments and international rules, environmental policy and policies, health and human rights, federalism (the United States and the European Union) and finally the United Nations and the use of force in view of events of such enormous importance such as the 2003 Iraq invasion by the so-called “*coalition of the willing*”.

B. ANALYSIS

There are many good books on “*institutional*” Public International Law. However, academia, professors, scholars and theorists have not done in-depth work as to the ultimate cause, the ultimate why and concomitantly an inner-thought exercise as to the reality of international legal norms, and ultimately as to what is internationally *juridical* or what is *juridical* among Nations and between Nations: what is inter-Nations.

Perhaps Professor Jackson’s last work is not a complete effort on that matter as he firstly and foremost presents very acutely the salient features that any philosopher would like to work on and perhaps on a more profound fashion. But the merit of Professor Jackson is not only his presenting the salient analytical features and the tools to discern the reality and effectiveness of Public International Law, but also his contributing insights of a person acting and academically and professionally working inside the current institutional and theoretical structures of IEL.

The study and observation of legal norms addressing and setting forth the fundamentals of International Law shall be made along with a study of the doctrines and theories of Professor Jackson to better understand its dynamics and to reflect the fruits of studies in better policies and legislation, above all, and for example, regarding developing countries in Latin America, Africa, Asia and Eastern Europe.

Without studying the underlying rationale and philosophical and policy approaches of IEL and its deep interconnection with International Law, an incessant repetition of outdated institutions

and outdated conceptions will do no good neither to practitioners nor to academics, Nations and systems.

From that point of view, for any academic devoting his or her time to the analysis and discerning of International Law, *Sovereignty, the WTO, and Changing Fundamentals of International Law* is definitely a must-read.