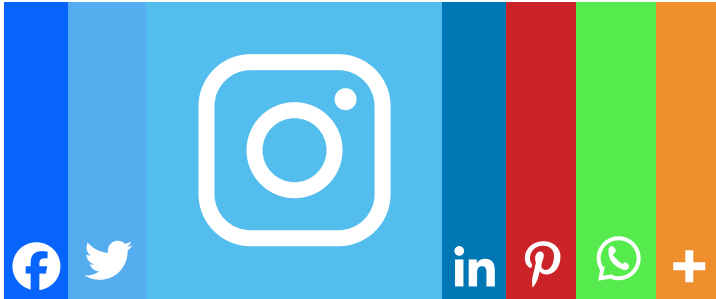


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Lesson 1 INTERNATIONAL BUSINESS WITHIN THE FRAMEWORK OF INTERNATIONAL TRADE.

(trad B. Valle)/ updated 2024

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



Beaches in the Ebro reservoir. Arija

1. Introduction.

- **Law** is the science that deals with facts, acts and relationships between different subjects in a particular manner: it analyzes them according to legal systems.
- **International Trade** is a discipline related to International Transactions (business, contracts, etc) whose nature is economic in a wide sense (finances, exchange of goods, services, etc).

- In this course we focus on the analysis of International Business Law from the perspective of Business Law: **Derecho Mercantil/Business and Commercial Law** (Business and Commercial Law) , **a branch of the Law that deals with 3 different matters: Commercial acts** (such as contracts, commercial business negotiations, etc.); **the organisation of entrepreneurs** (ie: companies, sole business persons, foundations involved in trade, etc.) and **market activity** (unfair competition, free trade, monopolies, exchanges, etc). Thus, in ILB we focus on Business law with a cross-border connotation: commercial transactions (mainly contracts), markets (especially from the perspective of commerce) and the organisation of the entrepreneur (especially with regard to business companies).

- Excluded from IBL are certain aspects of international trade such as tax and customs law, or the regime of cross-border workers. These will be dealt with in other subjects.

- ***International business law (ILB) deals with the relationships between private entities with cross-border implications***
 - IBL rules the relationships between its actors (people, companies, etc). Mostly, those relationships are carried out in an organized way with «commercial acts» such as contracts, or by creating companies or other associations, or by establishing secure payment systems, etc. Some of the consequences of IBL are «mere» occurrences: they can be unplanned, and they are non-contractual (i.e: an accident when carrying goods in an import-export operation): IBL is also useful to deal with such non-contractual events.
 - Business and trades take place in markets, so they must be developed within the Laws of Free Competition, the Laws on Intellectual Property, the Laws on Financial Stability, etc. IBL has a lot to say in this.
 - As IBL involves a cross-border element that deeply affects international business

relations, **it is fundamental to identify the applicable legal system or systems to each International Business Law Operation. It is also very important to find out which National Court of Justice is entrusted with conflict resolution on ILB litigation. As well as to know about out of Court conflict resolution mechanisms.**



Fruits de mer

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.
 - **The main actors of International Business Law are: States, International Organizations, companies and other forms of legal persons, natural persons (sole entrepreneurs)** (Lesson 2). Here we deal with States and Organizations as actors in IBL (please see Lesson 2 for other actors such as companies and private entities)

a) States

- The sovereign States are among the Institutional players in International Law. They are involved in many aspects of International Trade and IBL, although here we focus

on the estate role in passing Laws and Regulations, as well as in negotiating International Treaties and Conventions (some of which create International Organizations) .

- States have also justice-making powers through Courts of Justice and Judges.
- **Please note:**
 - **i.e.: In Spain**, following 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 States):

- The Members of these Organizations are mainly States,
- Some of those Organizations can have legislative powers when those powers have been recognized to them by their founding member- States (ie: The European Union).
- Other IO are competent to draft International Agreements and Treaties, but such drafts do not acquire legal mandatory status until they are ratified by the States. Ie: WIPO
- Many IO are not legislators, but all of them publish Recommendations, Guides, Model Laws and other pieces of «**soft law**».
- Some IO become members of other International Organisations, and/or signatories of Treaties and Conventions (ie The EU can sign Treaties).
- **TRADE ORGANIZATIONS**
 - Examples and classifications of **REGIONAL ORGANIZATIONS FOR TRADE/COMMERCE**
 - **IO created through Bilateral (Tariff) Agreements.**
 - Examples: Common Wealth, Francophonie, etc
 - **Multilateral/purilateral IOO creating a Free Zone Area (no internal custom duties -tariffs).**
 - 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

- **Multilateral/plurilateral IIOO creating and Internal Market.** They organise a free zone area and they also set common external tariffs. And, 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)

GLOBAL TRADE ORGANIZATIONS

- [WTO.](#)- *World Trade Organisation*. Created in 1995. It administers from its Geneva Headquarters a number of International Treaties or Agreements. The WTO widened (and organized) the tasks of the old GATT to include Services, Intellectual Property and Dispute Settlement. Today, WTO's 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](#)
- **GLOBAL ORGANIZATIONS SPECIALISED IN DRAFTING CONVENTIONS AND GUIDES/PRINCIPLES**
 - [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.](#)
- [INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW \(UNIDROIT\)](#). 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
- [ORGANISATION FOR ECONOMIC AND DEVELOPMENT COOPERATION \(OECD\)](#). It was created in 1961. It issues Soft Law principles, resolutions, Guidelines etc. Example, «Guidelines for Multinational Companies». Its headquarters are based in Paris.
- **UN BODIES AND INSTITUTIONS.** As it is known, the United Nations (UN) issues *binding General Assembly Resolutions* as well as *Soft Law*. Also, within the umbrella of the complex UN structure we find bodies that specialise in different aspects of IBL:
 - [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.

- **INTERNATIONAL FINANCIAL INSTITUTIONS** . They are involved in financing world development specially in underdeveloped countries as well as in coordination and leading world wide financial policy making
 - [World Bank \(WB\)](#)
 - [International Monetary Fund \(IMF\)](#)
 - [Financial Stability Board \(FSB\)](#)
- **OTHER INTERNATIONAL «ARRANGEMENTS» / CONFERENCES.** Here we classify some International arrangements that do not create a full organization, although they can be very influential
 - [*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 functions with some «Operating Principles» which have been accepted by most other International Organizations and arrangements»
 - **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.**
- Brics, Shangai Cooperation Group, among others)

c) Private Sector Organizations with International Impact

- Private Sector Organisations are those whose members are Private entities (ie: Companies, Consultants, etc). Some 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 pass legislation but 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. It is a world leader in international out of court dispute resolution (arbitration)
 - *International Standardization Office (ISO)*, ISO is an independent, non-governmental international organization with a membership of 167 *national standards bodies*. Through its members, it brings together experts to share knowledge and to develop voluntary, consensus-based, market relevant International Standards useful in industry throughout the World.
 - *International Financial Reporting Standards Foundation (IFRS)* The IFRS Foundation is a not-for-profit, public interest organisation established to develop high-quality, understandable, enforceable and globally accepted accounting and sustainability disclosure standards. Those Standards are developed by IFRS's two standard-setting boards, the *International Accounting Standards Board (IASB)* and *International Sustainability Standards Board (ISSB)*.
 - Some are , professional International Organizations, such as :
 - *World Federation of Engineering Associations (WFEO)* . Their National Member are organizations representing the engineers of its country at WFEO, they are considered most representative

of technically competent engineers according to the national standards. They develop codes of professional conduct and standards for International Engineering Works

- *Bankers Associations for Finance and Trade (BAFT)* ; the *International Banking Federation* (IBF); and others. They participate in defining best market practices and Standards that facilitate efficient delivery of trade and payments.
- *International Federation of Consulting Engineers (FIDIC)*
- ... and many others

d) Hybrid Organizations (private sector and -public sector members)

- Hybrid Organizations (private- public sector members)
 - *International Organizations of Securities Commissions (IOSCO)*. The International Organization of Securities Commissions (IOSCO) is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. This is a public sector organization that allows for private entities to become affiliated to it.
 - There are three categories of members:
 - IOSCO's the ordinary members (130) are the national securities commissions or similar governmental bodies with significant authority over securities or derivatives markets in their respective jurisdictions.
 - Associate members (34) are usually supranational governmental regulators, subnational governmental regulators, intergovernmental international organizations and other international standard-setting bodies, as well as other governmental bodies with an appropriate interest in securities regulation.
 - Affiliate members (69) are self-regulatory organizations, securities exchanges, financial market infrastructures, international bodies other than governmental organizations with interests in securities regulation, investor protection funds and compensation funds



Mariña lucense

1.3 // 1.4 Sources of the Law (and soft law) of IBL
(classroom notes) (taught in Spanish)

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