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英文版

国际商法 (第二版)

INTERNATIONAL BUSINESS LAW

□ 姜作利 著

English Edition

英文版

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INTERNATIONAL BUSINESS LAW

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本书是关于国际商法的**全英文教材**。

本书采取与国际接轨的读者中心主义写作风格，通过**最流行、最标准**的英语讲述国际商法，有利于读者掌握用**英语表达**国际商法内容的正确方法。

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Chapter One Introduction to International Business Law

内容提示:本章为国际商法概述,包括国际商法的渊源、历史发展、英美法系和大陆法系介绍、国际商法与我国法的关系。由于国际商法产生和发展的背景与我国有较大差异,我国法律学生对此可能有些陌生。因此,熟悉本章内容是学好国际商法的前提,这样阅读之后的内容,才会有高屋建瓴之感。考虑到万事开头难,本章内容力求简明扼要,英文表达力求通顺易懂,以便让读者收获开卷见喜之成就感。

I. What Is International Business Law?

Economic globalization, in recent years, particularly, as the Cold War and its threat of major disaster seems to have receded, has been one of the hottest focuses in the world. Although it is extremely difficult to define economic globalization, many economists and business experts believe that no business can be purely domestic, and the realities of the modern world make all business international. The causes of these developments are numerous: incredible advances in efficiency of communication, extraordinary reductions in transport costs, growing prevalence of instant tele-and-cyber-transactions, treaty and other norms causing reduction of governmental barriers to trade, and economic climate more favorable to principles of market economics, cross-border influences of competition which have driven increases in production and service efficiencies, and, last but not least, the blessing of relative peace in the world. As a result, scholarly efforts and governmental policy studies have also been giving increased attention to international trade, legislative initiatives relating to trade, the activity of financial institutions such as the World Bank or the International Monetary Fund(IMF)(国际货币基金组织), and many other economic subjects relating to investment, competition policy, etc.

Economic policies which are based on market principles are the best approach for maximizing human satisfaction is, of course, controversial, but it is mostly believed that markets can be very beneficial to the peoples involved though not absolutely equal to all. However, what is the role of law in the economic globalization? The Nobel Prize-winning economist Ronald Coase has stated: "It is evident that, for their operation, markets... requires the establishment of legal rules governing the rights and duties of those carrying out transaction... To realize all the gains from trade... there has to be a legal system and political order... Economic policy consists of choosing those legal rules, procedures and administrative structures which will maximize the value of production." Another Nobel Prize-winning economist said: "That institutions affect the performance of economics is hardly controversial... Institutions reduce uncertainty by providing a structure to everyday life... Institutions affect the performance of the economy by their effect on the costs of exchange and production." ①

Human institutions embrace many structures and take many forms, but it is very clear that law and legal norms play the most important part of the institutions which are essential to make markets work. In today's world, there are economically two systems of law: the public international law which includes the Bretton Wood systems(布雷顿森林体系), the General Agreement on Tariffs and Trade, GATT, the WTO, and the private international law including law merchant, international model law, etc.

International business law is the body of rules and norms that regulates activities carried out outside the legal boundaries of states. In particular, it regulates the business transactions of private persons internationally, and the international relationships of international commercial organizations.

In comparison with the traditional international business law, contemporary international business law covers much more extensively, such as law for the international trading of goods, company law, negotiable instrument law, maritime law, insurance law, law of international technology transfer, industrial property law, international investment law, international financial law, international tax law, law of international dispute settlement.

Taking into consideration of the tremendous scope of international business law, and the time limit of class performance of students of law, the author has to

① John H. Jackson, *The Jurisprudence of GATT & the WTO*, Higher Education Press 2002, p. 7.