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Theory ^{and} Practice of International Economic Law

Adamu Kyuka Usman

This book is on international economic law, and as such unavoidably examines international economic institutions which to some extent determine the content and character of international economic law- the IMF, the World Bank, OECD, OPEC, the Paris and London Clubs of Creditors, the G8 and G20, regional economic blocs and other economic institutions. International economic law principles like the most favored nation principle, national treatment standard, rules of origin, free trade, foreign investment, loans and sundry other issues are examined by the text showing how the interest of developed nations and international financial institutions sound through these legal issues. The book interrogates international economic law than is commonly the case with mainstream texts on the subject.

Definition, Nature, Sources, History and Subjects of International Economic Law • The Doctrine of State Sovereignty over Natural Resources and the History of Economic Relationship between Developed and Developing Nations • The IMF and the World Bank • The GATT and WTO • Paris Club and London Club of Creditors • Organization of Petroleum Exporting Countries and Organization for Economic Cooperation and Development • United Nations Economic and Social Council and United Nations Conference on Trade and Development • International Chamber of Commerce and the United Nations Commission On International Trade Law • The Group of Seven, Group of Twenty and BRICS Countries • European Union • Economic Community of West African States • North American Free Trade Agreement • Association of South-East Asian Nations • The New International Economic Order • Trade under the New International Economic • Carriage of Goods by Sea Law and Incoterms • The Theology of Foreign Investment Under the New International Economic Order • Slave Trade and the Right to Reparation for Slavery under International Law • Theology of Development under the New International Economic Order and Debts • Most Favoured Nation Standard and Globalization of Trade • National Treatment Standard, Globalization of Production and Rules of Origin • IMF Quotas and Drawing On the IMF • The Workings of the New International Economic Order through the Trinity of Trade, Loans and Foreign Investment • Monetary and Trade Instruments for the Globalization of Finance, Goods and Services • Corporate Social Responsibility and the Protection of Foreign Investment • International Trade Law, Health and Environmental Protection • Competition and Anti-Trust Law • Corporate Capital on the Rampage: Did Salomon v. Salomon Deliver A Monster?

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Usman**

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Malthouse

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By

Professor Adamu Kyuka Usman

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Dedication

To an International Economic Order that operates by the Rules of Equity and Fairness

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Preface

This text on international economic law dwells on international economic institutions that to some extent determine the content and character of international economic law. The IMF, the World Bank, OECD, OPEC, the Paris and London Clubs of Creditors, the G8 and G20, regional economic blocs and other economic institutions that drive the evolution of international economic law are examined in detail by the text. International economic law principles like the most favoured nation principle, national treatment standard, rules of origin, free trade, foreign investment, loans and sundry other issues are examined by the text showing how the interest of developed nations and international financial institutions sound through these legal issues. The book essentially views international economic law more with the eyes of a developing nation scholar than is commonly the case with mainstream texts on the subject.

Abbreviations and Acronyms

ARP	Approved Retail Price
AU	African Union
BFP	Basic Fuel Price
CBA	Collective Bargaining Agreement
CBN	Central Bank of Nigeria
CCMA	Commission for Conciliation, Mediation and Arbitration
CFC	Chlorofluorocarbons
CSR	Corporate Social Responsibility
DPR	Department of Petroleum Resources
ECOWAS	Economic Community of West African States
EOMP	Expected Open Market Price
GDP	Gross Domestic Product
IAP	Industrial Arbitration Panel
ICT	Information and Communications Technology
ILO	International Labour Organisation
IMF	International Monetary Fund
IPMAN	Independent Petroleum Marketers Association of Nigeria
LDCs	Less Developed Countries
LPG	Liquefied Petroleum Gas
MDA	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MNCs	Multinational corporations
MOU	Memorandum of Understanding
NAFDAC	National Agency for Food and Drugs Administration and
NAOC	National Oil Corporation
NAPIMS	National Petroleum Investment Management Services
NBS	Nigeria Bureau of Statistics
NBTE	National Board for Technical Education
NCCA	National Commission for Conciliation and Arbitration
NCCE	National Commission for Colleges of Education
NDDC	Niger Delta Development Commission
NECA	Nigerian Employers' Consultative Association
NEEDS	National Economic Empowerment and Development Strategy
NGOs	Non-governmental organizations

NIC	National Industrial Court
NLAC	National Labour Advisory Council
NLC	Nigeria Labour Congress
NNOC	Nigerian National Oil Corporation
NNPC	Nigerian National Petroleum Corporation
NOCs	National Oil Companies
NPF	Nigeria Police Force
NSITF	Nigeria Social Insurance Trust Fund
NSIWC	National Salaries, Incomes and Wages Commission
NUC	National Universities Commission
NUPENG	Nigeria Union of Petroleum and Natural Gas Workers
OMCs	Oil marketing companies
OMPADEC	Oil Mineral Producing Areas Development Commission
OPEC	Organisation of Petroleum Exporting Countries
PENGASSAN	Petroleum and Natural Gas Senior Staff Association of Nigeria
PHCN	Power Holding Company of Nigeria
PIB	Petroleum Industry Bill
PMS	Premium Motor Spirit
PPMC	Pipelines and Product Marketing Company
PPPRA	Petroleum Products Pricing Regulatory Agency
PRSP	Poverty Reduction Strategy Paper
PSF	Petroleum Support Fund
RMAFC	Revenue Mobilisation Allocation and Fiscal Commission
SAP	Structural Adjustment Programme
SMEs	Small and Medium-scale Enterprises
sms	Short Message Service
SON	Standard Organisation of Nigeria
SPDC	Shell Petroleum Development Company
SPL	Subsidy Per Litre
TDA	Trade Disputes Act
TNCs	Transnational Corporations
TUA	Trade Unions Act
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organization
UNO	United Nations Organisation
UPPF	Unified Petroleum Price Fund
WHO	World Health Organisation
WTO	World Trade Organization

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Definition, Nature, Sources, History and Subjects of International Economic Law

Definition of International Economic Law

International Economic Law is a branch of public and private international law concerned with the ownership and exploitation of natural resources, production and distribution of goods, invisible international transactions of an economic or financial character, currency and finance related services and the status and organization of the entities engaged in such activities.¹ It is the law that seeks to regulate the economic relations of nation states or entities within such states.² International economic law has also been defined as those rules of public international law which directly concern economic exchanges between subjects of international law.³ According to another definition, international economic law is a convenient term that covers multitude of bilateral and multilateral treaties made since the Second World War on trade, commerce and investment.⁴

David Bederman posits that international economic law subsumes a host of issues. At the minimum, it includes the background rules of private international commerce, the architecture of the global trading and monetary systems, and the principles for international investment and development.⁵

Principally, international economic law stands on a tripod: the tripod of trade, investment and loans (TIL). Trade investment and loans are the trinity that drives international economic law. Accordingly, institutions and legal rules dealt with in this text one way or the other, directly or indirectly are concerned with trade, investment and loans. Issues of science, technology and development are subsidiary issues beside trade, investment and loans.

Nature of International Economic Law

International economic law suffers the character of public international law which it is an aspect of, i.e., whether there is such a thing known as international economic law

¹ www.londoninternational.ac.uk/.../international_economic_law, visited 3/3/2013

² Ibid

³ David Bederman, *International Economic Law*, (New York Foundation Press, 2001) p.1

⁴ Antony Aust, *Handbook on International Law* (Cambridge University Press, 2005) p.372

⁵ Opcit 3

or what exists is merely international economic morality, comity of nations or ethics, regard being had to the absence of a coercive state that metes out sanctions. Depending on the answer to this question, the entire validity or otherwise of international economic law hangs.

It is submitted that international economic law is more than mere international economic morality, comity or ethics. It is indeed law. Nation states in their economic relationship with each other feel bound by it. For instance, the Most Favoured Nation principle, National Treatment Standards, protection of foreign investments are all rules of international economic law that nation states feel obliged to observe in their economic relationship with each other. Even sanctions are not totally lacking as there are instances of nation states which violate international economic law being sanctioned either by international tribunals or the United Nations. For instance, in the *Shrimp/Turtles Case*⁶ which arose from a U.S regulation that banned importation of commercial sea food in order to protect incidental killings of threatened species of sea life, the U.S was sanctioned by an international tribunal and it complied with the sanction.

The question may be asked what if the U.S has not complied with the sanction of the international tribunal, what would international economic law had done? A number of things: Mexico the country that brought the case against the U.S could take retaliatory measures that hurt U.S trade with it. In a proper case, the U.N can impose sanctions on the U.S that would turn it into a pariah state. By such sanctions, the U.N ostracizes a country the same way an individual may be ostracized by his community when he violates the customary law of the community.

Generally, international economic law is contractual in character. Being of that character, it is the specific agreement of the parties for every given transaction that create legal consequences. Even so, in modern times these contracts are effected under the broader legal framework of conventions, treaties and customary rules of international law. For instance, contracts for the sale of goods are made under the framework of the Convention on Contracts for International Sale of Goods 1986. This Convention finds application on contracts for international sale of goods where the parties reside in different states and had not excluded the application of the Convention in determining whether they are from different states regard being had to their places of business. The concept of place of business is dealt with by Art. 10 of the Convention which provides that:

If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the characteristics known to or contemplated by the parties at any time before or at the conclusion of the contract; and

⁶ www.wto.org, visited 23/1/2013