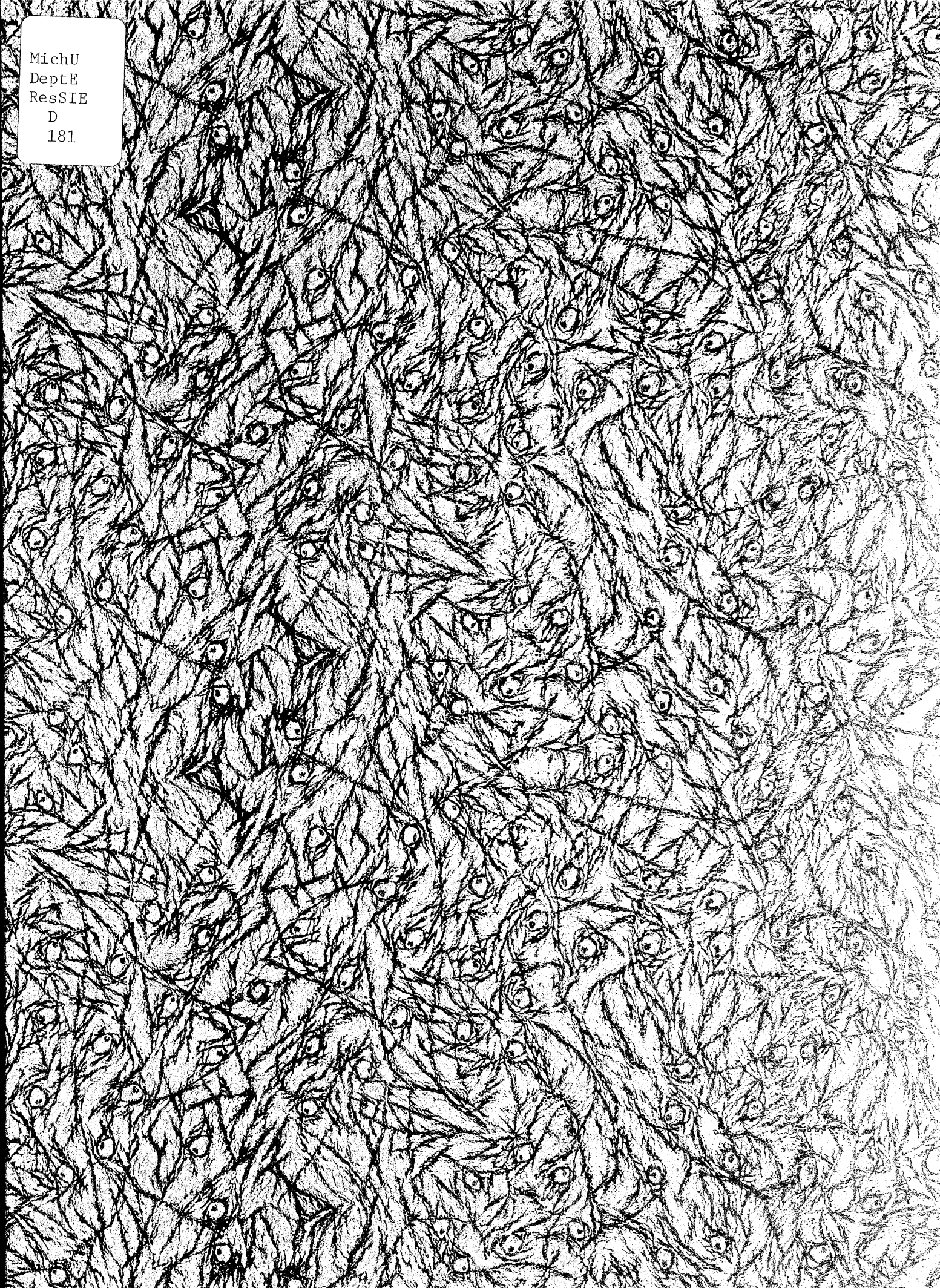
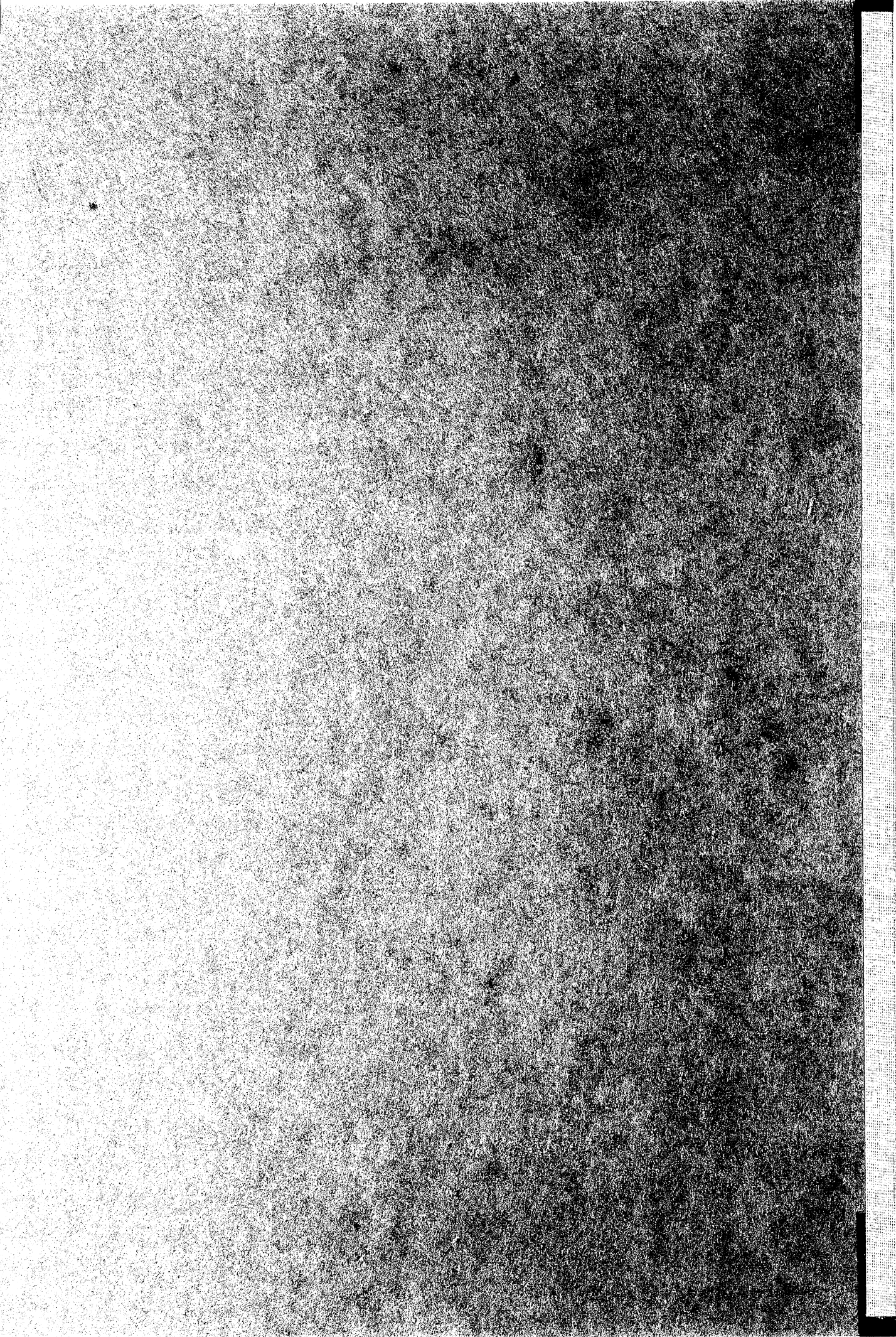


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RESEARCH SEMINAR IN INTERNATIONAL ECONOMICS

**Department of Economics
The University of Michigan
Ann Arbor, Michigan 48109-1220**

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**LEGAL PROBLEMS OF
INTERNATIONAL ECONOMIC RELATIONS**

**CASES, MATERIALS AND TEXT ON THE
NATIONAL AND INTERNATIONAL REGULATION
OF TRANSNATIONAL ECONOMIC RELATIONS**

Second Edition

By

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Preface to the Second Edition

This edition, we admit, is overdue. Almost a decade has passed since the first edition, and the changes in international circumstances relevant to the subject of this book have been startling. The basic theme of the first edition—the impact of international economic interdependence and the struggle of legal institutions to cope with that circumstance—has been confirmed many times over. The words of the preface to the first edition (most of which are printed below) are thus in many ways prophetic.

We have re-examined the basic premises of the first edition, and explored ways to make the second edition more useful. This has not been easy. We have benefitted from our own experiences in teaching with the first edition. We have also benefitted from the suggestions and criticisms of the many student and other faculty users of the first edition. Many suggestions called for additions to the book, however, and to keep the book manageable additions always entail subtractions. It will be easily seen that both the subtractions and the additions for this edition have been substantial. We do not claim the perfect balance between the myriad of competing desires of teachers and students of this subject, but we hope and expect that we have considerably improved the book with our efforts.

An important basic goal of both editions, however, needs to be repeated. It is very easy to tally up multiple dozens of subjects which a potential international legal practitioner would find useful when he or she begins to grapple with real world problems. We do not intend to offer a complete coverage of these dozens of subjects, nor even a substantial portion of them. We aim, instead, to offer the student, professor, or current practitioner, the means to achieve a basic understanding of the international economic system as it operates in real life, and as it is constrained or aided by a number of fundamental legal institutions, including national and international constitutional documents and processes. In doing this adequately, we have necessarily had to minimize the coverage of many other practical topics. In a number of cases, however, many of those topics have been covered in other courses in the curriculum.

Our goal for this book, and courses based upon it, is to penetrate deeply into subjects which can have great importance to the government or private practitioner, but which are essentially not covered in other law courses. In addition our goal is to build for the student a knowledge of the "foundations" of the legal system and institutions of international economic relations. This implies knowledge of the constituent international instruments and processes, and the ways those

interact with the important national constituent instruments and processes. The words of the Preface to the First Edition explain this in more detail.

In preparing this revision, however, we have had several other subsidiary objectives in mind. First, after reflection, we decided to improve the overall organization of the book, to make the presentation of material to students easier to understand, and also to make it easier for a teacher to select from the book so as to tailor the materials for his own preferred course outline. (The overall structure of the book is explained at the beginning of Chapter 1.)

In dramatically cutting early parts of the book, we have made room in Part III of the book for a number of short survey chapters of topics, some of which were not included in the first edition. We did this as a response to requests so that teachers would have considerable freedom, hopefully after exploring the fundamental and constitutional aspects of the subject contained in the first two parts, to select subjects they wished to emphasize. We anticipate that for some of those teachers, those who wish to explore subjects of Part III in more detail, the notes and bibliographical references will assist in the preparation of additional materials for students. The only satisfactory alternative to this approach was a multi-volume casebook, which is not practical for this course.

Finally, in Part IV, we have included some material designed to stimulate additional thinking about the strengths and weaknesses of the present international economic system, and to pose some questions which face national and international policy makers. Once students have mastered the fundamentals of this subject, it has been our experience that they have found it exciting to participate in discussion of some of the "forefront issues" of current international economic policy.

In general the material in this book is current as of about March 1, 1986. In some cases we have been able to update material to reflect events occurring subsequent to that date.

JOHN H. JACKSON
WILLIAM J. DAVEY

Ann Arbor, Michigan
Champaign, Illinois
June 1986

A Personal Note

The author of the first edition wishes to express his delight and gratitude that he is joined for the second edition by Professor William Davey, an outstanding young scholar and law teacher who has not only impressive academic credentials, but who has had direct and substantial experience in the practice of law, both abroad and in the U.S.,

dealing with the subject of this book. His efforts to improve this book have been extraordinarily helpful.

JHJ

Preface to the First Edition

Preparing a book on the subject of international economic regulation is like trying to describe a landscape while looking out the window of a moving train—events tend to move faster than one can describe them. Certain other law subjects have similar problems, but in the case of international economic law, this problem is compounded by the lack of definition of the borderlines of the subject. In its broadest extent, a study of international economic transactions and governmental actions relating to them, could be a subpart of dozens of existing law subjects in the law school curriculum. It certainly involves subject material considered in international law, conflicts of law, constitutional law, contracts and sales, corporations, tax, anti-trust, civil procedure, and administrative law.

As yet there is no generally agreed subject matter selection for this course in the United States law curricula, not even an agreed "core", as you would find in most courses in the law school curriculum. This is both the challenge and the danger of preparing published materials.

No doubt as time goes on, we shall see the course subject matter selection "shake down," become more cohesive and develop some agreement among law teachers. For the moment, however, this is not the case, and consequently any casebook on this subject must involve a series of decisions about scope, emphasis, and selection of subjects and materials, that can be appropriately challenged.

For these reasons it is perhaps especially important that this author explain the bases for his choices, and the premises on which he has developed this book. There are many of them.

First, and foremost, this book is constructed so as to emphasize the *legal system* and legal process of international economic relations in context.

The objective of this book is to look at the legal principles and processes as they affect decisions regarding international economic relations, whether the decisions be those of private citizens or enterprises, or government officials. Thus there is an integration of national regulation and international law, and to a lesser extent private transaction law (which however is not emphasized in this course because it is often a part or at least analogous to material learned in other courses.) For example, United States constitutional and regulatory rules have an intimate and weighty connection and influence on the international rules of GATT (The General Agreement on Tariffs and Trade.) One must study both to fully understand how they operate, because they interact.

Secondly, the emphasis is on trade in goods and related monetary problems, because these are generally at the center of international economic relations. Many other subjects are important, e.g. various "invisibles" or service transactions such as shipping, insurance, tourism—but although these may be touched upon from time to time, constraints of space and time suggest a priority treatment for the center of gravity of international economic relations. The principles learned there, however, are almost always transferable to other economic relation subjects e.g. the constitutional problems of division of governmental authority within a nation, the practicalities of negotiating new international rules, the "constitutional" status of international norms, the difficulties of international dispute settlement procedures, the particular weight of special interest groups and their influence compared with broader but more diffuse foreign policy objectives or the interests of the consumers, the operation of legislative bodies, the decision and voting processes of international organizations, the economic complexity of some of the rules, and the difficulty of fact finding.

Thirdly, the emphasis of this book is on the legal processes in *context*, but the emphasis is on *law*. The context obviously includes difficult conceptual and empirical questions of economics and political science, of sociology, history and especially overall foreign policy. But the emphasis here is on those subjects which have developed relatively sophisticated *rule* systems. There are many important subjects which have not yet developed such rule systems, and while touched upon they have not been selected for extensive treatment. (A course in economics, or world politics, therefore, might involve quite a different selection.) For example, both expert controls and problems of developing countries merit considerable policy attention. But rule systems or the influence of law on those subjects, is not (yet) weighty. Both subjects are dealt with in this book, but the focus on the primary goal of understanding the operation of *law*, means that it is necessary to eschew some tempting elaborations of policy questions when they, as yet, depend so little on law. This does not foreclose, of course, the opportunity for a particular teacher to construct for his class a rule formulating exercise based on the current and temporary materials bearing on the policy issues. Nor does this reflect any view of the author regarding the relative importance in a broader context of nonlegal materials or information. It reflects his view that it is useful for law students to examine closely to what extent their particular skills and knowledge could contribute to solution of the myriad international economic problems.

A word at this point might be in order as to the differences perceived by the author between a "legal" or lawyer's approach on the one hand, and the approach of an economist or political scientist on the other. Such a word, of course, risks angering one or the other of these groups, but may nevertheless be interesting and provocative to the reader. It seems to this writer that the lawyer is often more concerned

with precision, with individual problems, and with the practical limitations on realizing objectives, than his counterparts from other disciplines. The economist skillfully analyzes the overall or macro effects of various policies, and sees them in statistical terms. Often the political scientist does likewise. The lawyer is frequently forced to resolve individual problems, either those of particular citizens or those of a particular circumstance, often involving competing policy goals—both (or all of them) valid, but necessitating compromise. Likewise the lawyer is often a person who is asked to *implement* a policy and faces practical obstacles to such implementation. Could one say that the economist tells us what should be done, and then the lawyer worries about how to do it? In some cases, however, the lawyer is forced to (uncomfortably) play the role of the guardian of long run goals (preserving a constitution, for example) against those who strive for short term expediency.

Obviously these reflections are not entirely accurate, but it seems clear that there is a difference in role as well as approach between those trained as lawyers and those trained in other disciplines—for better or worse.

Fourthly, a basic goal of these materials is to be sensitive to their use in the setting of the American law school curricula, so as to avoid unnecessary duplication of other courses, and to present to the student a coherent subject matter that he is not likely to obtain elsewhere. This is the reason, for example, for deemphasizing private transaction law in this book, while focusing on government regulation. It is also a reason for minimizing duplication of material often included in either public or private (conflicts) international law. To a certain degree this author sees this course as a logical sequel to the course in public international law. However this book is designed to accommodate the many students who take it without first having taken international law.

Fifthly, closely related to the previous "premise", is the notion that this course should be sensitive to the problems faced by practitioners—lawyers or officials, but should also offer the student something which he may never again (in practice) have the opportunity to get—namely, an opportunity to examine at length and in depth the overall operation of the "legal system" governing international economic affairs. The day to day problems faced by practitioners will quickly give the young lawyer experience in "how to do it", and great expertise on rather precise narrow topics. What is hard to obtain after leaving law school is the opportunity to spend a considerable amount of time achieving a comprehensive understanding of the total system and the interrelationships of its parts. This book emphasizes this comprehensive viewpoint.

Sixthly, so as to minimize the otherwise rapid obsolescence of both this book and students' learning, attention has been directed more toward the "constitutional" or fundamental aspects of the subject, eschewing too much concern with very recent "current events." In this

Summary of Contents

respect the timing of this book has some advantages and some disadvantages. United States law has just undergone an enormous overhauling. The Trade Act of 1974 has revised the comparable 1962 statute, and added many subjects. Probably this law will remain in place for more than a decade, and the reader will discover that this law forms a sort of "leitmotiv" for this book, consistently appearing in almost every chapter as it bears on our subject matter. The GATT—which represents at the international level the basic "statute" is in great need of change, but the likelihood of much change in the near future seems remote. Trade negotiations underway in Geneva as this is written could bring fruition for some changes in the near future, but competent observers suspect results will take somewhat longer. On the other hand this book catches the international monetary system in the middle of fundamental revision—and the materials reflect that and focus on the likely results of that revision.

Finally, although designed primarily as an instructional tool for law courses, this book has also been designed so as to be useful for research and reference. Concerning almost every subject there has been included a "research footnote", that is, a relatively long footnote listing some of the more general and useful recent secondary works concerning the subject, which should assist a person—be he student or practitioner—to approach the subject so as to help solve his problem.

A few other observations and explanations about the nature of these materials are in order. It is clear that court cases as such cannot form the "backbone" of instruction of this subject matter. There are too few such cases, and the real context of the problems too often ranges more broadly. Thus many other materials are included. In particular documents are important, and the supplement contains the text of key documents. Most chapters contain many queries or problems, and often these must be discussed in the context of the documents in the supplement. Consequently the class time needed for such discussion may be greater than would appear from the number of pages devoted to a topic. Often class discussion can center around the problems—in the light of the materials furnished, including the documents.

This book is designed primarily for a three semester hour course (45 classroom hours) although it is clear that a course of such length cannot cover all of this book. A four hour (60 classes) course would likely be both necessary (and sufficient) to complete all of this book. A shorter course has the added luxury of some selection.

JOHN H. JACKSON

Ann Arbor, Michigan
June, 1977

	Page
PREFACE TO THE SECOND EDITION.....	xv
PREFACE TO THE FIRST EDITION	xix
ACKNOWLEDGMENTS.....	xxiii
TABLE OF CASES	lvii
TABLES OF STATUTES AND CONSTITUTIONS	lxi
TABLE OF INTERNATIONAL AGREEMENTS AND SIMILAR DOCUMENTS	lxiii
LIST OF COMMON ABBREVIATIONS.....	lxvii

PART I. THE LEGAL STRUCTURE OF THE REGULATION OF INTERNATIONAL ECONOMIC RELATIONS

Chapter 1. The Policies Underlying International Economic Relations.....	2
1.1 International Economic Relations and the Law.....	2
1.2 The Growth and Importance of International Trade.....	8
1.3 Economic Theory and International Economic Policy	10
1.4 Political Goals and International Economic Policy	28
Appendix	30
Chapter 2. International Commercial Transactions	35
2.1 Introduction	35
2.2 International Sales Transactions.....	38
2.3 Resolving International Commercial Disputes.....	63
2.4 Problem	71
Chapter 3. The United States Constitution and Regulation of International Economic Affairs.....	74
3.1 Introduction to Chapters 3 and 4.....	74
3.2 The United States Constitution and International Economic Relations.....	77
3.3 International Agreements and U.S. Law.....	112
3.4 Presidential Authority and Trade Legislation in the United States	128
3.5 The Courts and Foreign Relations.....	160
3.6 Federal-State Relations and International Economic Regula- tion	169

Chapter 4. National Government Regulation of International Economic Transactions	196
4.1 Introduction	196
4.2 The European Community	199
4.3 Japan	223
4.4 Nonmarket Economies	244
4.5 Developing Countries	246

Chapter 5. International Economic Regulation and the Bretton Woods System	251
5.1 Introduction to International Economic Law and Institutions	251
5.2 International Law: Role of Custom and Treaties—Individual Rights and State Responsibility	258
5.3 Multilateral Economic Treaties and Institutions: The Bretton Woods System	270
5.4 The General Agreement on Tariffs and Trade	293
5.5 GATT Trade Negotiating Rounds	324
5.6 Dispute Resolution and Sanctions in GATT	332
5.7 The International Economic Regulatory System Viewed as a Whole: Problems to Consider	357

PART II. REGULATORY PRINCIPLES AND IMPORT RESTRAINTS: THE CORE OF THE SYSTEM

Chapter 6. Tariffs, Quotas and Nontariff Barriers.....	362
6.1 Introduction	362
6.2 National Tariffs and Customs Law	369
6.3 GATT and International Tariff Commitments: The Bindings	395
6.4 Quotas and Their Application	420

Chapter 7. Nondiscrimination and the Most-Favored-Nation Clause	428
7.1 The Most-Favored-Nation Obligation	428
7.2 MFN in Operation.....	443
7.3 Customs Unions and Free Trade Areas	454
7.4 Preferences and MFN Exceptions.....	464
7.5 The Future of MFN in GATT.....	481

Chapter 8. The National Treatment Clause and Nontariff Barriers.....	483
8.1 Introduction	483
8.2 The National Treatment Obligation in Operation.....	486
8.3 Exception for National Social and Economic Programs.....	510
8.4 Government Purchases.....	522
8.5 Product Standards and Technical Barriers to Trade.....	532

Chapter 9. Escape Clauses, Safeguards and Adjustment Policies.....	538
9.1 Introduction: The Policies and History of Safeguard Measures.....	538
9.2 The Prerequisites and Causal Requirements of an Escape Clause Remedy.....	550
9.3 Remedies and Procedures for Escape Clause Cases.....	591
9.4 Voluntary Restraint Agreements and Special Safeguards Techniques.....	609
9.5 Adjustment Assistance	623
9.6 Safeguards and Structural Adjustment: The Puzzle and Prospects for Reform	629

Chapter 10. Responses to Unfair Acts in International Trade 648	648
10.1 Introduction	648
10.2 Dumping and Antidumping Duties	653
10.3 Subsidies and Countervailing Duties.....	723
10.4 Additional Remedies for Unfair Trade Practices	789
10.5 Retaliation in Trade Policy: Section 301 Actions.....	802

PART III. SPECIAL PROBLEMS OF REGULATING INTERNATIONAL ECONOMIC RELATIONS

Chapter 11. Monetary Affairs and Trade Policy: Operation of the International Monetary Fund	826
11.1 Introduction	826
11.2 Operations of the International Monetary Fund: International Liquidity	845
11.3 International and National Regulation of Foreign Exchange Restrictions	861
11.4 Trade Measures for Balance of Payments Reasons.....	873

Chapter 12. Export Controls Under GATT and National Law 883	883
12.1 Introduction	883
12.2 International Regulation of Export Controls	887
12.3 United States Export Control Law	893

Chapter 13. Trade Controls for National Security and Political Purposes.....	911
13.1 Introduction: Historical Background.....	911
13.2 International Rules and National Security and Political Controls on Trade.....	915
13.3 U.S. Trade Controls for National Security Purposes.....	918
13.4 U.S. Trade Controls for Foreign Policy Purposes.....	925
13.5 The Extraterritorial Application of Trade Controls.....	928
13.6 The Effectiveness of Trade Controls Imposed for National Security or Foreign Policy Purposes.....	939

	Page
13.7 A Case Study: United Nations Sanctions Against Rhodesia	944
13.8 Foreign Use of Trade Controls: U.S. Antiboycott Rules	951

Chapter 14. International Trade in Agricultural and Other Commodities.....

14.1 Introduction	953
14.2 Agricultural Products and International Trade Rules	955
14.3 Commodities and Commodity Agreements	970
14.4 Cartels and Producer Alliances	982

Chapter 15. International Trade in Services.....

15.1 Introduction	988
15.2 U.S. Law and Trade in Services.....	992
15.3 Negotiating Rules on International Trade in Services	993
15.4 A Case Study: Insurance.....	1008
15.5 International Legal Services.....	1016

Chapter 16. International Regulation of National Controls on International Investment.....

16.1 Introduction	1018
16.2 National Controls on International Investment	1028
16.3 International Regulation of National Controls on International Investment	1035
16.4 International Law and Expropriation.....	1039
16.5 Alternatives to Investment: Agents, Distributors and Licensing.....	1044

Chapter 17. Multinational Enterprises

17.1 Introduction	1047
17.2 Codes of Conduct for Multinational Enterprise: The Philosophical Problems.....	1049
17.3 The 1976 OECD Guidelines for Multinational Enterprises	1057

Chapter 18. Restrictive Business Practices and International Economic Relations

18.1 Introduction	1072
18.2 The Relationship of Competition and Trade Policies.....	1073
18.3 Application of National Antitrust Laws to International Transactions.....	1077
18.4 International Efforts to Control Restrictive Business Practices.....	1095

Chapter 19. Taxation and International Commerce.....

19.1 Introduction	1101
19.2 Comparative Tax Burdens and Their Effect on International Trade and Investment	1102
19.3 Taxation of Multinational Enterprises	1107

	Page
19.4 U.S. State Taxation of International Trade and Investment	1124

PART IV. MANAGING WORLD ECONOMIC INTERDEPENDENCE

Chapter 20. Developing Countries and the GATT System...1138

20.1 Introduction	1138
20.2 GATT Rules and Developing Countries.....	1140
20.3 The Generalized System of Preferences (GSP).....	1154
20.4 Initiatives for a "New International Economic Order" (NIEO)	1166
20.5 Developing Countries and the International Debt Crisis	1171

Chapter 21. Nonmarket Economies, State Trading and International Economic Regulation.....

21.1 Trade Between Market and Nonmarket Economies	1174
21.2 GATT and Nonmarket Economies: The Problem of Interface.....	1179
21.3 The United States and Communist Countries	1187
21.4 Countertrade	1195

Chapter 22. Interdependence and the Industrial Market Economies

22.1 The Problems of Interdependence.....	1202
22.2 Targeting and Industrial Policy.....	1203
22.3 The Houdaille Case	1211
22.4 Levels of Barriers to Trade: A Taxonomic Note.....	1215

Chapter 23. Perspectives and Conclusions.....

23.1 Reflecting on the Problems Examined in This Book.....	1220
23.2 Legal Rules or Government Discretion—Which Model Is Best?.....	1221
23.3 Managing Economic Interdependence.....	1241
INDEX.....	1247

