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# 国际商法

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□ 姜作利 著



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**国 际 商 法**

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姜作利,男,生于1956年2月,山东蓬莱人,山东大学法学院副教授,硕士生导师、世界罗马法研究会理事、山东省调解委员会调解员、山东省济南市国际贸易法学会副会长。于1995—1997年在意大利罗马大学法学院研究国际经济法和罗马法,曾应邀在波罗尼亚大学、罗马大学、萨萨里大学讲学。使用英语讲授国际商法近20年。在《法商研究》、《政治与法律》、《国际经济法论丛》、《国际贸易问题》等刊物发表论文40多篇。主持完成省级科研项目2项。出版著作4本,其中代表性著作有:《国际商法学》(上海人民出版社2003年版)、《国际商法》(山东大学出版社2003年版)。

## 前 言

我编著这部英文版的专著性国际商法教材,主要基于以下原因:

一、适应我国高校法学专业学生学习国际商法之需要。根据国家教育部2001年颁发的《关于加强高等学校本科教学工作,提高教学质量的若干意见》的要求,法律专业要先行一步,力争在三年内,使用外语教学课程达到所开课程的5%—10%。为此,许多高校相继尝试使用英语开设部分法律专业课。在讲授国际商法时,由于缺乏合适的教材,不少学校直接采用国外英文原版教材。我在多年使用国外原版教材的过程中发现,由于法律与政治之间存在着微妙复杂的关系,国外教材中常常近一半的内容是直接为维护自己国家和商人利益而编写的。如果中国学生不分青红皂白采用国外教材,必然会出现中国学生为维护外国人利益而学习国际商法的可笑现象。可见,中国学生使用国外教材学习国际商法,是不合适的。因此,中国人必须有自己的国际商法教材,这无疑已经成为当务之急!

二、为把中国相关法律推向国际市场,扩大我国在国际社会的影响贡献力量。传统法理认为,国际商法与中国法律无关,是地地道道的舶来品。中国只有被动地继受,别无选择。该观点有失偏颇。从理论上讲,国际商法虽然主要产生于欧洲发达国家,但随着经济全球化快速发展,各国法律日趋相同,各国的国内法已成为国际商法的重要渊源之一。另一方面,在经济全球化的强劲推动下,随着我国的法律日趋与国际接轨,立法水平也相应有了较大提高,越来越多的外商愿意适用中国法律来保护自己的合法权益。如果使用英文将中国相关法律编写进国际商法教材,既为外商来华投资经商提供了了解中国法律的机会,也有助于中国学生向外商介绍中国法律。这无疑有利于我国招商引资工作,促进我国经济的发展,扩大我国在国际社会的影响。

为此,本书具有以下特点:

一、吸收了多部国外国际商法教材的优点,尽量将原汁原味的法律知识奉献给读者。多数国外教材具有结构条理分明,理论浅显易懂,语言通顺流畅的优点,但是,缺点也是很明显:内容庞杂,重点不够突出。因此,我对多部国外教材进行反复对比,筛选出最重要的内容,剔除不适合中国学生的章节。

我虽然多年来一直使用英语讲授国际商法,但一旦使用英语著书立说,深感自己英语语言的驾驭能力欠佳。为了使本书语言地道、流畅,我借鉴了多部国外原版教材语言通顺易懂的特点,在介绍国外著名判例时,也引用了不少国外学者及法官的评论。这既有利于中国学生研读原文的法律英语,也有助于读者在今后的法律工作中予以引用,以增强说服力。

二、尽量体现中国的特色。本书在介绍国外相关法律的同时,适当考虑了中国政治、经济、法律、文化方面的特色,主要体现在下列几个方面:

1. 注重对相关理论的探讨。国外原版教材的内容之所以浅显易懂,主要是因为教材是供学生自己读的,教师上课绝不照本宣科,而是在教材的基本框架下进行研究性讲授。此外,国外相关资料齐全,学生很容易阅读到大量补充材料。考虑到中国学生自学能力较差,资料又缺乏,我在本书中采用了国际国内学者的最新研究成果,并进行了深入的探讨。这样,节省了学生收集资料的时间,有利于学生掌握系统的法律知识,提高其研究、思考问题的能力。

2. 将中国相关法律,如“三资企业法”、“仲裁法”等吸收进来,丰富了国际商法的内容,将中国相关法律介绍到国际社会。

3. 补充了一些基本的经济学常识,如“经济全球化”、“自由经济”、“绝对优势”、“机会成本”等理论。这可以弥补我国法学专业学生不开设经济学课程之不足,有利于学生从经济学的角度理解国际商法。

4. 将本书中一些重要的法律术语译成准确的汉语,有助于中国学生正确理解法律概念。众所周知,中国人学习英文时,常常要求教师译成准确的汉语。由于国外法律中不少概念深奥难懂,学生往往产生坠入云山雾海之感。如果将准确的汉语告诉学生,常会收到事半功倍之效。

本书作为中国大陆第一本由中国人编著的英文版的国际商法教材,我深感荣幸!法律出版社丁小宣先生毅然决定将本书纳入新近推出的“高等学校法学教材”,这种无私的鼎力支持使我铭记在心。山东大学法学院孙新

强教授在百忙之中对本书大力举荐,使我感激不尽。在此向他们表示衷心的感谢!由于时间仓促,本人的水平所限,不足之处在所难免,敬请读者提出修改意见,我不胜感激。

姜作利  
2004年2月于泉城

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