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völkerrechtlichen Vertragsordnungen**

Summary Conclusions

1. The protection of intellectual property rights (IPRs) and a liberalisation-oriented trade policy do not follow a common economic rationale. Neither can a lack of IPR protection be interpreted as a non-tariff barrier, nor does the existing international trade regime provide a general yardstick for a “fair” international trading order.
2. The trade relation of IPRs was deliberately established during the GATT Uruguay Round in order to transform the economic power industrial countries derived from their import market size into a world-wide strengthening of IPRs in their particular interest, as, considering their economic structure, they perceived a lack of IPR protection unfair.
3. There is no obligation under customary international law to provide IPR protection. The lack of a respective *opinio juris* is demonstrated by the fact that IPR protection derives its quasi-global acceptance from its being used as a *quid pro quo* for trade concessions.
4. While WIPO pursues three main strategies to protect IPRs – setting of international minimum standards, international registration systems and technical harmonisation –, TRIPS is essentially confined to the first of those strategies. It aims at a remuneration of rights holders rather than at a harmonisation of national protection systems. This corresponds to the logic of international trade that sees intellectual property as a valuable trade concession.
5. As a reaction to the unsteady fate of bilateral trade treaties in the 19th century, the Paris and Berne Conventions de-coupled IPR protection and trade policy. They secured IPRs against trade-related state intervention through a collective structure of obligations and thereby effected, as a reflex, a protection of individual property in fact. The TRIPS agreement re-establishes the trade relation of intellectual property and, consistently, foresees IPR suspension in reaction to a breach of the international trade rules.
6. The TRIPS agreement excludes any conflict with the WIPO Unions’ substantive rules. Its “Paris/Berne Plus” approach ensures that its level of protection complements that of the Unions, but does not undermine it. As far as the Unions contain maximum protection provisions, those have been incorporated into TRIPS.

Moreover, under a compatibility clause, TRIPS substantive rules yield precedence to those of the Unions.

7. In case of conflict, obligations under the WIPO Unions and the TRIPS agreement apply cumulatively. Therefore, the right to suspend IPRs under the WTO agreements leaves the legal relations between the respective states under the Unions' rules unaffected. This is because the TRIPS agreement does not venture to interfere with the Unions' collective obligations, but declares itself compatible with the WIPO system.
8. The Unions' collective structure of obligations shields the IPRs covered by substantive Union rules against suspension by way of countermeasure under the general law of treaties or the law of state responsibility in exchange for an established WTO infringement.
9. International law does not prevent states from establishing international organisations at their discretion, even though they enter into competition. Moreover, such institutions are independent of each other. General international law does not compel them to take account of understandings between states other than those party to their founding instruments. Something else might apply to so-called "global order treaties" that relate to a common value or challenge of the international community. However, neither the protection of IPRs nor the regulation of trade policy in a multilateral framework appertains to that realm.
10. The freedom to found international institutions applies equally to the establishment of international dispute settlement procedures. They, too, are independent of each other. The dispute settlement procedures under the WTO before the DSB and under the WIPO Paris and Berne Unions and the Rome agreement before the ICJ can therefore be pursued in parallel even though the same subject matter is concerned. The principle of *res judicata*, which applies to DSB and ICJ decisions alike, prevents contradictory decisions on the same subject matter. Procedural decisions of the dispute settlement organ can thwart an intersection of decisions in time, but may not hinder the parallel pursuit of action under both procedures.
11. There is no threat of fragmentation of the international IPR protection stemming from a non-uniform interpretation of substantive rules identical or substantially equal under both systems. Firstly, if occasion arises both institutions' interpretations apply cumulatively. Secondly, WTO panels as well as the Appellate Body take

account of the legal position under the Unions' legal systems, including reference to the *travaux préparatoires* and current legal doctrine. This corresponds to a more general tendency of international tribunals to discuss appropriately the relation between the questions entrusted to them and other fields of international law.

12. In contrast to legislation in the Unions, which has proceeded gradually and left the development of IPR protection to the discretion of each member state, the WTO, in principle, demands of every state that wishes to partake in the international trade system to protect IPRs at the level of industrial countries. This linking of political decisions with questions of market access is susceptible to superseding a comprehensive balancing of advantages and disadvantages of IPRs for a particular economy. Under such conditions, it is open to doubt whether the WTO is the appropriate instrument to give the global economy a positive legal framework, in general, or to sensibly develop international IPR protection, in particular.