

INTERNATIONAL

# DEVELOPMENT LAW

Rule of Law, Human Rights,  
& Global Finance

**RUMU SARKAR**

With a foreword by  
Professor Sir Elihu Lauterpacht



OXFORD

---

# **INTERNATIONAL DEVELOPMENT LAW**

**RULE OF LAW, HUMAN RIGHTS,**

**AND GLOBAL FINANCE**

---

**RUMU SARKAR**

**OXFORD**  
UNIVERSITY PRESS

**OXFORD**  
UNIVERSITY PRESS

*Oxford University Press, Inc., publishes works that further Oxford University's objective of excellence in research, scholarship, and education.*

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumpur Madrid Melbourne  
Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece Guatemala Hungary Italy  
Japan Poland Portugal Singapore South Korea Switzerland Thailand Turkey Ukraine  
Vietnam

Copyright © 2009 by Rumu Sarkar

Published by Oxford University Press, Inc.  
198 Madison Avenue, New York, New York 10016

Oxford is a registered trademark of Oxford University Press  
Oxford University Press is a registered trademark of Oxford University Press, Inc.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior permission of Oxford University Press, Inc.

---

Library of Congress Cataloging-in-Publication Data

Sarkar, Rumu.

International development law: rule of law, human rights, and global finance/Rumu Sarkar.  
p. cm.

Includes bibliographical references and index.

ISBN 978-0-19-539828-1 (hardback : alk. paper)

1. Economic development projects—Law and legislation.

2. Law and economic development. 3. Loans, Foreign—Law and legislation. I. Title.

K3820.S225 2009

343'.07—dc22

2009019131

---

1 2 3 4 5 6 7 8 9

Printed in the United States of America on acid-free paper

**Note to Readers**

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

*(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)*

You may order this or any other Oxford University Press publication by  
visiting the Oxford University Press website at [www.oup.com](http://www.oup.com)

---

## FOREWORD

I am pleased to have been invited to contribute this foreword to a work that represents an important attempt to map the contours of the subject of development law by someone who combines the discipline of an academic with the insight of a practitioner actively engaged in the field. Although there is much in this area that is controversial, Rumu Sarkar's work manages to avoid the pitfalls of ideology that seem so often to beset writings on this subject.

The work begins with what the author has termed a "*fin de siècle* analysis" of trends affecting the milieu of development and the evolution of legal principles involved in this movement. Indeed, this stock-taking element is a constant feature of the book, being further represented by the author's notion of the "Janus Law Principle," emphasizing "the importance of looking backward into the past of a developing country as well as ahead into the future," like the Roman god Janus. While, however, this is a work that sees the past—and *context* more generally: economical, sociological, philosophical—as an important foundation of the law relating to development, the work recommends itself primarily as a forward-looking attempt to examine the framework within which this law is evolving.

A key feature of this analysis is the link identified at the outset and reflected in the title of the work, namely, the connection between the law relating to development and that pertaining to international finance. It is in this context, in particular, that Ms. Sarkar addresses the issues in Part II of the text under the general heading of "International Financial Architecture"—namely, international borrowing and the problems of the debt crisis, the trends and implications of privatization as a development strategy, and the importance of emerging capital markets, both as concept and practical reality. This is where the meat of the subject lies.

Inevitably, in a work of this nature, which attempts to present a holistic view of a subject in a state of flux, there will be elements in the analysis that will occasion debate and dispute, both for what is said and for what is not. That is a good thing. The particular merit of the work lies in its view of the horizon and its ability to identify concrete landmarks thereon. There is bound to be debate about such matters as the New International Economic Order, the status of the "right" to development, the meaning of the notion that there is an "inchoate right to become a stakeholder in the development process," as well as many other significant concepts. This work will set the debates in context, particularly in view of the clarity of exposition that comes from the fact that the author is writing about what she is engaged in on a day-to-day basis. The book is a valuable and welcome contribution to the scholarly literature in an increasingly important area of international and transnational law.

Professor Sir Elihu Lauterpacht CBE, QC  
Cambridge, U.K.

---

## PREFACE

The study of development law is a personal journey for me since it combines the disciplines of law and political theory, the two subjects of inquiry that fascinate me the most. After being privileged to teach a course initially entitled, “Law and Development,” at the Georgetown University Law Center for several years, certain overarching themes gradually became more apparent to me. I realized that these issues deserved a fairly lengthy, coherent treatment that lay outside the confines of the course offering. Writing a book, although a serious undertaking, seemed to be the only logical step in the direction of fully exploring my thoughts about the subject. Further, my hope was to transform my collective thoughts into a simplified and streamlined form that could be used in teaching the subject more effectively to my students.

Moreover, it was the fortuitous combination of my teaching along with the necessary practical field experience required by and developed through my former position as an attorney with the U.S. Agency for International Development (USAID) that fueled this effort. My objective, as I later came to realize, was to bring some cohesion and discipline to a fragmented and overly diverse topic. Over time, I, along with my students, had become more and more dissatisfied with using law review articles that varied widely in their topics, treatment of the subject, and points of view. My class lectures were the first time when my students and I had the opportunity to discuss the theoretical framework and practical considerations that constituted the foundation of what I began to see as an emerging legal discipline.

However, describing the contours of an emerging legal discipline was, as I discovered, quite an undertaking, since it required that I define the subject matter, describe its contents, and persuade other academicians and legal practitioners that the subject is legitimately supported by substantive law principles. Chapter 2 is devoted to this effort and required extremely focused yet creative research and writing. I relied on the public international law origins of much of this subject matter and therefore divided the chapter into a discussion of parties, substantive legal principles, and establishing as well as enforcing legal norms. Rather predictably, I relied on U.S. constitutional law principles and federal case law, where practicable, in this attempt.

For the most part, this work is designed to establish a foundation of substantive law principles of international development law. The text is geared toward graduate law students (and their professors) and is designed to give a general, basic overview of the subject. While practitioners may find the policy-oriented aspects useful, the text is not designed to be a practitioners’ handbook.

## A. A SCHEMATIC OVERVIEW OF THE TEXT

Indeed, a brief description of the contents and the approach of the text may be useful at the outset. The main discussion of the text treats two separate but related aspects of international development law. The first part deals with theoretical and policy implications of international development law. In a nutshell, the first chapter sets forth a theoretical framework of analysis from which three other chapters flow: Chapter 2, which describes the underlying substantive principles of international development law; Chapter 3, which applies development law principles to development “projects” in the field as seen from the perspective of international donor institutions; and Chapter 4, which examines whether there is a human right to development. This subject is treated separately from the initial theoretical discussion of international development law since it is a topic that has its own public international law and private litigation aspects. For this reason, it is legally distinct and gives the most clearly legal analysis of the general subject matter.

The second part of the text addresses the international financial architecture and how the process of financing development creates its own results, problems, and dilemmas. The nature and roles of the various parties to the development process (e.g., states, multilateral institutions, corporations, non-government organizations [NGOs], individuals) creates its own layer of complexity. However, the focus will be on international borrowing practices and investment rather than on trade issues.

## B. IN-DEPTH DESCRIPTIONS OF THE TEXT

Chapter 1 examines the theoretical underpinnings of international development law. An understanding of the theoretical background of the subject is quite important, particularly since the impact of certain philosophies and assumptions are clearly felt in the policy framework and the development strategies pursued by both developed and developing societies. The text endeavors to give a jurisprudential overview of the philosophies underlying development law and practice. Hopefully, this theoretical framework will set the tone for more specific inquiries.

For example, rule of law (ROL) programs currently underway in many parts of the world, and arguably in all parts of the world, give a glimpse into the policies underlying systemic legal reform efforts. ROL programs (examined in more detail in Chapter 3) can be catalysts for legal change, which can later be systematized to create fundamental structural legal changes. ROL programs often address (and challenge) the most basic legal concepts and institutions within a developing society and provide a window of insight into the types of legal changes being contemplated (and actually instituted) by developing countries. The institutional

framework for such changes are examined not so much from the standpoint of an historical overview, but to indicate certain underlying tensions in the policies underlying development strategies, and the evolution of such changes.

In addition, Chapter 2 outlines the contours of an emerging body of international development law in its underlying fundamental principles, certain substantive principles of law, and the institutional framework in which development law is unfolding. Further, I believe an explanation is required as to why I choose to formulate fundamental principles of development law at the outset rather than deriving the same principles and rules from the actual practice of development law. In the effort to define substantive principles of development law, I had little choice but to rely on a deductive approach (where general propositions are used to support specific conclusions) rather than on an inductive approach (where specific instances are used to derive general principles).

Generally speaking, the first approach forms the foundation of many civil law traditions and the second approach is widely used in common law jurisdictions. As a common law practitioner, it would have been my preference to review case law, rather than case studies, in order to formulate (or at least suggest the formulation of) general principles of development law; however, this was not an option available to me since the requisite underlying case law does not yet exist. Judicial and adjudicatory bodies (outside of trade-based tribunals) simply are not focused on development law-oriented questions. Therefore, I took the initiative to establish a rules-based framework of analysis in hope that it will, in time, provide the underlying legal support to a more practical, case-driven methodology.

Further, Chapter 4 examines whether there is a right to development, and the genesis of the human right to development. While arguably, this section could have been moved to the first part of the text under the main theoretical part, in my opinion, this would unnecessarily clutter the discussion. Human rights analysis is very specific in the law, and it is perhaps the only chapter in the text that sets forth recognizably legal analysis.

Moreover, the topic has been broadened considerably in recent decades by a certain "judicialization" of rights to include, for example, matters such as housing, clean water and other entitlements, which heretofore lay outside an international human rights rubric. While litigation on these matters is just beginning, it evidences a new perspective on an entitlement to the dignity of the human person that is arguably encompassed within a right to development. Although this new legal dialogue is still evolving, it demonstrates a fresh new movement in this arena. Further, for those who intend to use the text for pedagogical purposes, this chapter is separate from broader theoretical discussions in order to be taught separately (or not) by the professor using the text.

Second, Chapters 5 through 7 of the text examine the international financial architecture that has both private and public components. Many professors and legal commentators may question the inclusion of international borrowing, debt, and investment to the exclusion of trade. While the impact of trade on development

overall is unquestioned, the subject is too vast and complicated to be treated adequately here. The omission of the topic here is being done with the hope that it will help narrow and better define the subject matter of international development law and that, further, the reader will supplement the discussion with other texts, as necessary, to account for the omission.

Private international transactions can act as a catalyst for initiating structural legal reform in the financial sector and may have many downstream implications. Further, the role of the state in financing development through international borrowing from private commercial and public multilateral banking sources are examined. Sovereign borrowing practices of the past failed to yield tangible development results and contributed to the enormous debt crisis of the early and mid-1980s, ultimately leading to the imposition of strict structural adjustment policies by the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD or "World Bank"). The gradual withdrawal of the state from productive sectors of the economy through privatization mechanisms are critically reviewed, and the implications of this recent evolution in the role of the state will be explored.

Two factors, namely the severe economic repercussions caused by an overreliance on short-term sovereign borrowing and the privatization of public sector enterprises, have resulted in a critical reconfiguration of the state's role in the development process. Indeed, developing states are beginning to rely more and more on private equity markets to finance their development needs. The implications of this, including the impact this might have on developed countries, will be explored later in the text.

Since the queries posed by the subject of international development law are broad, it would be remiss on my part not to advise the reader of the limitations of this text. This text examines the relationship of certain legal, historical, and philosophic ideas to one another within the context of the international development process. It is not intended to be used as a primer for international business transactions. Nor is this text intended to be a restatement of black letter law on subjects such as bankruptcy law, secured transactions, or intellectual property law, as such subjects might affect relations between the developed and the developing world. More importantly, trade issues, while critical to the international development process, have not been addressed since those debates are so abundantly addressed elsewhere. Not only would it be redundant but also less ably discussed within this context. It is the hope of the author that the professors using the text will supplement it with texts on trade, as they see fit.

In sum, this discussion is meant to put the dramatic legal changes that have taken place over the past few decades into perspective and to explore the relationships, if any, between these changes and examine their significance for the future.



### C. METHODOLOGY

Further, with regard to the methodology employed here, the subject matter of *International Development Law: Rule of Law, Human Rights, and Global Finance* is still evolving and comprises a rather unorthodox legal study. In fact, the normal channels of discourse (e.g., case law that distills principles of law from court cases) are not easily available to apply to this type of analysis. International development law also intersects other disciplines such as economics, philosophy, and political theory, which makes legal analysis of the topic somewhat unwieldy in this respect. Empirical case studies have been used illustratively to show certain trends and to help draw certain conclusions; thus, much of this material is anecdotal in nature.

Perhaps the concept of international development law is now more widely accepted. This acceptance was unexpectedly but directly brought to my attention in the law review authored by I. Haque and R. Burdescu entitled, "Monterrey Consensus on Financing for Development: Response Sought from International Economic Law," (27 B.C. Int'l & Comp. Rev. 219, 243 [2004]). The authors assert that two fundamental law principles that I set forth, namely, mutuality and the duty of cooperation, are a matter of recognized state practice at this point. I am delighted to have articulated legal principles that have proved useful within the context of international development law generally.

The most interesting, sustained, and profound debates of the text have taken place in my classroom and have been initiated by my students. I have been greatly enriched by their passionate commitment to the issues that this subject matter embraces. I greatly value their views on the subject, especially in relation to the theoretical notions that I have tried to impart to them.

Through my teaching experience, I have learned a more "politically correct" application of the Socratic method, which is simply to call on the student who says nothing but whose face reveals the eagerness of his or her thoughts. (This is far more productive and less intimidating than calling on students by rote or by alphabetical order, where the effect, if not the purpose, is to demean or terrify.) Teaching has also provided me with the opportunity to apply the clinical method in the classroom by requiring students to negotiate complex and intensive in-class exercises, a requirement that they have later told me that they actually appreciated. (In-class exercises that I have used in the past have included hypothetical examples of housing guarantees, debt-for-nature swaps, and privatizations of state-owned enterprises, and project finance undertakings, all of which succeeded beyond any expectations I may have had.)

This text has also provided me with a clear pedagogical tool that I have used to better understand and explain the theoretical and complex multidisciplinary background of the subject, and it is my hope that it provides the reader with the same opportunity. However, my true hope is that the ultimate end user of the

text will not be my students, other law professors, or development specialists but rather the policymakers in the developing world who might find that something written here guides them toward making disciplined, ethical, and conscientious choices in the international development law process.

#### D. WHAT IS INTERNATIONAL DEVELOPMENT LAW?

So, what exactly is the subject of international development law? For most legal practitioners, the subject of development law is not well understood or well defined. In fact, since development law and international finance is generally not taught in law schools, nor is it the subject of continuing legal education courses, exposure to the subject for most legal practitioners tends to be limited. Further, there appear to be no agreed upon notions of what the subject is or should be comprised of. International development law, at least to most observers and commentators, seems to be a multidisciplinary mixture of certain technical aspects of international corporate practice overlaid with economics, political theory, history, and sociology.

To begin with, “development” seems to be a choice—that is to say, a decision to view certain issues from the perspective of encouraging the economic, political, legal, and even the cultural development of Asia, Africa, Latin America, the Caribbean, and Central and Eastern Europe along with Central Asia (i.e., the former Soviet Bloc). For most practitioners and theorists, however, the overall objectives of alleviating poverty and human suffering and of improving the human condition more generally are the desired end product of the development process.

Amartya Sen has posited that:

Development can be seen, it is argued here, as a process of expanding the real freedoms that people enjoy. Focusing on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization. . . . If freedom is what development advances, then there is a major argument for concentrating on that overarching objective, rather than on some particular means, or some specially chosen list of instruments. . . .

Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. . . . In [some] cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.\*

---

\* Amartya Sen, *DEVELOPMENT AS FREEDOM* (Alfred A. Knopf, 1999), at 3.

Professor Sen's interdisciplinary approach heralds a fresh, new approach to questions of development generally. However, at this stage, it is doubtful that a final and binding definition of *development* and consequently of *international development law* will be agreed upon by its practitioners or theorists. Suffice it to say that development law is designed to address complex issues of human endeavor and change and, even more broadly speaking, of creating the context for global change. In particular, development law is concerned with analyzing, implementing, and evaluating global legal change.

The subject of *International Development Law: Rule of Law, Human Rights, and Global Finance*, has a new relevancy for both common law-based and civil law-based legal practitioners who are struggling to understand and compete in an increasingly globalized economy. The legal practice of most international law practitioners has been profoundly affected by these changes. Not only has the potential geographic reach of common law-based legal practitioners exploded, but the complexity of the legal questions they address has increased exponentially as well. Whereas, in the past, international law practice was usually confined to transactional work and related international litigation in Europe, Latin America, and certain parts of the Far East, this is no longer the case. Countries in previously unknown or inaccessible parts of the world from Kazakhstan to Mongolia to Vietnam have suddenly burst on the scene offering vibrant legal markets where none existed before.

The relations between developing countries or transitional economies (i.e., Eastern Europe and the former Soviet Union) and Western Europe and North America have taken a legal dimension that affects the international or general legal practitioner with an immediacy that did not exist before. And, perhaps for the first time, international lawyers are trying to grapple with the questions and challenges that are raised by the subject area of development law. International legal practitioners are now being confronted with societies with radically different legal histories, institutions, and cultures in new legal markets in developing countries that may not necessarily have compatible legal infrastructures. Further, these societies are themselves, in most cases, undergoing tremendous transformations and upheavals.

Although the scope and practice of development law may not yet be well-defined, the field has increasingly gained in importance and relevance for the international law practitioner. In recognition of this change, this text offers a perspective on some of the legal issues and practice-oriented questions raised by a new and unprecedented global interdependence. This discussion is designed to give private international law practitioners, in particular, and public international law specialists, in general, an overview of development law and some insight into certain current trends and worldwide developments that have an important impact on international legal practice. Any shortcomings or inaccuracies in the analysis presented are the full responsibility of the author.

---

## ACKNOWLEDGMENTS

Once again, I owe my grateful and humble thanks to Professor Sir Elihu Lauterpacht, CBE, QC, for setting me on the right course so long ago when I was still his law student at Newnham College, Cambridge University, and for his kind words concerning this effort. Rereading his foreword is still a delight as it remains evergreen with possibilities. In addition, I am wholly indebted to him for his visionary support in suggesting that the work be submitted as a doctoral thesis, for which, much to my surprise, I received a Ph.D. (Cantab) in 2000. My thanks also go to Baroness Onora O'Neill, the former Principal of Newnham College, Cambridge University, for so kindly hosting me and mentoring me during the trying few days leading up to the viva (oral examination) at Trinity College, Cambridge. Professor Amartya Sen, the former Master of Trinity College, Cambridge University, also has shown his steadfast support and enthusiasm for the subject generally and my continuing involvement in it specifically, and for this, I am deeply grateful.

To Martha Hoff, former assistant dean at Georgetown University Law Center, I owe my sincere thanks for taking a leap of faith in welcoming me to the law classroom at Georgetown in 1995. This was the first step in a long journey leading to this work, as now revised. And to Professor Ladislav Orsy, SJ, Georgetown University Law Center, I want to express my deep gratitude for his many insights on legal jurisprudence and his patience in discussing earlier versions of this text with me. Professor Alvaro Santos, Georgetown University Law Center, and Matthew Lapin offered important insights on earlier drafts of the text for which I am very grateful.

Moreover, I am very happy to have had the opportunity of meeting all my many law students at Georgetown Law, whose ideas expressed in class and whose own experiences in the development law process have added invaluable to my own. I truly respect and value their experiences and, as my former students, they are the first wave of future policy-makers who have listened carefully to, absorbed, and informed the ideas expressed in this work. They sat through the lectures where I endeavored to share the experiences that have so moved me and so profoundly changed my view of the world. The perspectives offered by my students have also helped clarify my writing in order to make this text a better pedagogical tool, so that teaching this subject has been both simplified and streamlined.

Further, I wish to express my appreciation for the support and assistance in researching this work that I received from so many of my friends and colleagues at the Georgetown University Law Center and at the U.S. Agency for International Development (USAID), the World Bank, and the International Monetary Fund.

Their field experiences and observations added invaluablely to my own. I especially owe so much to USAID since the work and the many adventurous travels I experienced through the agency were the beginning of a long and most rewarding personal and professional endeavor that culminated in this work. And finally, to my loving parents, my mother, who always believed in the vistas I created for myself, and my father, who, I believe much to his surprise, finally learned to accept in the end my choice of law rather than medicine.

The views expressed in this book are my personal views, and I accept full responsibility for any errors that may appear in the text.

Washington, D.C.

February 2009

---

## ABBREVIATIONS

|            |  |
|------------|--|
| AAEA       | Association of Asian Election Authorities                                  |
| AAfEA      | Association of African Election Authorities                                |
| ACP        | African-Caribbean-Pacific  |
| ADB        | Asian Development Bank   |
| ADR        | alternate dispute resolution   |
| ADR        | American Depository Receipts   |
| AfDB       | African Development Bank   |
| AFP        | Administradoras de Fondos de Pensiones                                     |
| AMEX       | American Stock Exchange  |
| AOJ        | Administration of Justice  |
| ATC        | Agreement on Textiles and Clothing   |
| ATRR       | Allocated Transfer Risk Reserve  |
| BAFECR     | Bulgarian Association for Fair Elections and Civil Rights                  |
| BIS        | Bank for International Settlements   |
| BRIC       | Brazil, Russia, India, and China   |
| CERDS      | Charter of Economic Rights and Duties of States                            |
| CLS        | Critical Legal Studies   |
| CSRC       | China Securities Regulatory Committee                                      |
| CTAB       | Capital Transfer Appellate Board   |
| DFID       | Department for International Development (UK Development Aid Agency)       |
| DSB        | Dispute Settlement Body of the World Trade Organization                    |
| DSU        | Understanding on Rules and Procedures Governing the Settlement of Disputes |
| EAI        | Enterprise for the Americas Initiative                                     |
| EBRD       | European Bank for Reconstruction and Development                           |
| EEC        | European Economic Community  |
| EFM        | emergency financing mechanism  |
| ESAF       | Enhanced Structural Adjustment Facility                                    |
| ESOP       | Employee Stock Ownership Plan  |
| EU         | European Union   |
| Ex-Im Bank | U.S. Export-Import Bank  |
| FDI        | foreign direct investment  |
| FPI        | foreign portfolio investment   |
| G-7        | Group of 7   |
| G-8        | Group of 8   |
| G-15       | Group of 15  |
| G-20       | Group of 20  |

|        |  |
|--------|--|
| GAO    | U.S. General Accounting Office                                     |
| GATT   | General Agreement on Tariffs and Trade                             |
| GDP    | gross domestic product   |
| GDR    | Global Depository Receipt  |
| GNMA   | Government National Mortgage Association (Ginnie Mae)              |
| HIPC   | Heavily Indebted Poor Countries                                    |
| IBRD   | International Bank for Reconstruction and Development (World Bank) |
| ICCPR  | International Covenant on Civil and Political Rights               |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights    |
| IDA    | International Development Association                              |
| IDB    | Inter-American Development Bank                                    |
| IFC    | International Finance Corporation                                  |
| IFES   | International Foundation for Elections Systems                     |
| IFI    | International Financial Institution                                |
| IMF    | International Monetary Fund  |
| IPO    | initial public offering  |
| JEXIM  | Japan Export-Import Bank   |
| LDC    | Lesser Developed Country   |
| LIBOR  | London Interbank Offered Rate                                      |
| LOI    | letter of intent   |
| M/EBO  | management/employee buyout   |
| MFN    | Most Favored Nation  |
| MIGA   | Multilateral Investment Guarantee Agency                           |
| NAFTA  | North American Free Trade Agreement                                |
| NASDAQ | National Association of Securities Dealers Automated Quotations    |
| NCB    | National Commercial Bank   |
| NEP    | New Economic Policy  |
| NGO    | nongovernmental organization                                       |
| NIE    | newly industrializing economy                                      |
| NIEO   | New International Economic Order                                   |
| NPP    | National Progress Party (Mongolia)                                 |
| NSE    | National Stock Exchange (India)                                    |
| NYSE   | New York Stock Exchange  |
| OAS    | Organization of American States                                    |
| OAU    | Organization of African Unity                                      |
| ODA    | official development assistance                                    |
| OECD   | Organization for Economic Cooperation and Development              |
| OPEC   | Organization of Petroleum Exporting Countries                      |
| OPIC   | Overseas Private Investment Corporation                            |
| OTC    | over-the-counter   |

|          |   |
|----------|---|
| PEMEX    | Petroleos Mexicanos   |
| PRGF     | Poverty Reduction and Growth Facility                                     |
| PSEC     | Philippine Securities Exchange Commission                                 |
| ROL      | rule of law   |
| RUF      | Revolutionary United Front  |
| SAL      | Structural Adjustment Loan  |
| SEC      | U.S. Securities and Exchange Commission                                   |
| SECAL    | Sectoral Adjustment Loan  |
| SFA      | Special Facility for Africa   |
| SHSE     | Shanghai Stock Exchange   |
| SOE      | state-owned enterprise  |
| SPA      | Special Programme of Assistance   |
| SRO      | self-regulatory organization  |
| STAQS    | Securities Trading Automated Quotation System                             |
| SZSE     | Shenzhen Stock Exchange   |
| TRIMs    | WTO Agreement on Trade-Related Investment Measures                        |
| TRIPS    | WTO Agreement on Trade-Related Aspects of Intellectual<br>Property Rights |
| UCC      | Uniform Commercial Code   |
| UDHR     | (UN) Universal Declaration of Human Rights                                |
| UNCITRAL | UN Commission on International Trade Law                                  |
| UNCTAD   | UN Conference on Trade and Development                                    |
| UNDP     | UN Development Programme  |
| UNDRD    | UN Declaration on the Right to Development                                |
| UNESCO   | UN Education, Scientific, Cultural Organization                           |
| UNICEF   | UN Children's Fund  |
| UNIDROIT | International Institute for the Unification of Private Law                |
| UNMIK    | UN Interim Administration Mission in Kosovo                               |
| UNTAC    | UN Transitional Authority in Cambodia                                     |
| USAID    | U.S. Agency for International Development                                 |
| USG      | U.S. Government   |
| WTO      | World Trade Organization  |
| ZPA      | Zambia Privatization Agency   |



---

## CONTENTS

Foreword ix

Preface xi

Acknowledgments xix

Abbreviations xxi

Introduction i

1. *Fin de Siècle* Analysis i
2. Significant Historical Trends 8
3. The Failures of the State 15
4. The Failure of Ideology 22

### I. THE RULE OF LAW

Chapter 1. The Rule of Law: Theoretical Principles 33

1. Theoretical Background 33
2. Modernization Theory vs. Dependency Theory 46
3. Conclusion 68

Chapter 2. International Development Law: Substantive Principles 75

1. Establishing the Parameters of International Development Law 78
2. Parties under International Development Law 80
3. Fundamental Principles of International Development Law 98
4. Substantive Principles of International Development Law: Establishing Legal Norms 110
5. Taxonomy of International Development Law 119
6. Institutional Framework for International Development Law: Enforcing Legal Norms 125
7. Conclusion 148

Annex A: A Draft Protocol Establishing an Appellate Board 150

Chapter 3. The Rule of Law: A Projectized Approach 155

1. Introduction 156
2. The Rule of Law: An Analytic Framework for Legal Reform Programs 167
3. Good Governance 176
4. Structural Legal Reform 188
5. Administration of Justice 189
6. Conclusion 197