

# **INTERNATIONAL ECONOMIC LAW**

**THIRD EDITION**

**ASIF H QURESHI AND ANDREAS R ZIEGLER**



**SWEET & MAXWELL**

# INTERNATIONAL ECONOMIC LAW

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2011

## FOREWORD TO THE FIRST EDITION

At a time when the economic troubles of banana producers in Central America can lead to trade wars which affect the livelihoods of woollen manufacturers in the Scottish Borders, one may ask whether there is any international economic law and if so whether it is effective. This book seeks to answer those questions. It surveys the several strands of burgeoning international economic law and binds them together in a coherent whole. The Scottish woollen manufacturer may not find within it a swift and effective remedy for the adverse economic consequences visited upon him as a result of foreign government action, but that is not the fault of the book. It is the result of international economic law being still at a developing stage and serves to illustrate the need for a book of this nature.

Commercial lawyers, whether employed by industry or government or in private practice, will find that this book contains a wide ranging account of the several international economic institutions that have been created in an attempt to bring order to international economic relations. The many references to conventions, reports and articles indicate the difficulty which lawyers not familiar with the learning in this field would have, in the absence of this book, in researching the topics covered by it. For the same reasons Dr Qureshi's work will be of great assistance to students of this area of the law.

Dispute resolution in international trade traditionally centres upon the private rights and obligations of one trader to another. However, where the source of a trader's economic problems is a foreign government's decision, the law of private rights and obligations may not always provide a remedy. This book sheds much needed light on the alternative international avenues which may be available to traders, financiers, investors and their associations to seek redress for the consequences of such decisions. Even where the present international economic institutions cannot provide a remedy, this book will enable the lawyer to understand more of the framework in which governmental decisions affecting international trade are

taken and thereby improve his ability to protect the interests of the trader, financier and investor in the future.

April 1999  
Nigel Teare Q.C.  
4 Essex Court  
Temple, London

(Now Sir Nigel Teare Q.C., Justice of the High Court, UK)

## FOREWORD TO THE SECOND EDITION

A new generation of globalisation seems to be emerging in the early 21st century, one that poses fresh challenges for developing countries. For many of these nations, expectations that globalisation would accelerate the development process were dashed by the disappointing development results of liberalisation and integration in the 1990s. It was increasingly recognised that greater economic integration alone was not addressing development concerns. Despite extensive trade liberalisation, many of the 50 least developed countries (LDCs) had not significantly reduced poverty, and some had experienced negative growth. Concern that the benefits of globalisation were being reaped at the cost of the poor, environmental degradation and workers' rights, found expression in broad protest movements in a new global civil society.

As a result, a number of important international initiatives were taken to ensure greater benefits from global economic co-operation, the most prominent of which was the adoption by world leaders in 2000 of the Millennium Development Goals (MDGs), to be achieved by 2015. Priorities began to shift, as reflected, for example, in international efforts to mobilise finance for development and to address the supply constraints and limited productive capacities of developing countries through aid for trade.

Paradoxically, this renewed emphasis on development comes not at a time of economic crisis, but at a time of sustained economic growth for a large number of developing countries. Ever since the early 2000s, the world economic environment has been extraordinarily propitious. Indeed, developing economies as a group have performed quite well in the past five years. Many African nations and other LDCs—34 of which are in Africa—have been growing at an annual average exceeding five per cent, marking considerable progress over the late 1990s. A distinctive characteristic of this new wave of globalisation is multipolarity, in which the South plays a major role. The new economic weight of some developing countries creates significant opportunities for the rest of the developing world. But because that weight is not equally distributed among them—and because their resource endowments vary greatly—policy diversity is of the essence.

There is, in fact, no room for complacency. Despite the economic success of the past five years, continued vigilance is required. The current broad-based

economic expansion is subject to risks, which should be avoided through careful economic management. Another risk relates to the potential impact of higher energy prices, and to the possible reversal of recent upswings in commodity prices. There are also signs that the rise of the South is prompting protectionist reactions in developed economies. This could undermine the liberalization paradigm that fuelled globalisation until now, and threaten the propitious environment. In the meantime, looming issues such as the economic impact of climate change and migration pose new challenges for the global partnership for development.

From UNCTAD's perspective, an even more compelling reason for caution is that despite the unprecedented expansion of trade, not everyone is benefiting from globalisation. The old issue of "growth with equity" has resurfaced in a new context, adding urgency to the need to find ways of sharing the gains from globalisation. Certain countries, and certain segments of the population within countries, are being left out of the current growth bonanza and are often adversely affected by its consequences. In addition, many countries, especially the LDCs and some middle-income and transition economies, have been unable to translate growth into poverty reduction and broader human development. Progress towards the MDGs in sub-Saharan Africa continues to lag far behind, despite accelerated growth. While the implementation of the WTO's Uruguay Round agreements improved developing countries' access to the markets of developed countries, the reduction in tariff barriers has recently been accompanied by greater use of non-tariff measures, and new gains from multilateral trade agreements remain elusive. Similarly in the financial domain, the launching of the Heavily Indebted Poor Countries Debt Initiative in 1996 has not been able to address the range of external debt problems, and commitments to step up official development assistance have yet to be translated into scaled-up flows.

Accordingly, this new edition of *International Economic Law*, co-authored by two distinguished scholars, comes at a timely juncture. There is growing recognition that pro-development considerations must be placed at the centre of all international economic cooperation. And greater coherence is essential between and within the global trade, monetary and financial systems, which do not always take account of the differing needs of countries at varying stages of development. An equally important recognition is that in the absence of a rules-based, transparent and co-operative approach to globalisation, any chances for achieving developmental results through multilateralism could be lost to the narrower gains that might result from bilateral or regional initiatives. There must be coherence between the rule of law and the cause of development if economic co-operation and progress are to extend to all nations, peoples and citizens of our increasingly interconnected global community.

August 2007  
Supachai Panitchpakdi  
Secretary-General of UNCTAD

## FOREWORD TO THE THIRD EDITION

*International Economic Law* is now in its third edition. Its first edition, of which Professor Qureshi was the sole author, appeared as recently as 1999. The second edition—for the preparation of which Professor Qureshi was joined by another leading scholar, Professor Ziegler—needed, among other things, to address the Millennium Development Goals articulated in 2000. The impacts, positive and negative (especially for least developed countries) of globalisation were centre stage.

It is a tribute to the authors that they have now been able to publish a rapid third edition a mere four years after publication of the second. Very much has happened since 2007. At that time we were in an era of development, in the sense that there had been an extended period of economic growth for a large number of developing countries. We now find ourselves in an era, which we must expect to be extended, of economic crisis.

These changes, and all the many relevant events within the broad umbrella of “international economic law”, have required all chapters to be revisited. Even as the authors have put aside elements that have become outdated, they have nonetheless had to expand virtually every chapter. The attentive reader will note not only an updated bibliography (there has recently been much innovative writing in the areas comprised in International Economic Law, especially perhaps on trade and investment), but also a special focus now on International Financial Law and on IMF surveillance. Everywhere the law has been brought up to date, important cases from a variety of jurisdictions included, new agreements and treaties put under scrutiny.

International Economic Law is a subject that contains other subjects within it. This book thus covers International Trade Law (including WTO activity, juridical and otherwise); International Financial Law (with special emphasis, fully updated, on the IMF); International Fiscal Law; International Investment Law; and International Development Law. What is occurring within these fields and, importantly, the relationships among them, is well presented and very informative. It hardly needs saying that in these stressful times developments within several of these topics are of the keenest interest.

Teachers will understand that International Economic Law comprises the entirety of the elements within this book. Others may turn to it for



contemporary analysis of particular issues engaging their attention. The following aspects have particularly attracted my own attention.

The chapter on International Development Law—significantly updated and expanded since the last edition—has had to reflect the changes of the last few years in this area. The focus on developing countries' preoccupations with trade preferences and nationalisation has incrementally shifted to a more global interest in stability in commodity prices (with models for achieving this having had mixed success) and insistence on good governance. And in recent years, we have seen that human rights can no longer be perceived as a free-standing subject. It now finds its place—and is acknowledged by all concerned to need to find its place—within IMF investment assessments, where impressive structures to this end have in recent years been put in place; and within trade and development law more generally. That development should not take place save in a holistic context (human rights, respect for local culture) is now accepted; though the means to achieve those ends are to an extent still the subject of debate. In particular, the place of human rights within the vastly expanding area of International Trade Law (rather than as inimical to it) is especially marked. The literature has not failed to reflect this.

Recent writing, including by Professor Qureshi, has not failed to address the issue of whether one institutional vehicle can serve other purposes—for example, whether WTO practices suggest that it is a development, as well as a trade, institution.

One of the most burgeoning areas of practice and study in recent years has been that of International Investment Law. Throughout the book the authors keep up to date by noting how the social and political contexts have developed through time (and since the first edition). International Investment Law was especially related to capital flows from developed to developing states, with all the tensions that that reality entailed. Today “all states try to attract important foreign investment flows” (p.490). The legal framework covering this is diffuse, but the number of bilateral investment treaties—and the ICSID and other possibilities for arbitrating them—has grown exponentially. The reader will find much on the emergence of norms across institutions—BITs, EPAs, GATS, TRIPS and TRIMS, and many others.

Just as no domestic lawyer can today ignore the basics of International Law (impacting as it does on so much of national law), so all international lawyers today require some understanding of the world of international economic law. This book (which, incidentally, is very attractively presented) will provide that bridge. It will also be invaluable to the specialist.

Rosalyn Higgins  
President of the International Court of Justice (2006–2009)

## PREFACE

This book focuses on that branch of Public International Law which is concerned with international economic relations between States. However, International Economic Law is also increasingly directly concerned with the individual, the trader, the investor, and the international financier. International commercial lawyers can no longer operate within the parameters of national legislation. They need to have a sense of that legislation in the context of International Economic Law.

Part One is concerned with some of the fundamental and introductory aspects of International Economic Law. Parts Two, Three, Four and Five comprise of an examination of the core spheres of the international economic order—namely International Monetary Law, International Trade Law, the International Law Relating to Factor Movement, International Taxation and International Development Law. This view of International Economic Law is taken here with the conviction that the disparate international economic phenomena need to be understood in the context of the totality of International Economic Law. The necessity to engage in legal analysis of the international economic order from a wider perspective is dictated not merely from the consequences of globalization, but also from the need to bring to bear the influences of the respective fields to each other, as well as to ensure balance and moderation to the liberal and welfare poles of the international economy.

However, such an approach is becoming increasingly difficult to formulate, given that the different branches of International Economic Law are expanding to such an extent as to require treatment in their own right. Consequently, the short-comings of this work are as much the authors' weaknesses, as those borne out of an attempt to host the different spheres in a single time/space dimension. Any strength however is entirely attributable to the various International Economic Law scholars in the different specialisms of the subject, on whom the authors here have had to rely as a result of having to take this particular approach.

We have not set out to de-construct International Economic Law; nor indeed have we tried to craft our own distinct perspective of it. With respect to the former, we should have—all disciplines need to. In relation to the latter, certainly a peg for academic credibility—our concern however has

been that perspectives can be not so much illuminators as blinkers—and often driven by dogma. We have tried here to give the reader some sense of the various debates and trends in International Economic Law from a Public International Law stand-point—and hope dearly that the reader will unfold many of our own blinkers.

The second edition of this book was published eight years after the first edition, with Asif H Qureshi as the sole author. During this period the first edition established itself as one of the leading texts in International Economic Law. The second edition brought on board Professor Andreas Ziegler as a co-author, thus making the publication truly international. The second edition updated the treatment of the subject in the first edition, and added new chapters viz., International Labour Law and International Double Taxation Relief. Moreover, the text of the second edition was accompanied by materials. This innovation is continued in the third edition. The third edition comes just after four years of the publication of the second edition. However, the four years seem a decade—having witnessed many changes—in particular precipitated by the financial crisis and under the shadows of the Doha multilateral trade negotiations. Moreover, there has been considerable jurisprudence both in investment law and WTO law, as well as an increase in focus in investment law. Thus, the updating has been substantial and many parts of several chapters have been revised.

The authors reiterate their gratitude to all those whose assistance facilitated the first and second editions. The authors are grateful to successive generations of readers, in particular postgraduate students, for their contribution to the value of this book. Individual and specific thanks are extended to Mianghi for her assistance and constant support in bringing the various editions to fruition; and to the editors of Sweet and Maxwell, in particular Nicola Thurlow, for their contribution and timely reminders about deadlines.

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