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## **Lesson 1 INTERNATIONAL BUSINESS WITHIN THE FRAMEWORK OF INTERNATIONAL TRADE.**

(trad B. Valle)

LESSON 1.- INTERNATIONAL BUSINESS WITHIN THE FRAMEWORK OF INTERNATIONAL TRADE.

1. Introduction

2. Subjects, object and territorial (cross border ) issues

3. Sources of the Law (and soft law) of International Business Law.

### **1. Introduction.**

- **Law** is the science that deals with facts, acts and relationships between different subjects; and it analyzes them according to legal systems.
- **International Trade** is a discipline related to International Transactions of an economic nature.
- **Actors in International Trade** include individuals, companies, States, International Organisations, among others
- ***International business law, deals with the relationships between private entities with cross-border implications***



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### **2. Subjects, object and territorial (cross-border) issues**

- International Business actors are natural persons and legal persons: citizens, traders, entrepreneurs, companies, groups of companies. It is, therefore, important to identify their legal capacity, nationality, etc.
- IB deals with the development of trade in a cross border environment; it takes place in markets, therefore it must be developed within the Laws of Free Competition,

the Laws on Intellectual Property, the Lawson Financial Stability, etc.

- IBL rules the relationships between its actors (people, companies, etc) through contracts, companies, associations, secure payment systems, conflict resolution mechanisms (judicial, arbitration, etc.)
- IBL involves a cross-border element that deeply affects international business relations as it is fundamental to identify the applicable legal system or systems to each International Business Law Operation.
  - I.e., we must find out which Law is applicable ( that of a specific State, or that of bilateral Conventions or Treaties, or that of Conventions approved by an International -Multilateral Organization) Sometimes IBL is ruled by «soft» norms or recommendations that may have their origin in the State, or in International Organizations, or even in private sector entities.

The main actors of International Business Law are:

**a) States**

- **The sovereign States are among the Institutional actors of International Law. They are also actors in International Trade, but they are mainly excluded as subjects of study in this course (IBL), except in so far as they approve Laws and Regulations, they have justice-making powers through Courts of Justice and Judges etc.**
- **States regulate IBL issues.**
  - **In Spain**, in accordance with Article 149-1, the State has exclusive competence over (...) : 3 International Relations. 6 Commercial Law. 9. Legislation on Intellectual Property. 10. Customs and tariff regime, foreign trade.

**b) International Organisations (and arrangements) of the public sector:**

- The Members of these Organizations are mainly States,
- They belong to the «Public Sector» of the economy
- They can have quasi legislative power when this power has been recognised to them by the States that create the International Organisation. Most times they prepare International Agreements and Treaties that do not acquire legal mandatory status until they are ratified by the States. Also, the International Organisations are a source of Recommendations, Guides, Model Laws and other pieces of «**soft law**».
- Some International Organisations become members of other international Organisations.
- Examples:

- [The Hague Conference on Private International Law](#). This is a World Organisation for Cross-border Co-operation in Civil and Commercial Matters. It was created in 1893. Currently, it is formed by 82 States and by the European Union. Its members are located in all continents. The Hague Conference on Private International Law is a global inter-governmental organisation. A melting pot of different legal traditions, it develops and services multilateral legal instruments, which respond to global needs.
  - Its activities are coordinated by a multinational Secretariat called «Permanent Bureau », that is located in The Hague.
  - The Hague Conference drafts International Conventions, which are then ratified by States, and thus become binding Laws. Even when they are not ratified they are very influential. [Examples: Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods, 1986; Apostille section](#) of 1961.
- [UNIDROIT, since 1926](#). It issues *Soft Law* in the form of principles resolutions, etc. ie, [Principles of International Commercial Contracts 2010](#), Unidroit [on Long Term Contracts](#) Its headquarters are based in Rome
- [OECD since, 1961](#). It issues Soft Law principles, resolutions, Guidelines etc. Example, «Guidelines for Multinational Companies». Its headquarters are based in Paris
- UN Bodies and Institutions. UN issues *binding General Assembly Resolutions* as well as *Soft Law*. Within the umbrella of UN we find:
  - [UNCITRAL United Nations Commission in International Trade](#). Main legal body of the United Nations system in the field of international trade law. Its working groups and their current topics are as follows: Working Group I - [Micro, Small and Medium-sized Enterprises](#), Working Group II - [Dispute Settlement](#), Working Group IV - [Electronic Commerce](#), Working Group V - [Insolvency Law](#), Working Group VI - [Security Interests](#)
  - [UNCTAD \(United Nations Conference for Trade and Development\)](#)
  - [UNIDO \(United Nations Development and Industry\)](#)
  - [WIPO.- World Intellectual Property Organisation](#). WIPO is an Intergovernmental Organization that in 1974 became one of the specialized agencies of the United Nations system of organizations.
- [WTO.- World Trade Organisation](#). 1995. It administers from its Geneva Headquarters a number of International Treaties or Agreements. It widened the tasks of GATT to include Services, Intellectual Property and Dispute Settlement. Today its main components are
  - GATT.-(Trade and Tariffs on goods)

- [GATS.- General Agreement on Trade and Services](#)
- [TRIPS.-Agreement on Trade-Related Aspects of Intellectual Property Rights](#)
- [Dispute Settlement System](#)
- Other International «Arrangements» or Conferences»
  - [GATT, General Agreement on Trade and Tariffs](#) This is an International, Multilateral Agreement. Originally signed in 1948, covering International Trade on Goods. The Gatt itself is not an International Organisation. Before 1995, its members met up in «Rounds» to deal with specific aspects of IT. In 1995 by the end of its «Uruguay Round», at the Marrakech Summit, its members created the World Trade Organisation (WTO), an International Organisation with main Headquarters. After 1995. Today, GATT operates through a General Council, within WTO
  - GATT's Operating Principles
    - Free Trade
    - National Treatment
    - Most Favoured Nation
- [G 20. The G20 \(or G-20 or Group of Twenty\)](#) is an international forum for the Heads of State and /or Governments, Financial Ministers and Central Bank Governors from 20 major economies. Founded in 1999, the G20 aims to discuss policy issues pertaining to the promotion of international financial stability. after its inaugural [leaders' summit in 2008](#), its leaders announced on 25 September 2009 that the group would replace the G8 as the main economic council of wealthy nations.

***Please note that there are different types of International Organisations. Here, we classify them in «generations»***

- 1st generation of International Organisations. They are created through Bilateral Tariff Agreements.
  - Examples: Common Wealth, Francophonie, etc
- 2nd generation. They are multilateral/plurilateral. Generally they involve the creation of Free Zone Area, which can later evolve into a more complex organisation.
  - Examples are: ASEAN (*Association of Southeast Asian Nations*); - TLCAN/ NAFTA (North American Free Trade Agreement) whose Members are Canada, EEUU, México - EFTA (*European Free Trade Association*) whose members are Switzerland, Norway, Liechtenstein, Island
- 3rd generation. Multilateral/plurilateral. They create a free zone area and also they set common external tariffs. They can receive legislative powers from its Member States(ie:EU)

- EU, EUROPEAN UNION. Regional supra-national Organization with legislative powers vested by its Member States
- MERCOSUR (to a lesser degree)

### ***c) Private Sector Organizations with International Impact and Hybrid Organizations***

- Private Sector Organisations are those whose members are Private entities (ie: Companies, Consultants, etc). They are very prestigious. So, their resolutions and documents are great influencers in International Business Law, mainly in the fields of Contracts and Dispute Resolution. They can never power to legislate. They draft Soft Law
  - Example of these Organisations:
  - [ICC. International Chamber of Commerce](#). Founded in 1919 in Paris. It is a known centre of International Arbitration since 1923, it acts as a [consultative body to UN since 1946](#). ICC drafts Soft Law in the form of Contractual Clauses such as the «International Commercial Terms, INCOTERMS widely used in the International Trade of Goods
  - International Standardization Office ([ISO](#)),
  - International Financial Reporting Standards Foundation ([IFRS](#))
- Hybrid Organizations (private- public sector members)
  - International Organizations of Securities Commissions ([IOSCO](#))

## **1.3 Sources of the Law (and soft law) of IBL**

(classroom notes)

(To complete with 1.3/ Sources of IBL in the classroom)