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The Role and Importance of National Economic Law in The International Legal Order

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Abstract

The present article seeks to evaluate the international effects of the establishment of national economic law rules and the conditions for their application based on the principles of public international law. Considering the emergence of national economic law, which is a response to the social and internal developments of countries and in response to the shortcomings of private law, and considering the phenomenon of globalization and the fading of national borders and the intertwining of many social and economic relations at the international level, the application of national economic law has caused tensions and conflicts between different countries.

This problem must be dealt with either through the coordination and unification of national economic law rules or through the resolution of disputes between the countries involved based on the basic principles accepted internationally. This article seeks to examine and present a framework of public international law based on which the limits of jurisdiction of states in the application of national economic law can be applied.

Keywords: National Economic Law, Competition Law, Stock Market Law, Extraterritorial Application Of National Law, Crisis İn İnternational Law, Jurisdiction Under İnternational Law.

Introduction

In today's complex world, the expansion of economic, social and political relations has doubled the interdependence between societies. The field of economics, which has a fundamental place in these developments, is still subject to the application of domestic law rules to international economic activities.

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The effect of economic regulations in an interconnected global order makes it difficult to cross national borders and to trans-national economic activities due to the possibility of conflicts between the laws of different countries.

Due to the diversity of factors involved in the global economy and the connection of economic interactions with more than one country, freedom of activity is subject to many unknown restrictions, which can be abused to reduce the credibility of private arrangements.

Not only do the standards of corrective justice differ from country to country, but conflicts of jurisdiction, especially in the field of domestic economic regulations, provide fertile ground for the failure of private programs.

This article aims to examine how established public law rules can contribute to the failure of international contracts and to what extent private parties can avoid such failures by prior choice of law. When the ability of parties to avoid established public law conflicts is limited by prior choice of law, subsequent dispute resolution may be the only option for determining the legitimate international scope of such rules. Disputes arising from national economic regulations - albeit in the realm of private law - have posed an unprecedented challenge in international law.

We must therefore examine whether and how the international legal order determines the boundaries of jurisdiction between states. The course of the debate depends largely on whether public international law can offer a tangible legal framework that includes substantive and formal guiding principles for resolving such conflicts between national economic law rules.

The outcome of private law disputes depends on determining the legitimate scope of application of public law rules established beyond national borders. This research aims to explore theories of jurisdiction in international law and state practice from a broader perspective. This broad approach helps us to identify the most appropriate rules for jurisdictional conflicts.

1. Globalization: A Legal and Normative Challenge

In the past two decades, the world economy has witnessed a major transformation from relatively independent national economies separated by geographical and legal barriers to an interdependent global economy in which economic agents enjoy greater opportunities.

The emergence of advanced media communications and the liberalization of transnational economic activities that have blurred national borders mark the beginning of an era of trade and exchanges that are largely unrelated to national economic rights. Economic relations between states have also steadily expanded and become more diverse. Foreign economic relations are no longer limited to the exchange of goods in trading zones. More recently, cross-border migration of workers, transactions in services, and the flow of capital and payments from one country to another have become very common. (Jackson, 1969, p. 2).

The political and economic structure of the world economy has witnessed fundamental changes to the extent that the picture of international economic relations has changed beyond our imagination.

The most powerful reasons for these changes have come from the rapid growth of geographical decentralization, foreign direct investment, the changing pattern of international trade, and the liberalization of financial services.

Although these exciting changes are beneficial to the well-being of consumers around the world, they can foster an environment in which market abuses and failures have a more serious impact on the stability and well-being of many countries.

Globalization therefore poses a dual challenge to policymakers at the domestic and international levels. The unprecedented pace of cross-border transactions and economic activities, coupled with unusual market failures, can threaten the sovereignty of states, that is, the ability of governments to formulate and implement public policy. (Reinicke, 1998, p. 5).

States that are eager to exercise such sovereignty, not only accept the order They are reluctant to embrace free internationalism, including economic freedom, property rights, contract law, and arbitration, but they are also indifferent to deep public policy concerns.

The global economy cannot be sustainable unless some regulatory tools are adopted to control some of the uncontrollable and complex forms of unintended consequences, information asymmetries, and anticompetitive behavior.

Information asymmetries have always been one of the arguments for why governments should intervene in markets, but globalization has exacerbated these asymmetries and created difficulties for governments in assessing the need for and extent of their regulatory responses. National antitrust policies can also face the problem of adapting to the global environment. (Jackson, 1998, p. 1).

As far as regulatory policies are concerned, the dialectic of globalization—in which public and private actors engage—has intensified, creating a permanent conflict between freedom and order, individual autonomy and social constraints. Similarly, the economic and political geography created by globalization has created a structural imbalance between the public and private spheres of society.

Governments that seek to continue to operate within the territorial principle have found themselves faced with many difficulties in exercising their regulatory authority over the sphere in which the global economy operates. (Shapiro, 1997, p. 309).

Increasing interdependence in the first place By increasing the interconnectedness of trade and investment, which breaks down the isolation of markets, it can reduce domestic autonomy in monetary, fiscal, and regulatory policy (Jones, 1995, p. 200-201). Thus, although globalization can lead to integration in the economic and private spheres, it also leads to diversity and pluralism in legal and political regulations (Smeets, 1990, p. 64).

There are some market failures that cannot be detected or contained under the purely liberal international system. In a liberal order, globalization can have tremendous benefits for all consumers, but the possibility of transnational market failures that undermine international market stability and cause fundamental harm to welfare is much greater (Petersmann, 1998, p. 1-25).

The inherent danger of spontaneous economic exchanges and the pursuit of private interests is therefore too great to be ignored without some constructive measures and a framework that is both stable and socially beneficial.

It is clear that there is still a global public interest in combating this kind of manipulation of international markets. The state, with its unique ability, is the first actor to intervene in any private bilateral relationship through the exercise of its public power (Simma, 1994, p. 234).

Note Ironically, much of the success of globalization depends on supporting and strengthening the role of states as territorially bounded communities and as fundamental institutions and value creators (Reisman, 1998, p. 1501; Alston, 1997, p. 436).

The main issue is often the means of implementing public policy goals and the manner of state intervention, whether there should be a universally accepted public order for the benefit of all citizens of the world or whether there should be a framework for harmonizing and harmonizing national visions of how public policy should operate.

Given the heterogeneous pattern of economic development throughout the world, the possibility of a plan for establishing rules at the global level is highly unlikely. In the existing system of domestic law, states are reluctant to act to achieve the best possible level of rulemaking for the whole world (Guzman, 1998, p. 1503).

Even if states agree on the scope and content of the international order, it is highly doubtful that a general consensus will be reached on global public policy or regulatory instruments against transnational market failures. In other words, apart from some regional arrangements, the prospects for substantial convergence of national policies in this area are not promising. (Sykes, 1998, p. 491).

The response of governments to the shortcomings of the international market has been essentially unilateral. Faced with the realities of globalization and the free market, governments have no choice but to strengthen and expand unilateral regulatory programs. The growth of economic systems has had a wide-ranging impact on economic activities across borders.

Exchange controls and the imposition of export and import rules for economic and political reasons are important examples of the transfer from national economic law to international economic relations, but other forms of rule-making with a national basis have international applicability.

In a globalized economy, where national boundaries have become blurred, the effects of nationally enacted laws that were originally intended to combat domestic market shortcomings can spill over into the international arena, creating confusion and suspicion.

Globalization and Expansion Foreign economic relations, together with the intervention of individual states through the implementation of their national economic policies in the form of economic rules, have led to great complexity for both states and the private sector involved in international relations. (Luard, 1984, p.255-266; Kenchtle, 1976, p.3; Rosenthal & Knighton, 1982, p.4; Hermann, 1982, p.19; Fulda & Schwartz, 1970, p.537). These economic rules have been recognized as a reflection of the public interest of national states..(Mann, 1987, p.603).

The diversity and difference in national interests have made international trade agreements the most complex type of agreement. (Schachter, 1991, p. 250-252). Sometimes this situation has placed international economic activities in a climate of conflict of rules. (Jackson, 1995, p. 603).

Today, issues related to economic and political welfare, national security, and the efforts of states to defend or expand economic interests are among the most troublesome problems of international law.

2 Towards a Legal Order

1. 2 The Importance of International Legal Order

The above-mentioned background makes the necessity of a flexible and practical international order clear. The changes that have occurred in the structure of international relations, the new role of the state in shaping the national economy, and the repetition and intensification of international interaction have made it necessary to revise and adapt international legal theories.

International economic life, even in its simplest form, is dependent and bound by the stability and integrity, order and sequence of conditions - what we can call the supra-economic, moral, political and legal framework. Economic exchanges, without a minimum of mutual trust and confidence in the stability of the legal institutional framework, either do not occur at all or do not last long.

The rules of national law and the involvement of the state in economic affairs are normal phenomena; For this reason, we need a precise international legal system to regulate these rules. (Ropke, 1954, p. 210-212).

Just like national economy, international economy cannot be effectively organized without a coherent theory of its goals, principles, institutions, interdependencies, and conditions for the realization of its policy. In comparison with national economy, the international economic system is characterized by a greater diversity of national economic, political, and social systems and global subsystems.

Thus, comprehensive legal and economic theories are essential prerequisites for the rational guidance of complex economic processes. (Schwarzenberger, 1970, p. 1; Petersmann, 1983, p. 228). The International Legal Order Appropriateness must be rooted in an established system that is continuous, allows for a series of procedures, and is also adaptable to change. (Black, 1969, Twining, 1996, p. 7&.1).

Despite the multitude of economic theories, it is the role and function of legal methods and international law to achieve the desired economic policy objectives. The primary purpose of legal methods in regulating world trade is to formulate and elaborate rules that create stability and certainty and the accompanying formalities. A kind of international order must be imagined that includes rules of customary international law with the nature of the rule of law. (Schwarzenberger, 1965, p. 72-107).

In order for the world economy to progress and maintain itself, the question of international legal order must be resolved. While international economic theories state that world trade is based on the law of comparative advantage, the basis of such an order must be the principle of covenant keeping.

Identifying the basis of obligations in the international legal order is particularly important in the economic field, because As long as this basis does not exist, no principles and standards (however clear and legitimate) can create an acceptable order of rules and procedures. (Farran, 1986, p. 193-196).

Given the complexity of highly regulated international markets, the inability of parties to allocate the associated risk, and the limited success of institutional cooperation in integrating the basic and substantive rules of the economy, it is common and inevitable. (Bhagwati, 1993, p. 219-234 Bello & Footer, 1995, p. 338; Dillon, 1995, p. 350-355; Young, 1995, p. 389-409).

The application of the rules of national systems to transnational economic activities has created a significant crisis between national and international legal systems (Picciotto, 1996, p. 90, 104). For many years, the conflict of jurisdiction in international economic law has been at the heart of economic disputes between states. However, recent developments have significantly intensified this trend. Because of the technical, economic and political issues that have transformed international society and the conflict that has arisen between the economic rules of different countries, we should expect a similar development in our legal theories (Paul, 1995, p. 609).

This is where international law, rather than proposing the direct application of substantive rules to individuals and corporations, should play an acceptable role in regulating and harmonizing the substantive rules of states. However, formal harmonization is itself a challenge.

Some doubts have been expressed about the possibility of achieving this goal and its effective implementation. Traditional views of international law, unfortunately, are often inadequate and incapable of explaining and justifying the rationalization of the rule-based system in the world in which we live today (Jackson, 1991, p. 8).

Public international law alone and with its traditional structure may neglect the changing infrastructure of international relations and the interaction of the public and private law spheres and, as a result, fail to address the multidimensional issues of contemporary international economic relations (Trooboff, 1993, p. 107-112).

2. 2 Sources and Existence of International Economic Law

An effective, feasible, and appropriate legal order for the modern world must not only encompass the growth and interaction of the fields of private and public law, but must also cover issues that exist at the boundary of law and politics, economics, and international relations.

The failure of public and private international law, and even international commercial law or international trade law, to take on various aspects of this challenge has led to the emergence of international economic law as a vehicle for compromise between different interests and rules.

In other words, international economic law is a place for reconsidering the authority of classical international law, which allows us to see the world as a single system, both geographically and functionally. International economic law recognizes and manages the delicate and complex relationships between the laws of different countries and different areas of public policy.(Trachtman, 1996, p.35-78) .

The project of international economic law at this stage proposes a framework for the harmonization of norms from a body and a set that are public or private, domestic or international in nature.

Regarding the sources, nature and scope of the international economic order, the practical method clearly rejects the view of international economic jurists such as Schwarzenberger, Verlern van Damme, Hohenwaldren, who recognize international economic law as general international law of treaties as opposed to customary law, which is based on a broad and absolute basis of rules of general international law (directly or indirectly based on treaties) with regard to transnational economic interactions. (Themaat van Verloren, 1981; Schwarzenberger, 1966, 7p).

Although excluding national rules - whether private or public - from the definition of the international legal order may achieve uniformity and consistency, it would limit this legal order to contractual agreements only and would leave many areas of dispute in international economic relations unresolved.

In contrast, Marj's definition focuses on the content and purpose of the rules of international economic law. International economic law therefore examines the complex interaction of a diverse set of different forms of social order that are linked to each other horizontally and vertically. For example, Petersman compares the former definition with his own.

He defines international economic law as the practical interplay of national and international private rules of the world economy, which consequently encompasses domestic private and public law and public international law, both contractual and customary.

The reason Kayne includes national law in his definition is that the domestic legal system of each state and its rule structure affect other states, whether intentionally or unintentionally.

The relationship between international economic law and national law, especially substantive law, is an important part of understanding the functioning of international law. Customary or treaty international law, which regulates the behavior of states and influences the outcomes of international economic transactions, is only a part of international economic law.

The functional and path-breaking approach seeks to replace the traditional system of normative unity that relies too much on general rules. Thus, in defending the innovative application of the new logic, this study acknowledges that some degree of universalism and integration may be lost.

This study recognizes the inherent complexity of evidence-based, problem-oriented, multi-disciplinary methodology. As part of this normative system, international law operates on the assumption that it determines the competences of states and the rules that are binding in those areas. International lawyers often believe that such international law exists and is binding on states. (Connell'O; .31-35p,1984,Weil;.394p,1991,Shaw1970, p. 38-54).

Despite doubts about the existence and favorable status of international economic law at the judicial level, it plays an important role at the political level (Zamora, 1989, p. 41). In international contractual law, at least a kind of de facto and spontaneous order can be inferred.(Roessler, 1978, p. 30-50; Tarullo, 1985, p. 533-552).

The international economic order based on custom towards a complete legal system does not yet exist and has been almost constantly challenged, but it is still an order. A rule-based approach must be sought that resolves the dispute by means of whether the rule has been violated or not.(Jackson, 1978, p. 98-99; Jackson, 1984, p. 1571-2).

In short, international rules define the legitimate rights of states in this order, as well as their internal order in respect of the rights of individuals. (4,5p,1978,1981,Tumlir (The lack of a binding mechanism does not invalidate serious studies of the legal rules of customary international law.) We can look to the rule and its deviations to see whether there are ways of thinking about the international economic order.

3 The Evolution of Jurisdiction Principles and Cases of Extraterritorial Application of Economic Law

3-1 Forms and Limitations of Jurisdiction

Once the foundation of an effective international legal order has been outlined, the interaction between international order and domestic law requires further consideration in a more specialized and practical framework.

The domestic law of the sovereign State emerges in the forms of judicial, legislative, and executive jurisdiction. The most fundamental and definitive function of international order is to determine how far the legislative, judicial, and executive jurisdiction of each State legally extends.

The distinction between legislative power and the determination of rules or laws or decisions is the guarantee of judicial enforcement and the power to take executive decisions. (Murphy & Swan, 1991, p. 515; Brownlie, 1990, p. 298-9)

As a reflection of sovereign sovereignty, states can impose legal obligations on individuals engaged in economic activities. Since jurisdiction is a vital and central feature of sovereignty, states may exercise jurisdiction in cases that may modify, create, or terminate legal relations and obligations, although in an interdependent global economy, states cannot claim absolute authority to make laws applicable in international situations.

As noted above, public international law has defined the boundaries within which domestic economic laws are legitimately applicable to actual international situations. This process involves determining the limits of state jurisdiction. International law therefore seeks to establish firm rules that are relevant to limiting the exercise of state sovereignty.

Since, under domestic law, various types of Different jurisdictions must be determined at different levels, international law sets limits beyond which States may not depart in the exercise of their jurisdiction. According to international law, a State's jurisdiction depends on the interests which that State reasonably has in view of the nature and purpose for which it exercises that jurisdiction, and on the need to reconcile these interests with the interests which other States have in the exercise of their jurisdiction.

Since each State is part of the international community, the rules which determine its jurisdiction must be derived from a consideration of the needs of the community, and in particular the need not to encroach unnecessarily on the interests of other members. (1048-1049p,1993,al et Henkin).

This will not be achieved until some practical means and indicators are introduced to guide the process wherever international decision-makers are faced with a conflict between international law and domestic economic law.

It is generally accepted that a state can apply or impose its laws to events and persons within its territory as well as to its nationals abroad. Territorial jurisdiction and nationality are recognized as the basis of jurisdiction and have been used as criteria for permissible jurisdiction. Territorial jurisdiction is often considered the conventional basis of jurisdiction.(10-13p,1988,Castel).

A state has territorial jurisdiction over all persons and things within its territory. Given that all states are equal under international law, This authority is exercised without hindrance by other sovereign states. Therefore, each state has a certain extent of national jurisdiction.

The principle of absolute territoriality in international law grants states absolute discretion to regulate economic matters within their own territory and, as a logical consequence, an obligation of non-interference with other states. (.2p,1984,Bridgeat 8).

As a corollary of sovereign sovereignty, it is clear that no sovereign or authority can apply law transboundary to the territory of a sovereign state except by agreement. (Stephens & Neale, 1988, p. 12).

However, as an exception to the principle of absolute and conditional territorial jurisdiction, it is accepted that a State may wish to base its jurisdiction on other grounds, such as nationality. Nationality, as a sign of loyalty and an aspect of sovereignty, justifies jurisdiction over extraterritorial acts in certain circumstances.

Accordingly, the authority of the sovereign State over those who are its nationals does not cease when they leave that territory. There are also a number of less widely accepted principles of jurisdiction, such as ineffective nationality, according to which a State may claim jurisdiction when the victim of an act is one of its nationals, or the principle of universal jurisdiction, according to which any State may claim jurisdiction over acts universally recognized as crimes against humanity.

The principle of territorial jurisdiction can also be extended to include: activities that began in the country exercising jurisdiction but were completed abroad (the principle of personal territoriality) or activities that began abroad but were completed within its territory (Jennings, 1957, at 153-160). In addition to the jurisdictions mentioned, the globalization of economic activities has rendered the principle of absolute territorial jurisdiction somewhat obsolete in the face of certain complex and difficult legal issues (Born, 1992; Muchlinski, 1995; Murray, 1975; Murray, 1981). In light of these developments, a more realistic approach should be adopted (Bron, 1992, at 153-160).

4. Transboundary Application of National Law: A Crisis in International Law

Although domestic law is at first glance generally territorial and should not be applied outside the domestic territory, the application of the private and impartial law of a country in another country has nevertheless become an age-old tradition.

As far as public international law is concerned, this form of transboundary law has never been in question. Many States, through conflict of laws rules and administrative and judicial procedures, allow the application of foreign private law rules within their territory, while these same States are often reluctant to give effect to laws with public objectives.

It is therefore not correct to rely on conflict of laws principles in determining the extraboundary scope of regulatory and generally oriented laws, since conflict of laws rules cover exclusively private law issues. (Dodge, 1998, p. 105).

The assumption that public international law determines the limits of a nation's competence to regulate economic affairs leads us to think that this is more a question of jurisdiction than of choice of law. Public international law in its old structure is incapable of dealing with these matters. Several factors have made the application of certain principles, such as the principle of territoriality and the principle of nationality, almost impractical.

The emergence of economic regulation, the blurring of the line between private/public law, the phenomenon of globalization, and the expansion of multinational corporations require other ways of addressing issues of jurisdiction and conflict of laws.(Lowenfeld, 1979, p. 329-335).

The departure from the usual methods, especially the departure from the inflexible principle of territoriality in an interconnected and integrated world economy, has led to a great controversy over the cross-border application of national laws to International transactions have been.(Dam, 1985, p. 887-895).

This occurs most often when states, by extending the principle of nationality, seek to exercise jurisdiction over the activities of their nationals abroad. In the case of multinational corporations with branches and subsidiaries throughout the world, the symmetry of the principles of territoriality and nationality with disputes over state sovereignty has led to the emergence of parallel jurisdictions. (Harris, 1987, p. 966, at 959).

Most parallel claims to jurisdiction and cross-border rules arise when the nationality of corporations is in dispute. The disputing states often adopt different approaches to determining nationality, resulting in parallel claims by states to jurisdiction.(Lange & Born, 1987, p. 17-21).

For various reasons, multinational corporations, when establishing branches and subsidiaries, register them in accordance with the domestic law of the country concerned, and as far as the law of these companies is concerned, these subsidiaries have independent legal personality.

Usually, the country of which the parent company is a national tries to impose its commercial laws and other economic regulations on the subsidiary, arguing that since this company is a subsidiary of the parent company, it is subject to the jurisdiction of the state of which the parent company is a national. (Seidl-Hohenveldren, 1987, p.13-17).

The International Court of Justice has accepted a theory that takes the place of registration as the basis and confirms the separate legal existence of companies from their shareholders and has recognized specific rights for each group. Relying on the principle of company registration, it is argued that a foreign subsidiary is not subject to the jurisdiction of the parent company's government, even when, under the domestic law of that government, a subsidiary wholly owned by the parent company could be considered a mere subsidiary, or in principle is.

However, arguments have been put forward to disregard the principle of company registration and to grant the subsidiary the nationality of the parent company. A company may be a subsidiary of its shareholders and not have a separate legal personality. The establishment of the Foreign Trade Act in time of war causes the citizenship of companies that are apparently citizens of friendly countries to be examined and the true identity of their shareholders to be revealed. (Thompson, 1983, p. 363-72). By proposing this view, the United States has tried to extend its cross-border jurisdiction to subsidiaries of American companies located abroad. (De Mestral, 1990, p. 148).

The process of globalization and the inability of traditional international law to determine jurisdiction have paved the way for the “effect and consequence theory.” This theory is another basis for claiming extraterritorial jurisdiction, especially when an act committed by a foreigner abroad affects the economy of a state that is trying to enforce its economic regulations. This form of cross-border imposition of economic regulations can create serious political tensions between the state on whose territory the regulations are to be enforced and the enforcing state.

In some cases, and to some extent, it has been accepted that a state may apply its law to a non-national when the act committed by that person has harmful consequences in that state. This is sometimes called the principle of territoriality. The traditional example is that a State may apply its criminal law to a person who shoots someone across the border and kills him on its territory. However, in many cases, and especially in relation to economic regulations, the situation is not entirely clear.

The question in international law is whether, in accordance with the principle of territoriality, the production of effects and consequences within the State is sufficient to justify the application of the laws of the State in question to an act that occurred outside the territory of that State and produced these consequences, especially when the responsibility lies with a non-national. There is much controversy and ambiguity about the meaning of the effects and consequences theory, whether it is merely intended effects, or direct and substantial effects (actual and intentional effects and effects or adverse effects, etc.) (Fugate, 1991, p. 80).

However, for many years the practice of the United States has been a clear example of the exercise of jurisdiction on this basis. The United States has applied its laws to apply in the areas of competition, export control, income tax and securities regulation outside its territory. More recently, the European Community has decided to apply its common law rules outside its territory, based on the effects and consequences theory (Lowe, 1983, p. 1-4, 24-28, 56-60).

Germany also considers the application of its law against obstacles to competition to any conduct that affects Germany, even if this is not the case. have a foreign origin. Thus, the issue of the extraterritorial application of laws, whether based on the "principle of nationality" or the "theory of effects", arises when a State assumes that its economic regulations should be applied in another State.

However, the validity and problematic nature of the imposition of jurisdiction ultimately depends on the State's ability to enforce any rules and decisions that are issued in this regard. The issue only becomes acute when, in addition to claiming jurisdiction, the State takes steps to enforce its economic regulations outside its territory.

In the field of public and criminal law, legal jurisdiction and judicial powers are one and the same; hence, States do not apply foreign public and criminal law. But in the field of private law, judicial and legal jurisdiction do not necessarily coincide. A court may have judicial jurisdiction and yet apply foreign law.

Therefore, legal jurisdiction can be accepted outside the territorial boundaries in areas described as "private law", that is, areas of law that do not concern the general public interest and the general political welfare. (Akehurst, 1972-3, p. 181; Boggiano, 1993, p. 47-9). Because of the neutrality of private law rules and their ultimate purpose of serving corrective justice rather than the implementation of public goals, they are less likely to give rise to conflicts of jurisdiction. (Basedow, 1994, p. 423-6). In practice, public law rules, especially economic rules such as taxation and criminal law – and not private law rules – give rise to the majority of cases of conflicts of jurisdiction and the issue of the cross-border application of law (Gann, 1987, p. 1).

A famous case in criminal law in which the violation of the territoriality principle was accepted as a valid and legal basis for determining jurisdiction was the Lotus case. In this case, a Turkish court had imprisoned the officer of the watch of a French ship for manslaughter. The ship had collided with a Turkish ship on the high seas, causing the death of a Turkish crew member. The Permanent Court of International Justice held that Turkey had jurisdiction to apply its criminal law in this case; Given that the effects of the crime committed on board the Turkish ship were evident, the Court ruled that the principle of territoriality of criminal law is not an absolute principle in international law and is in no way compatible with the principle of territorial sovereignty of the State. Taxation is another example of the extraterritorial application of rules that can lead to a conflict of jurisdiction.

Therefore, international law must play a role here. It is the task of international law to determine the enforceability of domestic financial laws in relation to international financial realities, in other words, to legalize the international tax situation (Feinschreiber & Bischel, 1985, p. 1-10; Skaar, 1991, p. 19-31; Picciotto, 1992).

1.4 Competition Law

Globalization has increasingly created competition problems that transcend national borders; international cartels, export cartels, restrictive practices in areas that are inherently international (such as air and sea

transport), global mergers, or even price fixing and abuse of dominant positions in several major markets are examples of such cases. It is therefore in the interest of competition law practitioners to cooperate and find solutions to these problems in order to strengthen the effective enforcement of competition rules at a time when cartels affect multiple markets. (15p,1997,Davidow)

This common interest may mean that there is less diversity in domestic economic law in the area of competition law than in other areas of economic law. The basic principles of competition law are so similar that they tend to converge and produce the same results all over the world; so that it is difficult to deny the fact that competition in the global economy is beneficial for everyone, regardless of how and through which country's law it is achieved. Strong and vigorous competition policies increase the likelihood of trade liberalization and global welfare advances.

It is therefore better to pursue a goal for cooperation and coordination on the substantive and formal rules relating to domestic competition policies. However, competition policies are not implemented in isolation; in most cases, these policies are intertwined with other policy objectives, especially in international trade. In a world of interdependent economies, The relationship between competition and trade policies is clear and obvious. Although they serve different purposes, both affect international trade.

Trade policies are inherently protective of domestic industries, while competition laws seek to promote and encourage competition in both domestic and international trade, but both can be effective trade policy tools.

Domestic competition laws often discriminate in their treatment of domestic and foreign firms and consumers in ways that are unfavourable from a global welfare perspective, increasing domestic welfare at the expense of foreign welfare (Iacobucci, 1997, p. 5).(Sornarajah, 1982, p. 131; Sornarajah, 1982, p. 127);

National competition laws often do not support competition in the global context and tend to support domestic economic and social interests. Thus, in the absence of global competition objectives, domestic competition laws are unlikely to converge. Thus, there is still a long way to go before international agreement on the substantive standards of competition law is reached. Competition policies necessarily vary according to the degree and level of economic development as well as socio-economic customs.(Griffin, 1998, p. 64).

In some countries, action against anticompetitive practices is more intense than in others. Convergence is likely to occur only among countries that have similar backgrounds; are at a similar level of economic development; and have a significant degree of political cohesion (Jeunemaitre & Dumez, 1996; 219, 221 at 216; Starek III, 1996, 29 at 32; Nicolaides, 1996, p. 131-145).

There are also valid reasons for respecting and respecting local competitive regimes that are consistent with economic development at the country level. Given the fact that diversity and policy-making with regard to local characteristics are an inevitable part of the global regulatory architecture, the effective application of domestic competition laws through a reasonable formal system becomes an important factor in the creation and maintenance of free and accessible markets, thereby adding to the stability of the system. The effective application of competition laws is a fundamental feature of free market economies and should be further strengthened. In a world of rapidly growing international trade and the growing power and influence of multinational corporations, it would be unrealistic to imagine that competition law is limited to activities conducted within national borders (Sharma, 1995, p. 45).

Some countries see an effective way to deal with anticompetitive behavior as extending the scope of their competition rules, that is, their cross-border application. The cross-border application of domestic competition laws is usually justified by relying on the "effects theory," which allows the regulation of foreign conduct that imposes specific effects on the domestic economy. The inclusion of acts committed abroad reflects the broad scope of domestic competition law, which even encompasses the conduct of all foreigners. If these rules are applied to non-nationals outside the jurisdiction, they will naturally apply to domestic companies, both under the effects theory and the nationality principle. are also applied. Thus, the principle of nationality reinforces the theory of effects and consequences.

There is a heated debate about the extent to which the theory of effects and consequences can justify the cross-border application of laws. The antitrust laws of the United States have repeatedly been applied to conduct that originated outside that country. These laws have been applied cross-border, both in the form of enforcement actions by the United States and in actions involving punitive damages by private parties. (Tepass, 1990, p. 565; Barbolak, 1985, p. 39; Allely, 1985, p. 157; Shaw, 1984, p. 253).

The first attempt to apply competition law was made in the litigation between the Banana Company and United Fruit; In this case, the actual and proper limits of the United States' jurisdiction over the activities of foreign companies located outside this country were examined and its jurisdiction was rejected.

However, the most important case in this field concerns the dispute between the United States and the Aluminum Company of America, which is considered in several ways a turning point in the history of competition law. This case concerns legal proceedings initiated against a Canadian company.

The importance of this case lies in its demonstration of the theory that liability for anti-competitive actions can be imposed even on non-citizens who, by their conduct outside US territory, have had harmful effects on the US economy.

The effects doctrine evolved with this case, and it was established, at least in domestic American law, that anticompetitive cartel agreements entered into by foreigners outside the country fall within the jurisdiction of the United States and are unlawful under the Sherman Act when, having regard to the nature of the agreements, they are foreseeable to have a reasonable effect on American commerce. (Hymowitz, 1987, p. 513)

With the exception of a period of moderation that allowed for accommodation with the interests of foreign governments, the practice of regulating and controlling foreign activities across borders has now been revived and strengthened in the most recent cases brought before American courts.

In the Insurance Company case The Hartford Fire v. California cited the custom established by the Aluminum Company of America and rejected the Banana Company's argument. In this case, the U.S. Supreme Court rejected the federal court's arguments based on international comity and upheld the basic principle set forth in the Aloka case that "it is now well established that the Sherman Act applies to conduct by aliens that is intended to produce, or has in fact produced, a justifiable effect in the United States." (Burr, 1994, p. 221) (Trenor, 1995, p. 1583)

This trend was further strengthened when the US Competition Authority brought a case against Nippon Paper, the Japanese manufacturer of fax paper. The agency alleged that the Japanese paper industry had violated US competition law by engaging in price-fixing activities.

The US government argued that criminal prohibitions apply to all foreign conduct that has “substantial and intentional effects within the United States.” The federal court dismissed the case with a narrow interpretation of the competition law.

But the Court of Appeals ruled that the competition law applies to all foreign conduct that has

substantial effects within the United States. In justifying its action, the court promptly rejected the arguments advanced in the US Banana Company case, with its perhaps outdated notions of respect and courtesy.

The Court argued that the presumption against the extraterritorial application of laws on which Bananar's argument was based had been overcome in light of recent case law. The Court cited Hartford Fire Insurance Company v. Aluminum of America and established a persuasive case law that was “permissible.”

This line of reasoning reflected a broader view of international economic relations, and in particular the way international markets are regulated. In the American view, old arguments about the territoriality of laws and sovereignty must be abandoned in light of the new global structure, the triumph of so-called democracy, and the hidden hands of the free market. (Rice, 1998, p. 613 at 633; Reynolds et al, 1998, p. 151).

The United States is not alone in seeking to enforce its competition laws extraterritorially. The European Union also seems to be moving towards accepting assumptions close to the “effects theory” as a basis for the cross-border application of its competition law.

(647p, 1979, Bellis; 195p, 1992, Whattein) Under the terms of former Articles 81(1)(82)(85)(86) of the Treaty on European Union, conduct is subject to EU competition law which is liable to affect trade between Member States. This may include direct or indirect effects and potential or actual effects, but must in any case be appreciable.

In the first case in which the European Court of Justice was called upon to rule on the cross-border validity of EU competition law, the Court did not take any clear view on the existence of a theory of effects and consequences based on the principle of cross-border application of rules.

However, in 1988, in the Wood Pulp Cartel v. the European Commission Decision, the Court of Appeal found non-EU producers of reed pulp against a number of restrictive practices which they alleged It could be argued that it restricted trade in the common market, while some of these producers had no presence in the common market at all. The petitioners argued that, because of their lack of competence, applying the EU competition rules to them would violate one of the obligations of public international law relating to non-intervention. However, the European Court of Justice rejected this argument and ruled that, under EU law, the Court also has jurisdiction over companies outside the EU if they sell to customers within the EU and enforce a price-fixing agreement concluded outside the EU (Griffin, 1998, p. 64). (Griffin, 1994, p. 353; Torremans, 1996, p. 280; Kuyper, 1984, p. 1013). In Wood Pulp, the European Commission did not discuss the limits of its jurisdiction in the event of actual conflicts with the interests or policies of other States. In the recent case of "Jancor" v Commission, the European Court of Justice ruled on the cross-border application of EU competition law and the application of these rules to foreign commercial partnerships because of their anti-competitive effects on the global market for radium and Plutonium was approved (Gonzalez-Diaz, 1999, p.3-28; Bavasso, 1999, p.45 at 48).

This approach is clearly at odds with the European community's reaction to the cross-border application of US antitrust laws. The European community sees the US action as a violation of the territoriality principle,

but at the same time attaches great importance to the so-called economic effects to justify the cross-border application of its competition laws (Sharma, 1995, p.45; p.323).

2 Securities and Stock Market Regulation

Perhaps in no other area are the effects of globalization more obvious and visible than in the area of financial services and stock markets. The fundamental and most tangible impact of globalization can be seen in the significant cross-border investment and transnationalization of stock markets.

The extent of this trend is seen in the growth of cross-border securities trading, the number of foreign participants, the emergence of multinational exchanges to provide services in this type of trading, and most obviously, the 24-hour and instant trading of stocks. Companies and investors from one country increasingly participate in the securities markets of another. The growth of these options clearly demonstrates the transnationalization of capital markets. (Dale, 1996, pp. 2-3.)

The key factors behind the shift in investment patterns from domestic to international investment on such an unprecedented scale are the changes in the pattern of supply and demand for capital; the demand for capital from developing countries and the capital surplus in developed countries are a distinctive feature of international economic relations.

Developing countries are well aware that domestic savings and financial markets cannot provide the capital needed for new industrial growth and are therefore seeking to attract foreign capital.

On the other hand, the attractive prospects and higher returns of investment in developing countries are more attractive to investors from developed countries. Developed countries with surplus capital are a powerful incentive. This strong supply-demand linkage has accelerated the internationalization of securities markets and has also broadened and diversified the scope of securities trading. (Light, 1998, p. 561, at 564).

The liberalization of securities markets and the reduction of domestic barriers have added to the intensity and strength of this movement. Securities markets have become significantly internationalized, and the driving forces of international political economy are pushing for entry by reducing legal barriers. Every day, the number of countries that open their stock markets to foreign investors and repeal laws that restricted their nationals' investment abroad increases. (Asher, 1996).

The process of liberalization draws its strength from a great wave of privatization, which to a large extent requires the international distribution of securities. This process is strengthening the expansion of the world market. Moreover, the practical integration and the growth of new financial instruments such as derivative transactions have contributed greatly to the process of transnationalization. Cross-border investment carries many risks, which can be managed and controlled through derivative transactions, while the integration of banks and securities can create powerful financial complexes capable of operating in competitive international markets; this can be seen in the strong tendency of banks and other financial institutions to have a presence outside their domestic markets.

However, the weakening of internal barriers has been made possible by technological advances. Due to advances in telecommunications and electronic commerce, financial information can be analyzed rapidly on a large scale, and geographical distance plays almost no role. These factors lead to an increase in the strength and speed of international financial transactions. (Sobel, 1997, p. 10, 16, 47; Schachter, 1997, p. 13)

International trade in financial services and securities markets certainly adds further complexity to an already complex financial market and increases the sensitivity and vulnerability of markets. Thus, the transnationalization of securities markets, due to the interconnectedness of markets around the world, has its consequences; for example, they react quickly to events and create instability. Financial markets are rapidly reflecting changes and shocks.

This poses particular problems for governments. As a result, abuses and commercial frauds are being extended beyond national borders, as it has become easier to manipulate securities markets internationally. Many abuses clearly demonstrate the use of cross-border financial transactions as a way to circumvent domestic laws.

As previously mentioned, the lack of information asymmetry between countries, the operation of complex international networks of economic criminals, and the ability to influence many interconnected markets around the world, pose a serious threat to the stability of financial markets. However, the main purpose of domestic securities law is to protect domestic markets and investors from any fraudulent or fraudulent activities. Governments have a strong interest in keeping financial markets thriving. They compete internationally for capital, in part through the framework of economic law. (1994, Schuster, p. 173)(1993, Trachtman, p. 47)

Countries with more stringent domestic capital market regulations are able to attract more foreign capital than countries with less stringent domestic capital market regulations because they provide greater protection for transactions conducted in these countries. (1987, Haseltine, p. 307-308)

In the absence of multilateral agreements or supranational regimes to regulate cross-border capital flows around the world, there are only national legal regimes that are not equipped to regulate cross-border investments. (1992, Mann et al., p. 303)

Thus, the trend towards transnationalization has transformed the assumptions on which domestic securities laws were based. Any legal strategy must take into account the role of the global market and, hence, the constraints imposed on national regimes. recognize legal rights. One result of this process is that market participants can avoid market barriers and restrictions with little effort. (Plambeck, 1988, p. 171).

The risks that exist in the new financial environment against regulatory factors are well reflected in the recurring global crises in financial markets. (Trachtman, 1993; Schuster, 1994) Even some of the secrecy laws in financial matters are a very good cover for those who can jeopardize the integrity of securities markets in order to protect the market itself and consumers.

Now, a new approach to regulating behavior in international markets is needed for both countries. (Honeygold, 1989) One might argue that the transnational securities market is an environment in which the role of the territoriality principle and the non-application of foreign public law should be somewhat reduced. In truly international activity, injustice and chaos can result from unquestioning adherence to the territoriality principle and the absolute and immediate rejection of the application of the law across borders.

In some situations where international agreement does not exist, the prevention of securities crimes International securities may be a legitimate justification for the extraterritorial application of national law. (Ajayi, 1992, 192). Given that financial markets around the world have become increasingly internationalized (Peters & Feldman, 1988, p. 19-52; Seligman, 1988, p. 1-17), domestic laws regulating these markets have sometimes been applied beyond the limits of acceptable jurisdiction and have often

discriminated against companies issuing foreign stocks or bonds. (53p,1988,al et Goelzer; 258p,1987,Hawes).

Most nations have their own regulatory systems for securities-related activities, including mandatory reporting and registration. (375-451p,1987,al et Pitt). Thus, the realm of securities and other financial market activities is subject to a great deal of jurisdictional conflict. (420-429p,1991,Kellan).

Indeed, jurisdictional conflicts are common in an important area of economics, such as securities law. The transnationalization of capital markets has led to more conflicts, which There are mainly in the areas of information abuse, fraud, record-keeping, information disclosure laws, gross profit limits, regulations on controlling a company by purchasing a majority of its shares and obtaining information from abroad.

Governments, in pursuit of their economic interests, tend to apply their regulations cross-border wherever harmful conduct outside the scope of these regulations has occurred. In any case, in an international situation, several governments may have legitimate interests in regulating securities transactions or financial services in general, but as far as international securities markets are concerned, the interconnectedness of securities markets entails multiple legal obligations in different countries, which are becoming increasingly difficult and costly to comply with.

This is particularly true of the United States market, partly because of its size and attractiveness to foreign companies and investors, and partly because of the acceptance by US courts of the effects and consequences doctrine or the principle of ineffective personality. The United States has repeatedly sought to expand its securities laws in order to maintain a buffer between its citizens and more regulated foreign markets. (Cox, 1998, p. 3).

Therefore, the practice of United States courts has been to extend their jurisdiction beyond the domestic territory and to apply the securities regulations of this country across borders. The subject matter jurisdiction of United States courts to apply the laws of this country is determined largely on the basis of the standard of effects and results or conduct. (Johnson, 1980-81, p. 890).

However, in some recent cases a combination of both criteria has been observed simultaneously. From the American perspective, for example, there is ample justification for jurisdiction over insider dealings or fraud outside the domestic territory, because fraud is a "harmful" practice and no nation should seriously object to the application of American anti-fraud regulations or insider dealings outside this country, where the result is to the benefit of all.

Although other countries do not necessarily agree with the United States on this point, this is nevertheless a logical conclusion. It is a situation in which the securities market is becoming increasingly global, but only governments are responsible for the establishment and operation of market regulations as a matter of national application. (Langevoort, 1993, p.175; Fox, 1992, p.263).

The UK Financial Services Act 1986 is also an attempt to respond to international considerations in meeting the needs of a rapidly growing international market. This Act and the rules and regulations arising from it govern investment in the UK. It is therefore necessary to conclude that this Act and the rules do not govern transactions and activities that have no connection with the UK.

However, because of the complex and extensive nature of securities transactions, the scope of the Act and the rules and regulations arising from it will depend on the place where the securities are issued or dealt in.

The securities may be dealt in at the same time or subsequently on a foreign stock exchange or on a domestic stock exchange, or they may be acquired by a British investor or dealer in a transaction carried out abroad or in the United Kingdom. (Pennington, 1990, p. 57).

In such circumstances, the scope of the rules relating to investment transactions is not so clear and it is therefore entirely possible that they will apply to transactions which are in a foreign jurisdiction but which also have consequences in the United Kingdom, particularly if, under the rules and practice of the foreign jurisdiction, the protection afforded to investors in the United Kingdom is less than that afforded by the UK Financial Services Act.

3.4 Exchange Controls

Jurisdictional Issues Exchange controls, unlike other economic rules, are subject to a unique regime. Since exchange controls are regulated by the International Monetary Fund, the scope of application of these rules is determined by international law in the form of treaty arrangements. (Mann, 1992, p. 397-43).

According to the Articles of Agreement of the International Monetary Fund, governments are authorized to control the flow of capital across their borders. (Gold, 1984, p. 77-790). The provisions of this article are mandatory and the parties to a currency exchange agreement cannot agree to the contrary. The IMF rules show that international interests are served by leaving members free to decide whether to control or not to control capital.

Under Article 8(2)(b) of the Articles of Agreement of the International Monetary Fund, the extraterritorial effect of the exchange control regulations of member States is recognized. Accordingly, a foreign exchange transaction entered into in the territory of a member State and involving the currency of another member State shall not be enforceable if it is made without regard to or in circumvention of the exchange control regulations of the latter State which are consistent with the Articles of Agreement of the International Monetary Fund.

The determination of what constitutes an exchange control contract and whether the regulations at issue are consistent with the Articles of Agreement is a matter of debate. All members of the International Monetary Fund are required by Article 8(2)(b) of the Articles of Agreement to give some degree of extraterritorial effect to exchange control regulations, including regulations relating to securities, approved by the Fund.

However, there is no doubt that the Fund's expertise is in economic and financial matters and it has no authority to make any assessment of security and military necessities. Thus, although the Fund accepted the US Treasury regulations on the control of Iranian assets, some commentators have challenged the extraterritorial application of the US exchange control regulations in London and Paris (Simon, 1981, 203-23).

It has been argued that in deciding whether a regulation is a “exchange control regulation,” the purpose of the control must also be considered.

In his view, if the control is intended to exert political pressure on a foreign government, rather than to support the currency of the country imposing the control, such regulation is not considered an “exchange control regulation.” (Edwards, 1981, p. 870-902; Balfour, 1989, p. 125 at 135).

On the other hand, American courts and commentators, for obvious reasons, have interpreted this article more broadly, so as to include politically motivated restrictions. However, the issue is not without

ambiguity. The second paragraph of Article (8) has not been considered a common rule in the courts of some members or among legal experts.

The reason for this is that the considerations of international law expressed by this provision are not always compatible with the national interests as considered by the courts of some member states, especially those countries that are the areas of most financial services and international currency markets.

Since this article involves striking a balance between national and international interests on the one hand, and public and private interests on the other, its implementation is not a simple task. Furthermore, this article does not have a clear meaning. The ambiguity of this article arises from different views on the meaning of the terms used in the article.

Terms such as “foreign exchange contract” “or regulations relating to foreign exchange control” are not well defined and therefore cause confusion. (.101-111p,1976,Williams; .319-396p,175,Williams) .

Although in a narrow sense, a "currency exchange contract" can be considered limited to a contract whose subject is the sale of currency, a broader interpretation of "currency exchange contract" by courts and commentators shows that a "currency exchange contract" can be applied to any contract for the sale of goods that involves the current currency of one of the member countries. That is, a currency exchange contract is any contract that affects the monetary resources of a member in which its current currency is involved. (.1064p,1987,Zamora).

4 Foreign Trade Regulations

In recent years, law has increasingly become a common instrument of foreign policy. Trade policy and export controls are generally regulations designed to protect national economic interests (Pterson et al., 1986, p. 77, 92-3).

But unlike primarily economic laws and unilateral quantitative measures, such as tariffs and other barriers to free trade, the most controversial regulations are primarily concerned with strategic political and foreign policy objectives (Mabry & Moyeer, 1983, p. 8-9 at 3p, Meessen, 1992, p. 171).

Governments often resort to economic sanctions, often with extraterritorial enforcement, against their enemies in times of war or similar emergencies (Lowenfeld, 1983, p. 71, 85; Bianchi, 1992, p. 366 at 372-374).

These sanctions require any national of the enacting country or any company controlled by nationals of that country to refrain from trading with specific countries or their nationals or to release their assets (Juster and Bialos, 186, p. 799).

The foreign trade regulations discussed in this study are economic sanctions in the form of sanctions and blockades imposed by the state and do not include collective measures taken under the auspices of an international organization.

The fact that many countries use economic sanctions to advance their national interests confirms that, despite the fervent slogans about free international trade and comparative advantage, the national state is still the most important actor in the arena of international economic relations and that globalization has not yet fundamentally weakened national borders and tendencies. Unlike other economic regulations, the mere existence of rules that regulate international trade, on the one hand, It reflects the diversity of the world and, on the other hand, reflects a divergence and internal disagreement between states.

However, the use of economic sanctions for political purposes varies from country to country. For example, under German law, foreign trade is considered essentially independent of foreign policy. In the United States, by contrast, foreign trade has traditionally been influenced and subordinated to political priorities (Werner, 1983, p. 403).

As economic diplomacy has become increasingly important, questions about the legitimacy of such measures have been raised and the issue has been widely debated. In classical international law, there was no restriction on the use of economic sanctions by states. But it may be inferred from the Charter of the United Nations that states have a specific duty to facilitate international economic relations by avoiding economic sanctions. From the point of view of many developing countries, those kinds of practices that lead to economic pressure are contrary to international law. While this This is not acceptable to developed countries. (Cameron, 1991, p. 218).

However, the legitimacy of economic pressure in international law is largely ambiguous and the UN Charter is not very definitive in supporting the idea that states should refrain from such measures. Consequently, and despite the assumption that economic sanctions are morally undesirable in the first place, (Rosen, 1993, p. 41) And no state should be discriminated against in trade relations. It is difficult to find a rule in international law that prohibits all forms of economic sanctions. Although, in the current state of development of the international legal order, some types of economic sanctions may be considered socially and economically undesirable, they do not necessarily violate international law.

Indeed, it is the right of nations to choose the states through which they will conduct economic relations. The state can determine its national interests and encourage or prohibit its subjects from engaging in trade with other nations. To each However, in exceptional circumstances, the political use of economic instruments may be considered a violation or infringement of the principle of non-interference in the internal affairs of other states.

However, the use of economic pressure on other states for political purposes has a long history. Since the beginning of this century, states have repeatedly and effectively used this leverage to inflict economic damage or change the behavior of their target states. (Doxey, 1996; Doxey, 1980, pp. 9-35p.)

The degree of success of such measures depends on the economic power of the implementing state. However, the interconnectedness of the international economy has made economic coercion an even more effective alternative to conventional warfare.

There are many examples of recourse to economic sanctions in the history of international economic relations. The most controversial type of economic sanctions concerns the situation in which states engaged in political disputes with some other states include third parties in their economic sanctions program.

Such a situation raises the issue of sovereignty, the principle of territorial jurisdiction, and the conflict of laws. This situation arises when a state, in an effort to impose its restrictive laws on nationals of other states or on its own nationals operating in another state.

It is obvious that this Secondary sanctions derive from extraterritorial jurisdiction, which stems from the principle of nationality or, in some cases, the principle of protection. Disagreements about the limits of jurisdiction for rules on trade and exports have also given rise to serious disputes and conflicts.

In such areas, international law may prohibit a certain type of economic coercion. The first serious case of the exercise of extraterritorial enforcement under the principle of protection concerns the Arab-Israeli

conflict, during which the Arab League imposed secondary sanctions on companies that had economic relations with Israel.

This type of exercise of jurisdiction is often considered to be contrary to international law, to the extent that it amounts to interference in the internal affairs of other countries. Interestingly, the strongest opposition to this type of enforcement has been expressed by the United States.

Since the United States is the largest importer of economic pressure in various forms and areas, this country's position seems somewhat ironic. The United States is at the center of controversy for its attempts to impose economic sanctions on citizens of other countries operating outside the country.

The United States' unparalleled economic power and its dominance of international economic relations have often enabled it to easily exert pressure on third countries or their citizens to sever ties with countries it considers hostile (Fairley, 1996, p. 173; Lowenfeld, 1997, p. 248). When special regulations apply to the export of certain goods and technologies, the claim of "regulating foreign transactions" can be justified on the basis that the goods and technologies are of the country of origin. During the period of the US embargo on the construction of the Trans-Siberian natural gas pipeline (Depender Zeigler, 1983, p. 63; Meessen, 1984, p. 97-108). Companies involved in the project were prohibited from exporting goods purchased in the United States or licensed under the technology. The effort to extend jurisdiction over foreign buyers of U.S. goods and technology was based on the premise that the U.S. government has the right to regulate and control the use and possible destination of its domestic products. However, international law does not generally recognize a theory of jurisdiction based on the nationality of goods. Recent U.S. actions in imposing secondary sanctions have gone beyond the nationality principle to include foreign companies that have no connection or connection with the United States.

Such companies may face certain financial penalties if they refuse to do business with a country subject to economic sanctions. Under the new law, non-U.S. companies that invest or otherwise engage in economic activities in Iran, Cuba, and Libya are subject to sanctions or may be prosecuted in U.S. courts.

This situation is not new in the United States, which has always sought to impose its foreign and economic policies on other countries and their citizens through extraterritorial legislation. But the scale of the recent law is such that it has provoked unprecedented reactions from the United States' trading partners.

The United States' allies and trading partners see the law as part of a process of warning against the unilateral action of the United States in imposing its policies on other countries. Canada, Mexico, and the European Union have therefore enacted laws to prevent retaliatory measures against the extraterritorial effects of US law. The results of such a conflict of jurisdiction could also jeopardize international organizations that were established to encourage and facilitate trade. (Giardina, 1998, p. 219)

5. The final argument, balancing interests?

The precise nature and intensity of jurisdictional disputes vary from case to case, but the central tenet of all complaints has always been that the exercise of extraterritorial jurisdiction based on the principle of nationality or the effects theory is undesirable because it disregards the interests of other States. The exercising State, when it legislates on the conduct of foreigners, in fact infringes on the rights of other States. (Davey & Jackson, 1995, p. 1073-77).

The controversy in this area stems from the assumption that the effects theory or the principle of nationality would bring a wide range of foreign activities under national economic regulation. (Gavil & Sennett, 1989, p. 1185-9.)

Therefore, it gives rise to considerable differences between States. The mere existence of a connection, such as a territorial connection, of nationality and effects, does not in itself justify the exercise of jurisdiction by a State. In line with the practice discussed above, there is a need for a flexible method by which the situation can be assessed. Such an assessment takes into account the relative importance of these connections for the State making the rules and for the States that may be interested.

This assessment also seeks to take into account the legitimate expectations of those affected by the rule and the degree to which States are generally prepared to accept a particular rule. The possibility of divergence between the rules of States is one of the factors that must be taken into account in determining the importance of these rules for the international system as a whole. (. 277 .246,p,1992,North).

Resistance of the violated state in various forms of diplomatic protest and the establishment of preventive laws (Toms III, 1981, p.585; Lowe, 1981, p.257-281; Edward, 1995, p.315; Cannon, 1985, p.63) . It has been established that the extraterritorial application of economic regulations should be reviewed in order to reduce such jurisdictional conflicts.

A middle approach known as the "balancing of interests" approach has been introduced and followed by United States courts in various situations. The general framework of jurisdictional regulations is summarized under the principle of "reasonableness".

The reasonableness of the exercise of jurisdiction is also determined by the importance of foreseeability and the direct effects of the activity. Although some recent U.S. cases have signaled a resurgence of the crude extraterritorial approach—which is at odds with the balancing-of-interests approach—Esch der (1986, 287).

Over time, however, the application of the balancing approach has led to a shift in perspective and a significant shift in direction against the extraterritorial application of domestic economic regulations. In each case, courts develop a list of factors and conventions that must be considered in determining the limits of jurisdiction. In addition, some jurisdictional disputes have been resolved through balancing-of-interests and diplomatic channels.

For example, in the Soviet pipeline contract dispute, the United States abandoned the proposed sanctions when it concluded that its interests in exerting such pressure on the Soviet Union were less than the Soviet Union’s interests in maintaining effective relations with its allies.

The resolution of the pipeline dispute not only demonstrates the balancing of competing interests as part of each state’s domestic decision-making process, but also reflects the weighing and evaluation of the interests of each state, as well as of private individuals. Balancing interests as a substitute for other jurisdictional bases is an important step in creating a viable jurisdictional framework for the new world order.

However, balancing interests is fraught with ambiguities and difficulties; although this approach limits the application of domestic law to foreign regulatory interests, it is also important to consider whether the normative force of such an approach derives from domestic policies or from public international law.

Of course, respect for the interests of another country based on domestic regulations is different from respect based on a commitment to public international law. The concept of balancing interests is fundamentally understood in relation to the concept of decency and as a commitment to domestic law.(Yntema, 1966, p. 6; Maier, 1983, p. 589).

(However, comity is not a rule of international law and is more of a political nature and lacks specific content and binding effect. (Gerber, 1982, p. 281; Maier, 1984, p. 205).

In addition, there are quite a few cases of consent that undermine the desirability of balancing interests on the basis of comity by domestic courts, because in most cases, these courts tend to give priority to the interests of their own country in balancing the interests of foreign countries and their own, arguing that the interests of the foreign country in the implementation of its laws The country is of greater importance than the interests of their own country.

This situation shows that balancing interests based on the concept of decency merely provides a basis for considering external factors without necessarily giving them a value. The main problem with this type of balancing is that it is not part of the normative rules of international law.

In addition, there are other fundamental difficulties in the balancing process. In some cases, US judges have pointed to the real problem of balancing when the policies of different governments on this issue are incompatible.

In the Uranium case, Justice Marshall, considering whether the Canadian defendant should be required to present evidence contrary to Canadian law, stated: “It is not possible from a judicial point of view to balance these completely contradictory and conflicting acts.”

Justice Wilkie, in part of the appeal in Laker, agreed with Justice Marshall’s view, adding: “We are not in a position to judge the importance of the antitrust or other laws for the United States and the United Kingdom.” Increasingly, courts have refused to adopt such an approach, and there has been growing scholarly criticism of this approach.

Such a criterion of organization, the results of which are not found in the balancing, imposes important and unknown issues on the parties to the dispute and on the court that is trying to resolve the issue, which is beyond the private interests of the parties. (Waller, 1991, p. 925).

In this respect, balancing interests is nothing more than political considerations. Interest has a misleading meaning in law. (Mann, 1984, p. 9). Given the inherent shortcomings of the balancing of interests approach, we need to develop a more legal method for resolving jurisdictional disputes with an international legal character.

As a matter of public international law, the extraterritorial exercise of jurisdiction has been strongly objected to by many commentators on the grounds of conflict with international law, propriety, and good faith (Westbrook, 1990, p. 71 at 72; Shari-Ellen Bourque, 1995, p. 191 at 211-215).

And the proposal to create a method based on international law has also been put forward. Although some believe that international law places little limit on the jurisdiction that a State may attribute to itself (Starke, 1984), international economic law, despite its interdisciplinary and functional character, cannot provide a satisfactory solution to the conflicts of regulatory regimes of international economic law discussed above unless it is accompanied by fundamental rules applicable in the judicial context and space.

An important task of international economic law is to identify these fundamental rules, that is, to move From general principles to more specific rules with a judicial character, it has not achieved its goals otherwise.

Undoubtedly, the nature of the conflicts of jurisdiction that we are considering here poses difficult challenges through which the validity and functionality of international economic law is tested. The validity of international law discussed in this article is acceptable if it avoids the ambiguities of traditional concepts that hinder legal development.

The balancing process can be limited to the purpose of achieving compatibility between conflicting fundamental principles of international law. This type of balancing, as part of the legal process, requires the application of legal principles and therefore has the important advantage of establishing a balance based on courtesy. However, despite the wide variations in the methods of assigning jurisdiction, the fundamental principles of public international law still allow for the implementation of an efficient system.

Through the interaction between the actions and reactions of states, when they exercise or react to extraterritorial jurisdiction, it is possible to create an international legal paradigm. For example, US authorities are reluctant to enforce EU law extraterritorially and vice versa (Meessen, 1987, p. 62; Akehurst, 1974, p. 1).

This may help to infer a model for dispute resolution, although balancing interests has its own shortcomings, but it is the last resort in the legal perspective, because it represents the only real attempt - albeit imprecise - to create a judicial criterion that establishes a link between legitimate sovereign and private interests (Alford, 1993, p. 213).

In stating the basic principles of balancing interests as a process of public international law, it seems that sovereignty, equality of states, non-intervention, prohibition of threats or use of economic pressure, responsibility, peaceful settlement of disputes, fundamental economic rights and duties of states, consideration of jurisdictional limitations, retroactivity The recognition of rights or reasonable expectations regarding the regulated action are among the most important principles that fundamental rules can ultimately rely on and apply in the process of balancing interests.

One of the practical and fundamental foundations on which the legal system is based is the principle of the equality of sovereign states. Each sovereign state, within the limits imposed by international law, has the right to make and enforce the laws it deems necessary. (Watts and Jennings, 1992, p. 339). Accepting the concept that all states have equal sovereignty entails that a state cannot extend its jurisdiction in such a way as to infringe the rights of other states. (Glossop, 1997, p. 216 at p. 213).

Conclusion

The changing nature and structure of international economic activities in an interconnected global economy on the one hand, and the inevitable intervention of states in private economic affairs through economic regulations on the other, have repeatedly led to the exercise of concurrent jurisdictions.

This situation, which often results in the extraterritorial application of national law provisions, creates multiple risks and also affects the value of private international transactions. Among the consequences of such a situation is the creation of instability in contractual relations.

In the case of international contracts that are subject to different regulatory regimes, it is very likely that they will face claims of illegitimacy and lose their credibility due to the inability of private parties to determine the limits of the risks arising from the diversity of national economic laws and in the absence of the necessary cooperation between states, the role of international economic law in determining the formal and substantive legal rules for defining the legitimate jurisdiction of each state in an interdependent global economy is very important and sensitive.

In this article, it is argued that international law, despite its shortcomings, is capable of providing effective principles and rules for resolving national economic conflicts through a process of balancing interests that, by applying some basic principles of international economic law, can take into account the interests of both states and private individuals.

This scheme is not directly and necessarily related to private contractual disputes, but the results of its implementation can have important and decisive consequences for private contractual disputes. However, the proper guidance of the process of applying national economic law rules depends to a large extent on the decisions of the competent judicial body.

References

Ajayi, O. (1992). International securities regulation. *Journal of International Banking Law, 5*, 192.

Akehurst, M. (1974). Custom as a source of international law. *British Yearbook of International Law, 47*, 1.

Akehurst, M. (1972-1973). Jurisdiction in international law. *British Yearbook of International Law, 46*, 179-181.

Alford, R. P. (1993). The extraterritorial application of antitrust laws: A postscript on *Hartford Fire Insurance Co. v. California*. *Virginia Journal of International Law, 34*, 213.

Allely, C. M. J. (1985). Case comment, *Laker Airways v. Sabena*: Comity and conflict. *Law and Policy in International Business, 17*, 157.

Alston, P. (1997). The myopia of the handmaidens: International lawyers and globalization. *European Journal of International Law, 3*, 435-437.

Asher, B. (1996). The development of global securities markets. In F. Oditah (Ed.), *The future of the global securities market*. Oxford University Press.

Balfour, P. (1989). Extraterritorial recognition of exchange control regulations: The English viewpoint. In N. Horn (Ed.), *The law of international trade-finance*. Deventer.

Barbolak, M. P. (1985). *Laker Airways*: Recognizing the need for a United States-United Kingdom antitrust treaty. *Dickinson Journal of International Law, 4*, 39.

Basedow, J. (1994). Conflict of economic regulations. *The American Journal of Comparative Law, 42*, 423-426.

Bavasso, A. F. (1999). *Gencor*: A judicial review of the commission's policy and practice. *World Competition, 22*(4), 45-48.

Bellis, J. F. (1979). International trade and the competition law of the European Economic Community. *Common Market Law Review, 16*, 647.

Bello, J. H., & Footer, M. E. (1995). Uruguay round-GATT/WTO. *The International Lawyer, 29*, 338.

Bhagwati, J. N. (1993). Challenges to the doctrine of free trade. *New York University Journal of International Law and Politics, 25*, 219-234.

Bianchi, A. (1992). Extraterritoriality and export controls: Some remarks on the alleged antinomy between European and U.S. approaches. *German Yearbook of International Law, 35*, 366-374.

Bischel, J. E., & Feinschreiber, R. (1985). *Fundamentals of international taxation*.

Black, C. E. (1969). Challenges to an evolving legal order. In R. A. Falk & C. E. Black (Eds.), *The future of the international legal order* (Vol. I). Princeton University Press.

Boggiano, A. (1993). *International judicial relations*. Buenos Aires.

Born, G. B. (1992). A reappraisal of the extraterritorial reach of U.S. law. *Law and Policy in International Business, 24*, 1.

Boston University International Law Journal. (1995). *Boston University International Law Journal, 13*, 191, 211-215.

Bourque, S.-E. (1995). The illegality of the Cuban embargo in the current international system. *Boston University International Law Journal, 13*.

Brand, R. A. (1995). The role of international law in the twenty-first century: External sovereignty and international law. *Fordham International Law Journal, 18*, 1685-1696.

Bridge, J. W. (1984). The law and politics of United States foreign policy export control. *Legal Studies, 4*(2), 8.

Brierly, J. H. (1958). *The basis of obligation in international law*. Oxford University Press.

Brownlie, I. (1990). *Principles of international law* (pp. 298-299). Oxford University Press.

Burr, S. A. (1994). The application of U.S. antitrust law to foreign conduct: Has *Hartford Fire* extinguished consideration of comity? *University of Pennsylvania Journal of International Business Law, 15*, 221.

Cameron, C. E. (1991). Developing standards for politically related states' economic action. *Michigan Journal of International Law, 13*, 218.

Cannon, R. (1985). *Laker Airways* and the courts: A new method of blocking the extraterritorial application of U.S. antitrust laws. *Journal of Comparative Business and Capital Market Law, 7*, 63.

Castel, J. G. (1988). *Extraterritoriality in international trade*. Toronto.

Cheng, C. J. (1988). *C. M. Schmitthoff's select essays on international trade law* (pp. 484-485). Dordrecht.

Choi, S. J., & Guzman, A. T. (1996). The dangerous extraterritoriality of American securities law. *Northwestern Journal of International Law & Business, 17*, 207.

Cox, J. D. (1998). Globalization's challenge to the United States securities laws. *Canterbury Law Review, 7*, 3.

Dale, R. (1996). *Risk and regulation in global securities markets*. New York.

Dam, K. W. (1985). Economic and political aspects of extraterritoriality. *The International Lawyer, 19*, 887-895.

Davidow, J. (1997). Recent developments in the extraterritorial application of U.S. antitrust law. *World Competition, 20*, 15.

de Mestral, A. L. C. (1990). *Extraterritorial application of export control legislation, Canada and the U.S.A.* Dordrecht.

Depender Zeigler, A. (1983). The Siberian pipeline dispute and the export administration act: What is left of extraterritorial limits and the act of state doctrine? *Boston Journal of International Law, 6*, 63.

Dillon, T. J. (1995). The World Trade Organisation: A new legal order for world trade. *Michigan Journal of International Law, 16*, 350-355.

Dodge, W. S. (1998). Extraterritoriality and conflict-of-laws theory: An argument for judicial unilateralism. *Harvard International Law Journal, 39*, 100-105.

Doxey, M. (1980). *Economic sanctions and international enforcement*. London.

Doxey, M. (1996). *International sanctions in contemporary perspective*. London.

Drew, S. M. (1998). Extraterritoriality of the United States Securities and Exchange Commission. *Comparative Law Yearbook of International Business, 20*, 231-235.

Edwards, R. W. (1981). Extraterritorial application of the U.S. Iranian assets control regulations. *American Journal of International Law, 75*, 870-902.

Fiebig, A. R. (1998). International law limits on the extraterritorial application of European merger control regulations for reform. *European Competition Law Review, 19*, 323.

Fox, E. M. (1987). Extraterritoriality, antitrust, and the new restatement: Is "reasonableness" the answer? *New York University Journal of International Law and Politics, 19*, 565.

Gann, P. B. (1987). Issues in extraterritoriality. *Law and Contemporary Problems, 50*.

Garland, J. P., & Murray, B. P. (1996). Subject matter jurisdiction under the federal securities laws: The state of affairs after ITOBA. *Maryland Journal of International Law & Trade, 20*, 235.

Gerber, D. J. (1984). Beyond balancing: International law restraints on the reach of national laws. *Yale Journal of International Law, 10*, 205.

Hillman, R. W. (1992). Cross-border investment, conflict of laws, and the privatization of securities law. *Law and Contemporary Problems, 55*.

Honeygold, D. (1989). *International financial markets*. New York.

Jackson, J. H. (1998). Global economics and international economic law. *Journal of International Economic Law, 1*.

Jackson, J. H. (1969). *World trade and the law of GATT*. Kansas City.

Jackson, J. H., & Davey, W. J. (1995). *Legal problems of international economic relations*. St. Paul.

Jennings, R., & Watts, A. (1992). *Oppenheim's international law*. Longman.

Jones, B. (1995). *Globalisation & interdependence in the international political economy*. London.

Kellan, R. A. (1991). Securities law-international boundaries-jurisdictional boundaries of the anti-fraud provisions of the federal securities laws. *Suffolk Transnational Law Journal, 15*, 420-429.

Lange, D., & Born, G. (1987). *The extraterritorial application of national laws*. Deventer.

Lowe, A. V. (1981). Blocking extraterritorial jurisdiction: The British Protection of Trading Interests Act. *American Journal of International Law, 75*.

Lowe, A. V. (1997). U.S. extraterritorial jurisdiction: The Helms-Burton and D'Amato acts. *International & Comparative Law Quarterly, 46*.

Meessen, K. M. (1984). Extraterritoriality of export control: A German lawyer's analysis of the pipeline case. *German Yearbook of International Law, 27*, 97-108.

Mostermans, E. (1990). Party autonomy: Why and when? In *Forty years on: The evolution of postwar private international law in Europe*. Deventer.

Petersmann, E. U. (1998). *The GATT/WTO dispute settlement system*. London.

Schachter, O. (1991). *International law in theory and practice*. Dordrecht.

Schwarzenberger, G. (1970). *Economic world order?* Manchester.

Trachtman, J. P. (1996). The international economic law revolution. *University of Pennsylvania Journal of International Economic Law, 17*, 33-78.

Twining, W. (1996). Globalisation and legal theory. *Current Legal Problems, 49*(1), 7.

Weintraub, R. J. (1992). The extraterritorial application of antitrust and securities law: An inquiry into the utility of a "choice-of-law" approach. *Texas Law Review, 70*, 1799-1818.

Westbrook, J. L. (1990). Extraterritoriality, conflict of laws, and the regulation of transnational business. *Texas International Law Journal, 25*, 71-72.

Young, M. K. (1995). Dispute resolution in the Uruguay Round: Lawyers triumph over diplomats. *The International Lawyer, 29*, 389-409.

Zamora, S. (1989). Is there customary international economic law? *German Yearbook of International Law, 32*, 41.

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