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## Ferenc Mádl and International Economic Law<sup>2</sup>

- **ABSTRACT:** *Ferenc Mádl, while rising to the ranks of the outstanding Hungarian statesmen who served their country unconditionally, remained a scholar with exceptional knowledge and a unique academic life. In the 1970s, he was the first to recognise that even the broadest interpretation of the field of private international law could not cope with the expansion and transformation of international economic relations in the world and in our country. Reality had gone beyond the given framework of thought, „the facts had rebelled”, a new system and new solutions were needed. A new discipline, international economic law was born to meet the needs of theory, education and practice. The new field of law not only sensed the changes in reality and the interconnections between different areas of reality, but also anticipated the future. Decades later, Ferenc Mádl comprehensively summarised the most important legal consequences of economic, political and social changes and demonstrated the role of law in these changes. In the field of international economic relations, changes have continued to accelerate, new issues and new dilemmas have emerged, including in the area of foreign investment, where public law meets private law, international law meets national law, substantive law meets procedural law. These – and many other exciting new topics – remain best located, cultivated and taught in the field of international economic relations ‘invented’ by Ferenc Mádl.*
  
- **KEYWORDS:** *Ferenc Mádl, scholar, statesman, international economic law, theory and practice.*

“Once upon a time, there was a country called Hungary, where the gates were closed more than seventy years ago. Some had left before the door was shut, but many stayed home. Many were then taken away; others withdrew into passivity – and some just worked. That is what they had to do, because they felt the urge to do so, and they also knew that their abilities obliged them to perform, that they owed it to themselves, their

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parents, their ancestors, and even felt that this was what their community, their nation, expected them to do.

In the meantime, a great historical experiment on humans began, with one of its key goals being to achieve total isolation from the world. This closure followed from the forced and temporary postponement of the world revolution, the resulting thesis of building socialism in one country, and the construction of an economic and political system based on autarchy. This laid the foundations for the institution of foreign trade monopoly as the legal technique for complete and unconditional isolation. It is noteworthy that not even this objective of 'existing socialism' succeeded, as it quickly became apparent that, without foreign trade, even the most powerful country in the world cannot function; it needs knowledge and advanced technology that it can only obtain from abroad, and it can only create the necessary resources for that by exporting its own goods. 'Navigare necesse est' – recognised the Bolshevik leaders, and their Hungarian stewards came to the same conclusion after the failed attempts to grow cotton in Hungary and to make it a country of coal and steel. A slow opening started, with a long series of reforms; the proclamation of a state monopoly on foreign trade was tamed into a 'one-hand policy'; Hungarian products and services could not compete with each other on the foreign market, but our external economic relations with the world beyond the thinning Iron Curtain also expanded strongly, and integration into the world economy became an accepted objective.

Life, and even legal life, continued; and the legal culture, developed over the centuries, stubbornly hung on, although mostly withdrawn to form part of the abstract concepts of civil law. Legal institutions operated because there were people operating them, with an international outlook, language skills and the knowledge that became increasingly important during the opening towards the external economy. The law of foreign trade was born, which later became international economic law, including not only classical conflict-of-laws, but also public law standards regulating, to an increasingly broad extent, the area of private law aimed at the direct regulation of legal relationships containing international elements and the area of international economic relations."<sup>3</sup>

This saved and preserved legal culture, knowledge and international outlook was represented by Ferenc Mádl, who also felt that all these would one day be particularly needed, not only for science, education and legal practice, but also for the governance of the country, the uplifting of the nation and its reintegration into Europe. Before the first free elections, he talked about waiting to be addressed with a gun at his feet, and if that happened he could not back down from the task. And he did not. And while he rose to the ranks of outstanding Hungarian statesmen who served their country unconditionally, all along he remained a legal scholar of exceptional knowledge who created a unique scientific oeuvre.

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3 Martonyi, 2010, p. 129.

But now we are still in the 1970s. Big and real changes have not started yet, but things were happening both around and in Hungary. The rapid and continuous growth of the world economy, and especially world trade, and the increasing emergence of new forms of international economic relations did not leave processes – not even Hungarian ones – unchanged. Cautious and sometimes uneven attempts were launched to “integrate the isolated Hungarian economy into the world economy”, which, in turn, led to a significant expansion in Hungarian trade relations with the developed “non-socialist” world. New, more advanced forms of economic collaboration with the West, including cooperation and other atypical treaties, were emerging; and there was also an attempt, although very limited at the time, to allow foreign working capital to enter the country under strict conditions.<sup>4</sup> The world was changing and we were changing with it; above all in the area of international economic relations. In turn, the accelerating expansion of external trade relations and of our economic relations in general has inevitably created new demands on the system and content of the legislation on these relations, which have appeared in the fields of jurisprudence, legal education and, of course, legislation and the application of the law.

The quantitative and qualitative changes in our international economic relations triggered the “revolt of facts”<sup>5</sup>, and Ferenc Mádl was not only the first to recognise it, but he also drew the resulting taxonomic conclusions on structural changes in the areas of the legal system. It became clear to him that private international law, as a science and educational subject, could not properly place new and expanding forms of international trade and economic relations, not even in its broader interpretation that had already gone beyond the interpretation of the concept of private international law covering only indirect regulation, i.e. conflict-of-laws and referring rules, and included, in addition to the law of traditional conflicts of law, direct regulations of legal relationships containing an international element, which appeared largely in an international legal norm of some level, first in the field of intellectual property law and international transport, and then in international sales.<sup>6</sup> Thus, private international law was able to handle, better or worse, the first big wave of the expansion of international trade; it went beyond the classic field of “*conflits des lois*” in both textbooks and university education and, in addition to indirect rules, it also placed direct rules applicable to international obligations containing an essential international element, defined by type of treaty in international trade, within international private law. However, the division of private international law into these direct and indirect rules was far from becoming universally accepted, and the approach that it would be more appropriate to limit the concept of private international law to its traditional meaning, i.e. to the conflict of laws, was increasingly gaining ground. (At least, Hungarian private international law followed that approach.)

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4 See Decree No. 28/1972. (X. 3.) of the Finance Minister on Foreign Investments.

5 Mádl, 1977, pp. 196–240.

6 See: Martonyi, 2010.

However, not even this broader interpretation of the field of international private law was able to handle the next great wave of the expansion and transformation of international economic relations, especially in the specific Hungarian circumstances. Reality moved beyond the given framework of thought and organisation; “the facts revolted”<sup>7</sup>, new solutions in line with reality and the facts displaying it had to be sought. Ferenc Mádl knew, of course, that the facts did not only revolt regarding the organisation and content of private international law and legislation on international economic relations. This rebellion was about to extend to increasingly broad areas, shattering not only the current frame of scientific organisation, but over time, at least he hoped so, the entire political, economic and social order, as well as the corresponding legal system. However, here and now, the opportunity to face reality – and to develop a scientific theory and education system consistent with the facts, and thus to further develop our international trade and economic relations through the modernisation of the legal framework, and ultimately to bring Hungary closer to Europe and the developed and free Western world – presented itself in that rather narrow area. Obviously, it was not by accident that he turned to the study of European Community law and wrote not only the first but also the most significant work on Community law<sup>8</sup>. At the same time, European law, with its complexity and diversity, provided further arguments and evidence of the relative nature of the system of traditional legal branches and the need for new approaches, along with a system better reflecting reality in this area, too.

The other area that contributed significantly to the revolt of facts, in particular at international level, was the explosion of foreign investments and capital relations in general and, as a result, the emergence of international investment law, the rapid spread of bilateral international conventions for the protection of foreign investments and multilateral international dispute resolution systems for the settlement of investment disputes, in particular the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.<sup>9</sup> The emergence of bilateral substantive and multilateral dispute settlement and procedural rules on disputes between sovereign states and natural and legal persons as the actors of the economy stretched not only the framework of private international law, but also the international trade law in the broader sense, and raised new, previously unknown dilemmas in terms of the separation of public and private law, the relationship and disputes between the sovereign state and non-state actors in economic life, and even the relationship between the issues of substantive and procedural law.

Rapid changes in reality were reflected in the varied picture of names that Ferenc Mádl calls the “battle of names”.<sup>10</sup> The designations used for the multifaceted and multi-level legal material applicable to international trade and the economy indeed show a

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7 See: Mádl, 1977, p. 197.

8 Mádl, 1978.

9 This Convention established the International Centre for the Settlement of Investment Disputes (ICSID) and the Rules of Procedure for Arbitration Proceedings referred to that Centre. See Martonyi, 1987, pp. 113–122; Király and Mádl, 1989.

10 Mádl, 1977, p. 197.

very diverse picture in a wide variety of languages to this day and their content is still not uniform and precisely delimited. International trade law (public law), international business law (private law), international business transactions (even more private law), *droit du commerce international* (both), *internationales Handelsrecht* (private law), *internationales Wirtschaftsrecht* (public law), just to mention some well-known categories in these three languages.

The expression “name war” also signals that the changes made it necessary to further rethink the system of categories used so far. This task had to be carried out by jurisprudence. That is why Ferenc Mádl asks the question: “here and now – what path can be offered to bring our rebel facts together into a liberating and creative system.”<sup>11</sup> He then mentions that “Hungarian jurisprudence is now quite generally convinced that it must overcome this situation and move forward, both in terms of education, scientific research and many practical aspects...”<sup>12</sup> He summarises the system theory requirements of the new answer, stating that the legal branch (“a homogenous cohesion of norms that preserves its strength of character, which is not denatured in its elements; even if it participates in a larger heterogeneous norm complex, it preserves the values of its substance; moreover, it uses the same to promote the goals of such a complex”<sup>13</sup>) is not the answer, but ‘no’ is not an answer, either. That is why he answers the dilemma by stating that “international economic law is a complex area of law and discipline” whose “body of legislation constitutes a complex area of law linked together by the weight of the rules, the specificities and functions of regulation, forming a scientifically independent discipline and, as regards its name, attracting the designation of ‘international economic law’.”<sup>14</sup> The subject matter of regulation mainly consists of property and economic relations, and its peculiarity is that “it is about international economic and financial relations and therefore regulation is always born and developed on the assumption of a foreign element”.<sup>15</sup>

The realisation evoked by the change of reality and the thought based on it became reality. A coherent complex legal area and discipline was born, which drew the conclusions from the first and second waves of the development of world trade and of international economic relations, and brought the norms of public and private law relating to international economic and property relations, which assumed a foreign element, and which belonged to different legal branches, together into a coherent, complex area of law. This heterogeneous legal area is a scientifically independent discipline “and, as regards its name, attracts the designation of ‘international economic law’.” Ferenc Mádl formulated the main cohesive elements, characteristics and elements of the legal field and discipline in accordance with the facts, and named it. Indeed, the name he proposed, that was “attracted” by this field of law, quickly became

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11 Mádl, 1977, p. 221.

12 Mádl, 1977, p. 223.

13 Mádl, 1977, p. 229.

14 Mádl, 1977, p. 230.

15 Mádl, 1977.

generally used in science, education, textbooks, the naming of departments and also in practice.

The birth of this field of law was a good example for the desired unity of science, education and practical legal work. The recognition and thought were the results of a scientist's research; that result was taken over by legal education and then exploited in practice. A few decades of teaching experience have made the benefits of the uniform handling of this legal field clear to all of us, making it easier to understand the common principles and essential characteristics, in particular the identical functions of the legal branches that were built on different regulatory methods, as well as to obtain the knowledge necessary for this. This single function was none other than the fair and balanced international regulation of international trade and wider economic relations, increasing legal certainty for all parties, and ultimately developing international relations.

However, the creation of international economic law as a complex area of law has produced the greatest results in practice. The work of international lawyers and arbitrators was the most successful and convincing in demonstrating the correctness of this insight of science and the transfer of this insight into education. Large international transactions, acquisitions and investment decisions always require a complex research and analysis of all elements of the case, covering legal norms classified into a wide variety of legal branches and the end result can only be based on the entirety of the conditions of public and private law, international law, European law and national law. The legal diversity of legislation is further complicated by the different levels of legal norms, the relationship between these levels and possible conflicts. This diverse, multifaceted and multilevel world of norms with varying geometry and spatial structure<sup>16</sup> gives the environment where practical legal work must be navigated, which requires the consideration of both the characteristics of homogenous legal regulations and the complex unit of rules governing international economic and property relations built on a common function.

Scientific research and thinking has therefore produced significant results by establishing international economic law as a complex area of law. It enriched science, helped education and substantially increased the quality of practical legal work on legal relationships with an international element. There is nothing more and nothing better a scientist and science can do.

On the basis of the history and perhaps on the pretext of establishing the legal field of international economic relations, we must make three statements, each of which goes beyond this specific area and characterises the scientific activity of Ferenc Mádl as a whole.

The first item is that the basis of scientific research is reality, and if reality changes, facts revolt and then science must address the new situation first and foremost. The changes in the international economies and Hungary stretched the known and

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<sup>16</sup> Martonyi, 2001; Martonyi, 2007, pp. 137–175.

familiar frameworks, necessitating new insights, new organisation and a new way of thinking. The theory did not venture alone on a speculative path selected by itself, but it recognised, followed and re-thought reality, creating a new system and, in line with it, new content, thus significantly influencing reality itself in the right direction. This was achieved in a specific area, but the result suggested, and even made it increasingly clear, that the facts were revolting increasingly widely, that the messages of reality were becoming stronger and that conclusions needed to be drawn in an increasingly wider scope. Hungary belongs to Europe, to the Western world; it is linked there by its values, history and culture – not the least its legal culture. Economic and commercial opening leads to this direction, just like jurisprudence and legal education, bringing the country closer to that world. The success of this approximation must be based on reality and facts, never forgetting the end goal.

But it is necessary to see not only the changes in reality, but also how the different areas of reality are interlinked. Seeing the links in the field of our narrower subject concerned, above all, the internal context of the legal system; but the conclusions drawn also made it clear that the quality practice of jurisprudence makes it essential to see and understand the wider impacts of economic, social, sociological, political and, above all, cultural contexts beyond the law.<sup>17</sup> After all, the revolt of facts started primarily from these areas and triggered a new solution to the systematisation of legal norms, better suited to reality and better helping to shape reality. The legal scholar did not, and could not, lock himself in the inner world of law, because he was also a political thinker worried for his country and wanting to act, and a man who later became an exceptional statesman. But, in addition to the context beyond the law, he also saw that the law has its own structure, system of concepts, organising principles and theorems, which legal thinking can never ignore, because doing so would deprive the law of its very essence. The law must also respect its internal system and theorems because without these it would lose the possibility, as is often the case, of influencing the development of economic, social and political conditions.

The importance of law not becoming dysfunctional due to the disregard for the internal structure and conception, and the legal system continuing to fulfil its role in shaping the state and the economy, is presented in a work written by Ferenc Mádl a decade later in English that was translated into Hungarian by László Burián.<sup>18</sup> In the countries of Central and Eastern Europe, regime changes were implemented through law, which, despite numerous errors and shortcomings, has shown that the law can play a decisive role in the transformation of the state and the economy, and that revolution is possible through law.

If we go back to the seventies, the era that was decisive for our topic, from that decade, Ferenc Mádl's work, written in the middle of the 1990s, seems to be the distant future. Distant? Two decades is a long time in a person's life, but in history it is a – sadly protracted but – short period. However we judge the long or short nature of time, which

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17 On the context see Mádl, 1983, pp. 238–254.

18 Mádl, 1997.

we know to be relative, we get to our third statement. The essence of this is that Ferenc Mádl may have suspected and sensed the developments of the future by looking at reality and great connections. It is certainly not that he foresaw the events of the 1990s in the 1970s and knew how he would write a uniquely valuable and instructive analysis of the role of the law in regime change. We cannot reverse the course of time either, but it is safe to say that both the scientific response to the revolt of facts half a century ago and the scientific presentation of the legal institutions and legal instruments of regime changes in Central and Eastern Europe formed part of a straight-line oeuvre. The same scientist, the same scientific sophistication, the same values and, above all, the same man.

What could be foreseen, though (and foresight is far from forecast, as the latter is rather the profession of meteorologists and economists) was that changes would continue and the restlessness of the facts would not decrease but increase. This applies above all to our domestic affairs, because that is why Ferenc Mádl could write his work on the revolution carried out by law. But significant changes also continued in the world economy and in world trade, and no less in the relevant international regulations.

For decades, one of the important factors for the growth of the world economy was the more dynamic growth of world trade, the trade of both goods and services. At the same time, international capital and money flows have multiplied. The third great wave of economic relations had taken place, and by the end of the first decade of our century, the syndrome called globalisation had peaked. At the same time, the regulation of world trade was characterised by continuous expansion for nearly 60 years, and the rules of the GATT, initially considered “soft law”, hardened especially after the establishment of the World Trade Organisation in 1994, and became real law through the creation of an effective, relatively well-functioning dispute settlement system. It is no coincidence that this successful dispute resolution and the expanding and hardening norms and values underlying it have begun to serve to enforce other non-commercial values, so-called “non trade values” as well, the political and moral basis of which is understandable, but which expanded the regulations of the world trade system and dispute settlement itself to the edge of disintegration, since it is difficult for an overloaded system to deal with almost all the problems of the world with its own means alone.<sup>19</sup> In addition to being overloaded, the system faced other challenges as well, which have been more serious and are currently increasing. Mostly as a result of technological developments, the structure of world trade has changed; the share of trade in goods has decreased, and the trade in services has increased, but the real explosion has been brought by the huge increase in data traffic. Security concerns have intensified, and security policy considerations were increasingly gaining ground against commercial and economic aspects. These previously started processes have been significantly accelerated by the COVID-19 pandemic.

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<sup>19</sup> See Martonyi, 2016; Martonyi, 2018, pp. 80–95.



The system of regulation has fundamentally transformed, the multilateral structure has weakened and fragmented. Regional and bilateral systems are coming to the fore, increasingly ignoring the previously (more or less) followed multilateral rules; the principle of equal treatment that formed the basis of the system, implemented through the legal technique of the most favoured nation, is disintegrating, and, after protracted agony, the procedure that was the most successful dispute settlement procedure in the international relations system so far will disappear, at least temporarily. The previous several-decade hardening of rules, the strengthening of the legal element, the so-called “judicialization”<sup>20</sup> is today replaced by a process to the contrary; the legal element is not strengthening but is becoming weaker, and we bear witness to a process that must be called “de-judicialization” in English. And if we use the English terms, the whole point of the process is that “security trumps economy”, most notably the regulation of economic relations; with the escalation of the world situation, the heightening of uncertainty, tensions and dangers – again not caused but greatly enhanced by the epidemic – the guarding of city walls and keeping an eye on opponents have become the most important issues. More broadly, this can also be put in a way that, in the cooperation and competition between geopolitics and “geoeconomics”, the former seems to get the upper hand, and geopolitics and security policy seem to corner and occupy the place of traditional “trade policy” i.e. the policy of international economic relations.<sup>21</sup>

All this, of course, does not help the legal security and predictability of world trade and economic relations, or the exercise of rights, compliance with obligations and the enforcement of responsibilities.

This process characterised by fragmentation, regionalisation and localisation, coupled with a simultaneous de-judicialization, caused mostly by other factors, i.e. the weakening of the legal elements, essentially concerns rules considered to be of a public-law nature within the law of international relations. At the same time, the private-law regulation of international trade transactions has not shown spectacular results in the last few decades either. In the framework of UNCITRAL, work continues, with many exciting and new issues on the agenda<sup>22</sup>, but the comprehensive unification of the law of international trade seems to have reached its peak with the Vienna Sales Convention in 1980. (That the spread of the application of the Convention has not proved to be a major success is another matter).

However, the change in reality did not slow down, but, on the contrary, accelerated. First and foremost, technological progress is accelerating, but the geopolitical and security policy situation is changing rapidly as well. Trade policies are changing, policies on foreign investment are changing and, as a result, regulations expressing these policies are changing as well. Recent developments make it clear that, without a

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20 Nagy, 2021, pp. 49–59.

21 Martonyi, 2020, pp. 13–21; Martonyi, 2021, pp. 117–129.

22 Issues such as commercial mediation and arbitration, collateral, financial transactions, the legal aspects of public-private partnerships, questions related to the contracts of micro, small and medium-sized enterprises.

broader and more flexible framework of international economic law as a complex and cross-disciplinary area, the latest directions of international law development could no longer be addressed at all by using the classical structure, thinking, education and practical approach. And this is where the pursuit of reality, the understanding of the context and, building on all this, sensing the future, foresight, and the progress made possible by that, are given special importance.

The time and place make it possible to mention only one topic in a long series of new developments, a topic that is particularly supportive and illustrative of the specifics, complexity and diversity of the legal field discovered by Ferenc Mádl.

It is beyond doubt that, from among these topics, the most attention has been paid to the legal regulation of foreign investments, in particular the protection of investments and the settlement of investment disputes. This is because here, not only public and private law (and their important actors), international law and national law, substantive law and procedural law meet, compete and collide with each other, but also economic and political interests affecting the fate of the whole world and worldviews that express and influence them – ideologies, if you will – are in conflict<sup>23</sup>. And, of course, the dissolution of the normative hierarchy, the rivalry and conflict between the levels of power and regulation also play their part in the big game – it is enough to refer to the recent decisions of the European Court of Justice, which graphically show not only the economic and political weight of the subject, but also the contrast between the international legal obligations assumed by the Member States and the autonomy of European law.<sup>24</sup>

The special system for the settlement of investment disputes, arching over the boundaries of the branches of law, was mainly created by the fact that neither international law nor national law and justice were able to resolve how to make balanced decisions in the legal disputes between a sovereign state and an investing individual, protecting all interests and properly enforcing the requirements of economic constitutionality. International law has tried two known principles that are completely opposite to each other, and the conflict between these two principles has resulted not in a solution, but in worsening political conflicts. The “doctrine of espousal” proclaimed by the United States, according to which the host State’s unfair and inequitable action, such as the nationalization or expropriation of the investor’s property without compensation, establishes international legal action on the part of the State of which the investor is a resident (the issue of residency, of course, has raised further questions), has obviously created international tensions, especially if the host State has stood on the basis of the “Calvo doctrine”<sup>25</sup>, which assumes the absolute primacy of sovereignty and the tacit acceptance of equal treatment by the foreign investor, and has made it

23 Martonyi, 2016, pp. 145–156.

24 For a thorough critique of this decision see Nagy, 2018, pp. 981–1016; Martonyi, 2019, pp. 428–431. See later the opinion of the Court of Justice in the CETA (EU-Canada Agreement) case on the dispute settlement clauses used in the investment protection agreements concluded by the European Union. (Opinion 1/17 of the Court, 30 April 2019).

25 See Brower, 1981.

the basis of its policy towards foreign investors. The judiciary of the host State did not provide remedy; the judge should have ruled against their own legislation, which is an excessive expectation against the primacy of international law. However, the action before the court of the investor or other State was made impossible by the immunity of the sovereign state which adopted the law subject to complaint. The collision of the interests of host States and those of the investors and their states and the inapplicability of traditional legal instruments together led to a new dispute settlement solution that could not be placed in the binary world of public and private law, which juxtaposed sovereign and private individuals resident in other states and allowed the individual's claims to be directly enforced against sovereignty in some form of arbitration. Has the individual been elevated to the level of public international law in relations between sovereign states? Or has the State been forced to take off its toga of sovereignty (Ferenc Mádl used this term in relation to state immunity) and to descend to the level of individuals, of "traders"?<sup>26</sup> Actually, none of these happened. Public and private law jointly solved a dilemma, creating a new, original, far from perfect solution that, in the given situation, satisfied the economic and political interests of encouraging and protecting foreign investments. The function and principles are common and the new form of dispute settlement can be placed without difficulty in the framework of international economic law.

However, the punchline of the story is not the proliferation and relative success of this form of dispute resolution, and not even the extraordinary intensification of criticisms of it, which reflects almost the most important economic, political and ideological differences in our world today, but the fact that the task of comprehensively reviewing the international convention on dispute resolution forums and procedures and creating a possible new forum (permanent international court) and procedure was given to UNCITRAL, the organisation designed to unify trade law, based on the decision of its Member States at the 50th jubilee meeting held in 2017. The situation is far from complete consensus regarding the creation of a new forum, but the Member States nevertheless considered that the relatively most neutral international institution essentially dealing with the legal unification of private law had the best chance to solve this politically sensitive task.

It would be impossible to even list the new topics of international economic law that cross the boundaries of public and private law, and embrace and compete with each other. All these new developments and the relevant regulations can be easily placed within the complex but flexible and wide framework of international economic relations, based on the criteria given by Ferenc Mádl. At the same time, one should not lose sight of the statement already quoted above, which Ferenc Mádl made about the branches of law ("a homogenous cohesion of norms that preserves its strength of character, which is not denatured in its elements..."). The fact that the regulation of many new phenomena of the world economy and world trade requires a combined use

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26 Nagy, 2020, pp. 898–917.

of standards of a public and private nature falling within different legal branches does not mean that the “homogenous strength of character” of these branches and that “the legal branch, even if it participates in a larger multi-type norm complex, preserves the values of its substance; moreover, uses the same to promote the goals of such a complex”, can be disregarded<sup>27</sup>. In the meantime, technological developments have led to a huge transformation, in particular in the areas of tax law, competition law and data protection. The row cannot be closed because further advances in biotechnology and artificial intelligence will not leave classic civil law untouched. It is therefore particularly important to bear in mind the “values of substance” of the legal branches. It is not certain that important public policy issues need to be resolved and regulated by traditional private law instruments, especially if this leads to legal consequences that are difficult to foresee and may also jeopardise the achievement of the objective pursued.<sup>28</sup>

The change in reality is therefore accelerating; and drawing the consequences of the changes, seeing the context and sensing the future are more important than ever. Today’s researchers are facing incredibly exciting and huge tasks. They are very lucky that, in addition to the work to be done, they also have a role model to follow.

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27 See Mádl, 1977.

28 The latest example for this disregard for the specificities of the branches of law is the solution already applied in some Member States and envisaged to be introduced at EU level that wants to ensure the protection of environmental, social and human rights by imposing an obligation of due diligence on the buyers regarding each actor in the supply chains, and, in the event of a breach of this obligation, joint and several liability for damages set forth in an imperative rule. See European Parliament Resolution of March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability, P9 TA (2021) 0073.

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