THE RIGHT TO DEVELOPMENT WITHIN THE INTERNATIONAL ECONOMIC LEGAL ORDER

Christian Tietje*

1. INTRODUCTION

Ernst-Ulrich Petersmann has always analysed and explained international economic relations not only from a narrow perspective of specific rules of a specific treaty, but in a broader sense as part of a global system of law and society. It was and is this broad perspective that facilitates necessary and enriching debates on fundamental questions of the international economic order such as trade/investment and human rights. This short essay in honour of Ernst-Ulrich Petersmann shall present a topic closely related to many of the fundamental questions raised by him in recent decades: the right to development. The term “right to development” for decades has played a prominent but also highly disputed role in international law and international economic law. Numerous economic, political, cultural and legal discussions are linked to it.

This contribution will concentrate on the legal aspects of the right to development. In this regard, three dimensions of the discussion on a “right to development” can be distinguished. The first perspective concerns the legal position of a right to development within the context of international human rights in general.

* Dr. Christian Tietje, LL.M. (Michigan), is professor of European law and international economic law, director of the Institute of Economic Law and director of the Transnational Economic Law Research Centre (TELC) at the Law School of the University Halle, Germany (tietje@jura.uni-halle.de).

of the ICJ has been disputed and unclear. Third, the exact relevance of a right to development in international economic law in general is an open question.

This essay can address only a few points of the right to development discussion. Thus, the focus will be not on details, but on overall systemic aspects in relation to international economic law. In what follows, first, the terms “international economic law” and “international economic system” will be described in relation to their relevance for the right to development debate (2). Then, a brief historical review of the right to development (3) and an overview of its content and its conceptual position within the international legal order follow (4). Finally, the legal status of the right to development and its overall relevance for international economic law will be addressed (5).

2. INTERNATIONAL ECONOMIC LAW AND THE INTERNATIONAL ECONOMIC SYSTEM

International economic relations in terms of economic transactions which are characterized by a cross-border or cross-jurisdictional feature have always existed in human history. In this regard, the international economic system can be understood as a sociological phenomenon of the decisive power and actor structures that determine the cross-jurisdictional and cross-border economy. International economic law is, therefore, the law of the international economy and not merely international law that deals with the economy, i.e. from a functional perspective the entire law that is relevant for cross-border economic transactions. In this regard, in addition to numerous specific areas of national law and European Union law, in particular the legal order of the World Trade Organization (WTO), the International Monetary and Financial Law (World Bank, IMF, and numerous governmental, intermediate and non-governmental organizations) and international investment protection law are important. Overall, international economic law is to some extent still state-centred, even though it highlights individual rights in the international economic system more and more.

The international economic system and international economic law have, at least since the second half of the 1950s, also been characterized by development