

Editorial EYIEL 5 (2014)

In 2014, the global economic system celebrated two anniversaries: 70 years ago, on 22 July 1944 at Bretton Woods, New Hampshire, the Articles of Agreement of the International Monetary Fund (IMF) and the Articles of Agreement of the International Bank for Reconstruction and Development (Worldbank) were adopted. Since then the global financial and monetary system has undergone significant policy changes, but the institutional framework remained the same. More recently, 20 years ago, on 15 April 1994, the Final Act of the Uruguay Round of Multilateral Trade Negotiations was signed and its key component, the Agreement establishing the World Trade Organization, entered into force on 1 January 1995. Even though the beginning of the multilateral trading system dates back to the late 1940s, the founding of the WTO constitutes a significant institutional reform that marks the beginning of a new era.

Anniversaries are usually moments of celebration. However, even a superficial observer will notice that neither the current international financial and monetary regime nor the international trade regime is in a stage that invites celebration. Instead, both are facing difficult and fundamental challenges to their very existence not only from the outside but also from within. So while this may not be a time to celebrate, anniversaries are also often used for reflection about the past and the future. Hence, the European Yearbook of International Economic Law, itself celebrating its fifth volume in 2014, considers these two anniversaries the appropriate moment to reflect on the legacy and the current status of the two main pillars of International Economic Law. Apart from the two Distinguished Essays, the special focus sections of this volume consist of contributions by researchers who replied to a call for papers that the editors of the yearbook issued in 2012. This format gave us the opportunity to include papers written by “new voices” in the field, i.e. researchers at the early stages of their career, who approach the issues debated in this volume with fresh and innovative thoughts. As a consequence of the call for papers, the content of this volume is supply—rather than demand—driven but puts the spot on some issues that might otherwise not have been included in such a volume.

The first special focus on “The Global Monetary and Financial System 70 Years after Bretton Woods” is introduced by Cynthia Crawford Lichtenstein’s Distinguished Essay, entitled “Reflections on the Intellectual History of the International Regulation of Monetary Affairs”. In her essay, she analyzes the conceptual debates about the role of the IMF and its law in the governance of global monetary affairs, in particular, views on conditionality and capital flows that were expressed at the establishment of the organization and that resurface with each new global financial crisis.

Annamaria Viterbo and Francesco Costamagna, in their contribution on “Multi-regionalisms in the Context of the EU Sovereign Debt Crisis: Current Legal Challenges and the Way Forward”, focus on the increasing role of currency or monetary unions in the IMF and the interaction of such regional monetary systems with the global system, in particular, pointing to the shortcomings of the existing legal framework, e.g., in relation to the impossibility of membership in the IMF for currency unions and the ensuing nonavailability of lending facilities.

Cornelia Manger-Nestler addresses the “Interaction for Monetary and Financial Stability – Central Banks as Main Actors in the Global Financial System”. In her view, central banks might emerge as winners from the recent (and ongoing) crisis (or crises), at least if some considerations for the reform of the global monetary and financial system are taken into account.

Chien-Huei Wu draws the attention to the linkages between the monetary and financial pillars of the global economic system and the trade pillar, by addressing “Greater Coherence in Global Economic Policymaking: Progress and Prospect”. He posits that collaboration and coordination between the Bretton Woods institutions and the WTO have intensified with their formalization upon the creation of the WTO, but he also points to challenges ahead.

The last essay links the first special focus of this EYIEL volume to its second on the “Multilateral Trading System 20 Years after Marrakesh”. In his Distinguished Essay, Asif Qureshi reminds us that the development promise of the trading system has not been kept. Despite the fact that the current round of trade negotiations is dubbed the “Doha Development Agenda”, the development perspective is still not being mainstreamed in the WTO regime. “Taking development seriously” might therefore be the call of the hour, 20 years after many developing countries joined the multilateral trading system during the Uruguay Round, expecting market access for their products in return for opening trade in services and protecting intellectual property rights.

Tilman Krüger departs from the observation of the political impasse at the WTO’s negotiations vis-à-vis an apparently active judiciary, an issue that has often been addressed in terms of a constitutional imbalance of the WTO. Rightly recalling that Members are the gatekeepers of the WTO’s dispute settlement system, Tilman develops a theoretical framework of strategic litigation at the WTO from an international relations theory perspective. He argues that Member States can contribute significantly to the development of WTO governance through using its dispute settlement system strategically.

Elisa Ruozzi returns to a—if not the—classical theme of “trade and. . .” issues in her essay on the WTO’s attempts to manage the integration of environmental concerns into the global trading system. In her overview of the pertinent issues and concepts, she first illustrates the reluctance of the WTO regime to adopt some environmental law principles and then shows how WTO jurisprudence on the matter evolving on a case-by-case basis might actually incorporate some of these principles at least in a modest way.

It is well known that the Uruguay negotiators left many issues open that remain unresolved until these days. Laura Puccio tackles one of the lesser known unresolved issues in her essay on the effects of preferential rules of origin and anticircumvention rules. Disciplines for both sets of rules were debated in the Uruguay Round, but without a legally binding outcome. Laura links both preferential rules of origin and anti-circumvention rules to the notion of circumvention and shows how they could be justified in light of the general objectives of the WTO system.

Few sectors of the economy have changed so dramatically since 1994 than telecommunications services. While the Internet was largely unheard of at the Marrakesh Ministerial Conference, electronic communication supplied through various networks and on a digitalized basis is now the backbone of almost any economy and society. Olga Batura shows that the GATS telecommunication framework developed in the second half of the 1990s is not capable of meeting the regulatory needs of the dawning Information Age and further enhancing free trade in communication services at the same time. As a key remedy, she suggests to reclassify communications services and to include the concept of technological neutrality in the regulatory framework.

No reflection of the WTO system 20 years after Marrakesh would be complete without mentioning the proliferation of regional and preferential trade agreements. Instead of revisiting the issues and restating the obvious, Josué Mathieu draws our attention to the problem of conflicting jurisdictions if both the dispute settlement system of a regional trade agreement and the WTO dispute settlement system claim exclusive jurisdiction. Using the recently decided US–Tuna II case, Josué shows that the conflict between exclusive jurisdictions has not yet been solved and may not be easy to solve based on standard international treaty law.

The Regions part of EYIEL 5 (2014) brings together contributions on the EU’s Deep Trade Agenda, on Current Approaches to the International Investment Regime in South America, on the Multilayered System of Regional Economic Integration in West Africa, and on the Tripartite Free Trade Area, as well as on India and her Trade Agreements. The Institutions part contains treatises of developments in the World Customs Organization, the World Intellectual Property Organization, and International Investment Law. After the book reviews, EYIEL 5 (2014) is complemented with an Annex containing the case (on exchange-rate manipulation and crisis-caused guarantees to financial institutions) and the Best Submissions of the 11th EMC² ELSA WTO Moot Court Competition (of the Harvard team for the complainant and the Leuven team for the respondent).

The case not only addresses issues of current interest but also links the subjects of our two special focuses nicely together.

As usual, this volume could not have been put together without the help of numerous people. Our thanks goes to Dr. Brigitte Reschke of Springer and her team, who took care of the actual production. Once again, Sören Rätthling took care of all the editing, the list of contributors, etc. Many thanks also to him for the fantastic work.

Passau, Germany
Erlangen, Germany
Lüneburg, Germany
August 2013

Christoph Herrmann
Markus Krajewski
Jörg Philipp Terhechte

<http://www.springer.com/978-3-642-40912-7>

European Yearbook of International Economic Law
2014

Herrmann, C.; Krajewski, M.; Terhechte, J.P. (Eds.)

2013, XIX, 534 p. 4 illus., Hardcover

ISBN: 978-3-642-40912-7