


Ramon J. Jeffery

# The Impact of State Sovereignty on Global Trade and International Taxation

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# The Impact of State Sovereignty on Global Trade and International Taxation

by

Ramon J. Jeffery

*B.A., LL.B. (Hons.) (Monash),*

*LL.M. (LSE), Ph.D. (Cantab.)*

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# The Impact of State Sovereignty on Global Trade and International Taxation

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Ramon J. Jeffery

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*For Karina and my parents*

'Well then, do you agree that the society and constitution we have sketched is not merely an idle dream, difficult though its realisation may be? The indispensable condition is that political power should be in the hands of one or more true philosophers ... They would regard justice as of paramount importance, and throughout their re-organisation of society, serve and forward it.'

Plato, *The Republic* (2nd ed., translated by Desmond Lee, Penguin Classics, 1987)

# Preface

This book was defended as a dissertation in November 1997 for the award of a Ph.D. degree in law by the University of Cambridge. There are many people whose assistance and encouragement have enabled me to complete this work. I am particularly grateful to Dr. Philip Baker for being an inspirational teacher and helping me during my time in London and thereafter, especially in relation to my decision to undertake a doctorate. I thank Dr. John F. Avery Jones and Prof. John Tiley for their support of my work, and Prof. James Crawford for his guidance and help.

I would also like to acknowledge the influence of Mr. Philip Allott whose innovative approaches on a wide range of issues have been a great stimulus for my work. Prof. Dr. Klaus Vogel has been a great inspiration to me through the many different ways in which he has encouraged my work. I also thank the people at the Cambridge University Research Centre for International Law for providing a friendly intellectual and social environment for all the law Ph.D. students. My thanks must also go to the staff of the Cambridge Law Faculty and the Squire Law Library for their attentive assistance during the course of my studies there.

I would also like to thank the International Fiscal Association for its support in enabling me to attend its 1995 Cannes Congress to present my research, and more recently its 1998 London Congress to receive the 1998 Mitchell B. Carroll Prize which was awarded to this study.

My most special thanks go to Mr. Graham Virgo, who apart from being the best and most understanding Ph.D. supervisor one could wish for, has always been a supportive and encouraging friend.

This examination of the impact of State sovereignty on global trade and international taxation has its genesis in my studies for the Master of Laws degree at the London School of Economics. It was there that I developed my interest in international taxation and encountered European Community law for the first time. In commencing the research which has resulted in this book, I decided to coalesce my interests in international taxation and European Community ('EC') law by examining the elimination of direct tax distortions within the EC. As I progressed with the research it became clear that the question of the existence of tax distortions within the EC and their elimination was set in the broader context of the relationships associated with this dynamic



new legal order, that is, between Member States with each other; between Member States and the EC; and between Member States and the EC with third countries. I realised that this question could not simply be approached from the point of view of a tax lawyer concentrating on the narrow technicalities of the interaction of national tax systems and the EC provisions in this respect. It became evident that an examination of the discrete technical tax issues was related to the wider context of the balance of power and the relationships within the EC, and between the EC and the rest of the world.

I saw the importance of other areas of law, international law and EC law in particular, to ways of thinking about and approaching international direct tax distortions. Some of the ideas that I had been considering raised the question of the balance of power between the various elements and actors in the national and international law-making processes. It seemed that the role of global economic change and that of the nation State were pivotal elements in the overall picture. I decided to focus my research by examining the role of global economic change and the legal understanding of the State, encompassed in the concepts of sovereignty and jurisdiction, in the creation and elimination of international direct tax distortions. This approach does not appear to have been adopted before. The objective of this study is to blend theory, in terms of a new way of thinking about and approaching international tax issues, with practice, by applying the ideas to a restricted number of issues with a view to suggesting *practicable* solutions.

This book adopts the Harvard system of citation. References in the footnotes to books, articles and other similar materials are to the author and year in italics followed by the page number(s) where appropriate, as for example, '*Smith (1996) p. 23*'. The reader should then refer to the Bibliography for the full details of the reference. Where there is more than one reference by an author in the same year these are distinguished by the use of letters after the year of publication, as for example, '*Jones (1996a)* and *Jones (1996b)*'. Where a reference corresponds in all details with the immediately preceding reference, the term '*ibid.*' is used. Cross-references to other parts of the book are by the heading number, such as for example, 'see the discussion at 1.2.3'.

Ramon J. Jeffery  
Melbourne, February, 1999

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