AN APPRAISAL OF THE NATURE AND SCOPE OF INTERNATIONAL ECONOMIC LAW: CHALLENGES AND NEW DEVELOPMENTS

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ABSTRACT

International Economic Law comprises of legal studies with a broad collection of laws, regulations and customary practices regulating international trade and business between certain subjects in different nations. This includes the examination of both law and policy on multi-level terms as such private law, local law, national law and international law. It intends to create an understanding of business and economic relations across national frontiers. It expounds the legal problems that transactional economics brings to the fore and makes inquiries into its legal resolution thereof as well as the legal avenues for such resolution. It deals with world's trade practices in the international sphere while including in them the knowledge and practices of established business touch and emerging practices. This paper seeks to make an overview of the scope and nature of laws that governs the economic relations of states, understanding the concepts, both philosophical and legal, definition of terms and its practical usage and legal framework for international economic law. While examining the legal framework, the sources of international economic law is equally discussed vis-à-vis the impact each source has had on the legal regime of World Economies.

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Introduction

International economic law does not have a lay down definition.[1] Two leading scholars and practitioners, John Jackson and Ernst-Ulrich Petersmann, provide the following definitions:

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[1] Lowenfeld F. Andreas, *International Economic Law* (Oxford University Press, USA, 2003) 1-10.

> This phrase can cover a very broad inventory of subjects: embracing the law of economic transactions; government regulation of economic matters; and related legal relations including litigation and international institutions for economic relations[2].

In the words of Petersmann:

> International economic law presents itself as a conglomerate of private law (including "law merchant' and "transnational commercial law'), state law (including "conflict of laws') and Public international law (including supranational integration law as in the EEC) with a bewildering array of multilateral and bilateral treaties, executive agreements, "secondary law' enacted by international organizations, "gentlemen's agreements' central bank arrangements, declarations of principles, resolutions, recommendations, customary law, general principles of law, de facto-orders, parliamentary acts, governments decrees, judicial decisions, private contracts or commercial usages.[3]

Others scholars have equally define international economic law as the legal system governing the relationships between nations' investment, economic relations, economic development, economic institutions and regional economic integration[4]. International economic law regulates the international economic order or economic relations among nations. However, the term 'international economic law' encompasses a large number of areas. It is often defined broadly to include a vast array of topics ranging from public international law of trade to private international law of trade to certain aspects of international commercial law and the law of international finance and investment[5].

In these definitions, we can discern the international business law including private international[6]. Also discernable is the public international law of multilateral and regional trade, or integration, which traditionally pertains to trade in goods, but combines its trade concerns with the regulatory concerns of international business law to attack other bulwark of the domain

[2] John H. Jackson, 'International Economic Law: Reflections on the "Boilerroom" of International Relations', 10 Am. *U. J. Int'l L. & Pol'y* 595, 596 (1995)

[3] Ernst-Ulrich Petersmann, 'International Economic Theory and International Economic Law: On the Tasks of a Legal Theory of International Economic Order', in *The Structure and Process of International Law: Essays in Legal Philosophy Doctrine and Theory* 227, 251 (R. St. J. MacDonald & Douglas M. Johnston eds., 1983); see also Jackson (n 1).

[4] See Black Law Dictionary(9th edition) 892

[5] Hazel Fox, 'The Definition and Sources of International Economic Law', in Fox H., *International Economic Law and Developing States: An Introduction* , (BIICL, London 1992) 1–23.

[6] But see Georg Schwarzenberger, *The Principles and Standards of International Economic Law*, 1966 Receuil des Cours d'Academie de Droit International [R.C.A.D.I.] I 7-11 (1967).

reserve, such as intellectual property regulation, competition law, investment law, environmental law, regulation of services, labor law, and, eventually, all other areas of business regulation. The international economic law system, however, does not present a full set of rationales for these types of regulation; the full set of rationales must first be articulated domestically[7].

Competition among states, namely regulatory competition, is a central rationale for bringing these types of regulations to the international realm. The other important reason for international regulatory cooperation is international externalization, where adverse effects are imposed on citizens of other states. The resulting international economic law is fundamentally a law of competition which permits and forbids certain competitive acts in international trade. Implicit in the idea that this international economic law is a law of competition is the notion that there is a market in which this competition takes place. This is not the market among private producers of goods and services, but the market among states for public goods. States compete for jobs, wealth, and power, or rather their governments compete for re-election by reference to their ability to secure jobs, wealth and power. The field regulated by international economic law is at the center of this competition. When states decide to regulate or restrain the competition, they cooperate to establish international economic law among themselves. This is no different from the story of the emergence of regulation in domestic society:[8] regulation emerges to limit competition, to say that there are certain minimum standards of conduct. Sometimes regulation emerges to require the internalization of externalities. Regulation also may arise, however, to address pecuniary externalities: the harmful effects that may result from market competition itself. While economists seem to believe that in the long run, the benefits of international trade significantly outweigh the disruptions it occasions, governments generally decline to conform their policy to this theoretical insight.

This conception of international economic law presents a view of the types of state actions that are permissible during competition. It prohibits many acts of protectionism and mercantilism. Yet, it has been learnt recently that the domain of potential protectionism and mercantilism is quite large.[9] As tariff barriers and non-tariff barriers to trade in goods have been reduced, less obvious differential applications of embedded legal and regulatory law have been used to form

[7] Trachtman – *Revolution,* available at: http://www.worldtradelaw.net/articles/trachtmanrevolution.pdf p.10 accessed 19 January 2016.
[8] *ibid.*
[9] Trachtman (n 7)

nontariff barriers not only to trade in goods, but to trade in services and investment. These nontariff barriers, however, have a dual character that makes them difficult to address[10]. First, they are socially rooted, often democratically legitimated, structures that represent a domestic vision of how domestic society should be organized to achieve domestic values. Second, they are international trade barriers. The transformed perspective of international economic law, however, transcends this artificial division.

Scope and Nature of International Economic Law

The nature of International economic law is such that it forms an integral part of international law but its scope is so wide that it cannot be entirely covered within the limitation of this paper. International economic law involves both public international law and private international law. International economic law and public international law are not separate categories[11]; rather, international economic law simply refers to a type of "public" international law that has economic goals. Trachtman[12] maintained that economics also dominates politics. Politics is one category of institutional technique for social decision making, and economics includes both this category and, for example, the categories that we have come to speak of as the market and as the firm. The public choice technique of applying economic analysis to political issues is based on this proposition.[13] As a matter of fact, economic integration is the leading motivation for new public international law today, and the most fertile source of new legislation and constitutionalization in international law. International economic law comprises a new or expanded set of legislative fields for international law to address. Indeed, international economic law is the leading engine for revising the domain reserve of traditional public international law, the unquestioned margin of admiration accorded the state. Perhaps most importantly, international economic law provides the functional basis for a new era of international constitutionalization.[14] In this regard, traditional public international law serves

[10] *ibid.*
[11](n 2)
[12] Joel P. Trachtman, 'The International Economic Law Revolution', *Journal of International Economic Law*, 1996 University of Pennsylvania 7 U. Pa. J. Int'l Econ. L. 33 p.3
[13] Paul B. Stephan III, 'Barbarians Inside the Gate: Public Choice Theory and International Economic Law', 10 *Am. U. J. Int'l L. & Pol'y* 745 (1995).

[14] Paul B.Stephan (n 13)

as the default constitutional structure on which we build through constitution-like treaties.[15] The goals of international economic law is to motivate positive legislation of constitutional and legislative rules. There may be an overflow effect from the economic to the political; this was a conscious strategy of Jean Monnet and Robert Schuman in designing the European Economic Community.

The International Economic Law Interests Group of the American Society of International Law includes the following non-exhaustive list of topics within the term 'international economic law': International Trade Law, including both the international law of the World Trade Organization and GATT and domestic trade laws; International Economic Integration Law, including the law of the European Union, NAFTA and regional economic integration such as ECOWAS, Private International Law, including international choice of law, choice of forum, enforcement of judgments and the law of international commerce, International Business Regulation, including antitrust or competition law, environmental regulation and product safety regulation, International Financial Law, including private transactional law, regulatory law, the law of foreign direct investment and international monetary law, including the law of the International Monetary Fund and World Bank, the role of law in development, International tax law, and International Intellectual property law.

Thus, International economic law seeks to solve the questions[16] such as what is the economic context of international economic law, and what have been the key methodological features of research in the field?, what are the socio-economic objectives that governments seek to achieve when they regulate (or not) international economic activity; and why do they disagree about how and when (or not) to do it?, what are the source of international economic law and how comprehensive and coherent is it?, what are the mechanisms by which the international institutions are regulated and how are these changing?, by what mechanisms do international financial institutions regulate the economic behaviour of states, and is the traffic all ones way?, by what mechanisms do international financial institutions regulate the economic behaviour of communities, and is the traffic all one way?, what regulatory challenges and opportunities arise in the economic aftermath of war and natural disaster?, how is law used, abused and avoided as

[15] Joel P. Trachtman (n 12)

[16] For further research on these problems see John Braithwaite and Peters Drahos, 'Global Business Regulation Cambridge', (2000); Niall Fergson, *The Ascent of Money: A Financial History of the World*, (London: Penguin 2009)

money flows ever more freely across borders?, what impact has this effort led by non-state actors had on the international economic landscape, and what might its impact be on the development of international economic law?, and what does the future, including the rise of China and India, hold for international economic law?[17]

International Business Law and International Economic Law

International business law merits serious study both from private and public policy perspectives. As a matter of public policy, it merits serious study as a branch of international economic public policy, or international economic law. Increasingly, it is recognized that domestic regulation of business is within the domain of international economic law. International economic law addresses some of these concerns by promoting cooperation among states and limiting competition.

Economics is often associated with the allocation of social capital through markets. While economics usually is defined as the study of market-based activity, it increasingly has turned its attention and analytical techniques to spheres not typically considered to be markets, such as marriage, child-rearing[18], and crime. As the domain of economics is expanded to encompass nonmarket forms of economic organization, such as the family, firm, or state as units of organization, economics emerges as a broad science of choice of organizational form, a leading example of which is the market itself. What, then, is business? Perhaps business is the pragmatic implementation of this science of choice to exploit markets.[19] Business includes sales, marketing, accounting and human relations, topics conventionally excluded from economics. On the other hand, all of these business activities play an important microeconomic role. For example, an economics analysis of transaction costs might find that marketing plays an important role in reducing the transaction costs of obtaining information regarding products or services, and that accounting facilitates analysis and communication both within and without the firm.[20] The perspective of economics is often that of the government, which is assumed to act as optimizer

[17] Malanczuk P., 'Globalisation and the future role of Sovereign States', in F. Weiss., et al. (eds), *International Economic Law with a Human Face* (Kluwer Law International, The Hague, 1998) 45–65.
[18] Gary Becker, *The Economic Approach to Human Behavior* (1976); Jack Hirshleifer, 'The Expanding Domain of Economics', 75 *Am. Econ. Rev.* 53 (1985)
[19] Trachtman (n 12)

[20] Trachtman (n 12)

for the aggregate of society rather than for the individual or firm. Business analysis, on the other hand, often takes the perspective of the individual or firm. Neoclassical economics has been criticized by the new institutional economics for failing to encompass this perspective and use it to inform its analysis. This criticism has been made by new institutional economics.[21]

A related purported distinction between international business law and international economic law is the distinction between transactions and trade. Transactions, in this sense, are between private persons (or public persons treated more or less as private persons), while trade is a matter of public policy and mercantilism or protectionism. The distinction is one between levels of analysis. Analysis at the individual or firm level of economic organization is transactional, while analysis at the state or higher level is economic. Because the substantive body of law governing the individual is still predominantly domestic, this distinction implicates the domestic-international dichotomy.

Nonetheless, from a curricular standpoint, a course in "international business transactions" involves sales of goods, licensing of intellectual property, and foreign direct investment, but might not include an investigation of the legality (as opposed to the simple application) of tariff and nontariff barriers that affect these transactions. Comparing both the practical business standpoint as well as the standpoint of economic theory, these issues are inseparable.[22] They are made inseparable because of the interdependence between domestic law and international law. Thus, the business person may use international law as a basis to attack adverse domestic law.

International law may or may not be directly applicable to require the non-application of inconsistent domestic law. Even if it is not applicable by courts, it may form the basis for a favorable interpretation of domestic law, or for a political attack on an adverse domestic law. Sales cannot be made without considering tariff and nontariff barriers to export transactions and their international legality. Intellectual property cannot be licensed without considering local

[21] Thrain Eggertsson, *Economic Behavior and Institutions: Principles of Neo-Institutional Economics* (1990); Bruno S. Frey, 'Institutions Matter: The Comparative Analysis of Institutions', 34 *Eur. Econ. Rev.* 443 (1990); Steven G. Medema, 'Discourse and the Institutional Approach to Law and Economics', 2 *J. Econ. Issues* 417 (1989); Douglass C. North, 'Institutions, Transaction Costs and Economic Growth', 25 *Econ. Inquiry* 419 (1987); Douglass North, 'The New Institutional Economics', 142 *J. Inst. & Theoretical Econ.* 230 (1986); Richard A. Posner, *The New Institutional Economics Meets Law and Economics*, 149 J. Inst. & Theoretical Econ. 73 (1993); Oliver E. Williamson, 'Comparative Economic Organization: The Analysis of Discrete Structural Alternatives', 36 *Admin. Sci. Q.* 219 (1994).

[22] Ronald A. Brand, 'Recognition of Foreign Judgments as a Trade Law Issue: The Economics of Private International Law', in *Economic Analysis of International Law* (Jagdeep Bhandari & Alan Sykes eds., forthcoming 1996).

laws protecting intellectual property, which have been recognized in the Uruguay Round to be importantly related to trade, and which are disciplined under the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Good ("TRIPs"). Foreign investment decisions cannot be made separately from issues of tariffs, antidumping duties, and rules of origin, and from issues of protection against mistreatment that may be possible, for example, under bilateral investment treaties. Of course, from a pedagogical standpoint, it may make sense to separate the contract, commercial law, conflict of laws, and other private dispute resolution issues, which share some common themes, from trade law issues, which relate more to competition, especially competition among states, as opposed to private persons. In essence, transactions and trade are inseparable.

Legal Frameworks and Principles

International economic law is based on the traditional principles of international law such as: *pacta sunt servanda,* freedom, sovereign equality, reciprocity, economic sovereignty. It is also based on modern and evolving principles such as: the duty to co-operate, permanent sovereignty over natural resources, preferential treatment for developing countries in general and the least-developed countries in particular. The sources of international economic law are the same as those sources of international law generally outlined in **Article 38 of the Statute of the International Court of Justice** thus:

Article 38

> (1) The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> (b) international custom, as evidence of a general practice accepted as law;
>
> (c) the general principles of law recognized by civilized nations;
>
> (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Flowing from the above provisions, the sources of international economic law are conventions, customary international law, judicial decisions and opinion of scholars. Over the years, the International Court of Justice situated at Hague had dispensed justice with help of these various laws and principles. Although, international economic law came as a development and

substantial aspect of international law, it long existed in these various laws as we shall later discover in this paper.

Economic Sovereignty

When states began to function as politically independent and sovereign entities, they realised that one of the most important attributes of state sovereignty was economic sovereignty. Without this, political sovereignty was not complete. Asserting economic sovereignty meant having control over the economic activities of both juridical and natural persons conducting business within the country, whether nationals of that country or foreigners. Owing to a number of historical reasons, many states inherited on independence a situation in which foreign individuals or companies enjoyed certain concessions or privileges or control over the economic activities of the country concerned. In many states the natural resources and mining rights were controlled by foreign companies or individuals under a concession agreement entered into with the previous administration, whether colonial or otherwise.

When the country concerned wished to embark on a policy of economic development, one of the first initiatives it had to take was to consider harnessing its natural resources in accordance with its economic policies. It therefore became necessary for these states to assert sovereignty over the natural resources of the country and require that foreign individuals and companies comply with the new policy adopted by the state. In many countries it was difficult to assert economic sovereignty without doing away with the rights, concessions and privileges enjoyed by foreign individuals and companies over the country's natural resources. However, developed countries whose nationals had gone overseas to invest and do business resisted attempts to impose national law on foreigners. They argued that existing concessions and contracts had to be honoured under international law. It was at this juncture that the concept of permanent sovereignty over natural resources was introduced in international law.

Permanent Sovereignty over Natural Resources (PSNR)

When the number of newly independent developing countries grew, these states sought to assert their complete economic sovereignty by proclaiming that they had complete and permanent sovereignty over their natural resources – regardless of any arrangements made by their previous colonial administrations. Consequently, a resolution was introduced in the UN General

Assembly to this effect and was passed by an overwhelming majority of states. **Paragraphs 1 and 2 of the famous 1962 UN General Assembly Resolution on the Permanent Sovereignty over Natural Resources** (PSNR) state:

> 1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned;
> 2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

The resolution further outlines the rights of states with regard also to the expropriation and nationalisation of the assets of foreign companies[23]. Thus, nationalisation, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognised as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law[24]. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the state taking such measures shall be exhausted. However, upon agreement by sovereign states and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication. The concluding paragraph of the resolution seeks to assure investor countries and foreign investors that the provisions of bilateral investment agreements will be respected. In its paragraph 8[25], foreign investment agreements freely entered into by or between sovereign states shall be observed in good faith; states and international organisations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

[23] UN General Assembly Resolution on the Permanent Sovereignty over Natural Resources 1962, Para 4 and 8
[24] *ibid.*
[25] UN General Assembly Resolution on the Permanent Sovereignty over Natural Resources 1962

It is significant to mention here that the provisions of the PSNR Resolution[26] have been held widely as representing customary international law because of the unanimous support it received at the UN its declaratory nature of the rules of customary international law on the subject matter.

Fundamental Principles of International Economic Law

As an attempt to implement the objectives of the New International Economic Order (NIEO) and to establish the norms of international economic relations, the UN General Assembly adopted as part of its resolutions on the NIEO the Charter of Economic Rights and Duties of States (CERDS) of 1974. Chapter 1 of the Charter outlines the fundamentals of international relations. Economic as well as political and other relations among states shall be governed, *inter alia*, by such principles as (a) Sovereignty, territorial integrity and political independence of States; (b) Sovereign equality of all States; (c) Non-aggression; (d) Non-intervention; (e) Mutual and equitable benefit; (f) Peaceful coexistence; (g) Equal rights and self-determination of peoples; (h) Peaceful settlement of disputes; (i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development; (j) Fulfillment in good faith of international obligations; (k) Respect for human rights and international obligations; (l) No attempt to seek hegemony and spheres of influence; (m) Promotion of international social justice; (n) International co-operation for development; and (o) Free access to and from the sea by land-locked countries within the framework of the above principles.

These are principles of a general nature which include both economic and political principles and reflect the trend of the early 1970s. Articles 1, 2, 4 and 5 outline the economic rights and duties of states in a more concrete manner:

Article 1

> Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

Article 2

> 1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

[26] Resolution 1803 of 1962.

2. Each state has the right:

(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph;

(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Article 4

Every State has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic cooperation, every State is free to choose the forms of organisation of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic cooperation.

Article 5

All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy.

It is geared towards accelerating the development of developing countries. Correspondingly, all States have the duty to respect that right by refraining from applying economic and political measures that would limit it. Although the charter was not a ‘hard law’ instrument having binding legal effect, many of the principles embodied in it have been regarded as representing the basis for the development of international economic law. Indeed, the charter reiterates some of the principles that were already widely accepted as representing customary rules of international law, such as the permanent sovereignty of states over their natural resources.

The Right to Economic Development

One of the central elements of the NIEO and CERDS was the economic development of states. This element was reinforced and strengthened through a 1986 resolution of the UN General Assembly on the right to economic development of states. The main operative provisions of this declaration read as follows:

Article 1

> 1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
>
> 2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

> 1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.
>
> 2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.
>
> 3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.

Although the right to development is a difficult right to define in concrete terms and does not have much legal significance, the articulation of this right in 1986 has enabled the international community to rely on it to support and develop other principles of international trade and development special and preferential treatment for developing countries the need to address the problem of the international debt. It can also be argued that the right to development was a contributor to the adoption of the Millennium Development Goals by the international community in 2000, at the dawn of the new millennium.

The Law on Natural Resources (The Stockholm Declaration 1972)

The Stockholm Declaration of the United Nations Conference on the Human Environment of 19721 was perhaps the first major international environmental law instrument that introduced the idea of conserving natural resources onto the agenda of international economic law. Principles 2, 3 and 5 of the Stockholm Declaration speak of the need to conserve natural resources:

Principle 2

> The natural resources of the earth including, the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate[27].

Principle 3

> The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable restored or improved.

Principle 5

> The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

The Stockholm Declaration sought for the first time to limit the right of states to exploit their natural resources (especially those which are non-renewable). As stated earlier, until this point international economic law had sought to define and strengthen the rights of sovereign states to exploit their natural resources (whether renewable or non-renewable) through various instruments, such as the concept of permanent sovereignty over natural resources.

However, while endorsing this right of states, Principle 21 of the Stockholm Declaration sought to reconcile it with the need for environmental protection. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

The Charter of Economic Rights and Duties of States 1974

Article 30 of the Charter of Economic Rights and Duties of States of 1974 included the following provision furthering the spirit of the Stockholm Declaration. The protection, preservation and

[27] Stockholm Declaration 1 11 ILM 1416 (1972), adopted on 16 June 1972.

enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. All States should cooperate in evolving international norms and regulations in the field of the environment.

Thus, the momentum was maintained within international environmental law to limit the right to exploit natural resources in favour of the preservation of the environment. Consequently, the need to conserve natural resources and to exploit them in a sustainable manner figured prominently in the 1982 World Charter for Nature.[28]

World Charter for Nature 1982

The preamble to this Charter declares that 'man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognise the urgency of maintaining the stability and quality of nature and of conserving natural resources'. The Charter then goes on to state that:

> The degradation of natural systems owing to excessive consumption and misuse of natural resources, as well as to failure to establish an appropriate economic order among peoples and among states, leads to the breakdown of the economic, social and political framework of civilisation.[29]

UN Convention on the Law the Sea 1982

The need to pay attention to the preservation of the environment while exploiting natural resources was also reflected in the Law of the Sea Convention adopted in the same year. Article 193 of this Convention provides that:

> States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

[28] UNGA Res. 37/7; 22 ILM 455 (1983), adopted on 28 October 1982.
[29] World Charter for Nature 1982.

Thus, from the 1980s onwards the idea developed that the right of states to freely dispose of their wealth and natural resources was subject to the concepts of: the preservation of the environment conservation of natural resources the sustainable use and development of such resources. These concepts were also gradually finding their way into the body of international economic law. These principles of international environmental law had started to influence the international economic law principles relating to the exploitation of natural resources. Other environmental treaties, whether global or regional, relating to specific regions (e.g. Africa or Southeast Asia) or the protection of specific geographical areas such as wetlands or specific natural resources such as wildlife, flora and fauna had started lending their support to the idea that the international economic law-based right of a state to exploit their natural resources was subject to certain principles of international environmental law.[30]

The Brundtland Commission

The 1985 report of the World Commission on Environment and Development (WCED) popularly known as the 'Brundtland Commission' popularized the phrase 'sustainable development', embodying both states' right to economic development and their obligation to pay particular attention to any degradation of the environment resulting from development activities. In other words, it was a phrase coined to express the balance that had to be reached between the right of states to use or exploit their natural resources in accordance with their developmental policies and the duty inherent upon them to preserve the environment in carrying out such developmental activities. The Commission defined the term 'sustainable development' as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.[31]

In the opinion of the Commission, economic development that undermined the environment or led to the excessive exploitation of natural resources to the detriment of future generations was not sustainable development. Hence, it was felt that the need to preserve and make rational use of

[30] Examples are: the 1968 African Convention on the Conservation of Nature and Natural Resources, the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources, the Ramsar Convention on Wetlands of 1971, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals, the 1991 Protocol on Environmental Protection to the Antarctic Treaty.

[31] Our common future: World Commission on Environment and Development (Oxford: Oxford University Press, 1987) 43.

the natural resources of a country in the interests of the environment and future generations was inherent in the concept of sustainable development.

The Rio Conference 1992

Following the groundwork done by the Brundtland Commission on broad concepts such as sustainable development that embraced not only the environment, but also all other economic activities regulated by international economic law, the UN decided to convene a special Conference on Environment and Development in Rio in 1992. Unlike the Stockholm Conference (which was on the human environment) the Rio Conference was going to consider both the environment and development, displaying the importance attached to the elements embodied in both words. Principle 1 of the resulting Rio Declaration on Environment and Development declared that human beings were at the centre of concerns for sustainable development.

The Rio Declaration was adopted unanimously by the Rio Conference – the largest conference ever convened in the history of international relations. It seeks to recognize the right of states under international economic law to exploit their own resources pursuant to their own environmental policies the duty of states international environmental law to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

Principle 2 of the Declaration reads:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[32]

The tension between the right of states to exploit their natural resources and the need to conserve natural resources has been a tension between international economic law and international environmental law. The law of sustainable development has brought these two together, adding a sustainable development dimension to various principles of international economic law such as: equity, the right to economic development, the right of permanent sovereignty of states over their

[32] The language used here draws heavily on the provisions of Principle 21 of the Stockholm Declaration; Article 30 of the 1974 Charter of Economic Rights and Duties of States the 1962 UN Declaration on Permanent Sovereignty of States over their Natural Resources (PSNR).

natural, resources. Although the Rio Declaration widened the scope of the principle of sustainable development to include not only conservation of natural resources, but also a host of other elements, it gave this principle a credible international standing. What is more, Principle 12 of the Rio Declaration injects the sustainable development dimension into international economic law issues and highlights the importance of international economic law principles for the effective operation of the rules of international environmental law.

The UN Convention on Biological Diversity 1992

The Rio Declaration was not the only outcome of the Rio Conference. The 1992 UN Convention on Biological Diversity was opened for signature at the Rio Conference and was signed by 157 states and the European Union. The preamble to the Convention reaffirms the sovereign rights of states over their own biological resources. However, the Convention stresses at the same time that states are responsible for conserving their biological diversity using their biological resources in a sustainable manner. Article 6 of the Convention states:

> Each Contracting Party shall, in accordance with its particular conditions and capabilities:
>
> (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned; and
>
> (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Thus, although there are still not any specific international treaties regulating the exploitation of certain natural resources (e.g. oil, gas, minerals and land), the discussion in the preceding paragraphs demonstrates that these natural resources must be exploited in a sustainable manner with due respect for the environment.[33]

New Developments[34]

[33] UN Convention on Biological Diversity 1992.

[34] For further research see Bryan Lowell, and Farrell, Diana, *Market Unbound: Unleashing Global Capitalism*. Wiley, 1996; Buchanan Patrick J., *The Great Betrayal: How American Sovereignty and Social Justice Are Being Sacrificed to the Gods of the Global Economy*, Little Brown and Company, 1998; Burtless Gary, Lawrence Z. Robert, Litan E. Robert., and Shapiro J. Robert, *Globaphobia*: *Confronting Fears About Open Trade. Brookings Institution*, 1998; Greider William, *One World, Ready or Not: The Manic Logic of Global Capitalism* (Simon & Schuster, 1997); Kuttner Robert, *Everything for Sale: The Virtues and Limits of Markets*, Alfred A. Knopf, 1997; Mishel Lawrence, Bernstein Jared, and Schmitt John, *The State of Working America*, 1998-99; Economic Policy Institute, 1999; Sassen, Saskia, *Globalization and its Discontents*, The New Press, 1998; Yergin, Daniel, and

The development of instant, international communications, the growth of international trade, and other factors have contributed to the creation of an unprecedented global economy. As *Chicago Tribune* writer Richard C. Longworth points out in his article, [35] the increasing internationalization of finance can bring major benefits to investors and nations, but it can also have disastrous consequences. Recent economic crises in Asia and Russia and their repercussions on world markets have raised the question of whether more effective regulations are needed in the new global economic climate.

With the growth in nation's economy, a lot of new developments evolve that create both challenges and positive contributions. [36] Despite growing regional cooperation, national governments have seen globalization erode much of their ability to control their own economies as traders and corporations move beyond the reach of national law. For the world's market-oriented democracies, erosion of national sovereignty means a reduction in the power of the ordinary citizen's ability to influence events through the vote; hence, it has the potential to erode democracy. In this partial vacuum, international organizations, new and old, have assumed some functions that national governments once controlled. For example, the International Monetary Fund (IMF), an independent agency of the United Nations (UN), has become both a safety net for nations in economic crisis and a global enforcer of economic behavior. Both roles, however, have become controversial, and there have been proposals for a new global economic authority. The World Trade Organization (WTO) has succeeded the old General Agreement on Tariffs and Trade (GATT) and has become not only a forum to settle international trade disputes but a court with power to enforce its decisions.

Other international bodies, such as the Bank for International Settlements (BIS) in Switzerland and the International Organization of Securities Commissions (IOSCO), are setting up new codes

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Stanislaw, Joseph., *The Commanding Heights: The Battle Between Government and the Marketplace that is Remaking the Modern World*, Simon & Schuster, 1998.

[35] Richard C. Longworth is an award-winning senior writer for the Chicago Tribune and author of Global Squeeze: The Coming Crisis for First-World Nations (1998).

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and regulations. These organizations are, in effect, now writing the global economic rulebook for the 21st century.

Challenges

It is my observation that international economic law faces some challenges. First, International economic law faces the challenge of integration of laws. The absence of integration will create the problem of inability to what extent and how policy formation processes can be integrated. Secondly, although, tariff barriers and nontariff barriers to trade in goods have been reduced, less obvious differential applications of embedded legal and regulatory laws have been used to form nontariff barriers not only to trade in goods, but to trade in services and investment. These nontariff barriers, however, have a dual character that makes them difficult to address[37]. One, they are socially rooted, often democratically legitimated, structures that represent a domestic vision of how domestic society should be organized to achieve domestic values. Two, they constitutes international trade barriers.

Recommendations

It my recommendation that the term "international law" must be revisited and reevaluated, as the system of law that governs international relations has both states and individuals as its subjects and objects. [38] Incidentally, the use of the phrase "international law" is taken to mean "transnational law," the term coined by Philip Jessup, the late judge of the International Court of Justice, to include in the scope of study private law and other municipal law that affects relations between different countries and their peoples.[39]

[37] Richard C. Longworth, *Encarta Yearbook* , March 1999.
[38] Mark W. Janis, 'Individuals as Subjects of International Law', 17 *Cornell Int'l L.J.* 61 (1984).
[39] Philip C. Jessup, *Transnational Law* 1-2 (1956); Henry Steiner et al., *Transnational Legal Problems* (1994). Alternative terms include "law of nations," as proposed by Mark W. Janis, 'International Law?', 32 *Harv. Int'l L.J.* 363, 371 (1991), and "world law," as proposed by Harold Berman, 'The Role of International Law in the Twenty-first Century: World Law', 18 *Fordham Int'l L.J.* 1617, 1617 (1995). It is my view that "international law" will continue to experience a change in meaning that will make it inclusive of these other concepts. The word "international," as originally coined by Bentham, describes fewer real world circumstances, and is increasingly used to connote much more than "inter-national" relations; Weston Mark Janis, 'Jeremy Bentham and the Fashioning of International Law', 78 *Am. J. Int'l L.* 405, 405-18 (1984).

Nations should be able to recognize and manage the complex and subtle relationships between different countries' laws, and between different areas of public policy, such as trade and the environment. This is important because decisions taken by people in one country affect people in other countries, and decisions taken in one functional area affect policy in other functional areas.

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing trans-boundary or global environmental problems should, as far as possible, be based on an international consensus.

Conclusions

Indeed, the scope and nature of international economic law is broad. It a well recognized form of international law that has interlocking relationship with other aspects of international relations. In fact, instead of being an independent international subject, it underscores the importance of most international conventions, treatise and politics. Matters to which international economic law relates are of serious interest to all nations-both developed and developing nations. We have seen that it covers most especially International Trade Law, including both the international law of the World Trade Organization and GATT and domestic trade laws, International Economic Integration Law, including the law of the European Union, NAFTA and ECOWAS, Private International Law, including international choice of law, choice of forum, enforcement of judgments and the law of international commerce, International Business Regulation, including antitrust or competition law, environmental regulation and product safety regulation, International Financial Law, including private transactional law, regulatory law, the law of foreign direct investment and international monetary law, including the law of the International Monetary Fund and World Bank, the role of law in development, International tax law, and International Intellectual property law.

Needless to mention that the main international economic agenda in the post-Second World War period involved promoting the free movement of goods and capital across borders and enabling states to exploit their natural resources to the maximum extent possible for their economic development. Over the years, international economic law tried to catch up with this expansion of international economic and commercial activities and regulate wherever and whichever aspect possible, but with little or less attention paid to environmental aspects of economic development. But the recent developments within international environmental law have influenced the development of international economic law especially with environmental principles of sustainable development[40].

No doubt, a discussion on the nature and scope of international economic law includes the examination of status and impact of international economic organizations. Over the years, these organizations, as rightly explained above, have evolved rules, regulations and practices in addition to conventions, treaties and agreements that helped shape the international legal regime on world economy. However, many of the existing organizations need a re-organization and serious appraisal. For example, the enforcement policies of World Trade Organization must be reviewed and institutions such as International Monetary Fund and World Bank should do a self-assessment and critical comparison between its practices and underlining purpose of its establishment in order to place itself in a better position in contributing to the rules guiding international economy as a whole.

Finally, the development agenda of the world economy should no longer be a struggle between the developed and developing countries. Instead, both groups of states were supposed to work jointly to achieve sustainable economic development. All states had a duty to contribute to the process, but the level of contribution would be guided by the concept of common but differentiated responsibility. This idea was endorsed by the Rio Declaration of 1992 and other instruments adopted by the Rio Conference.

[40] John H. Jackson, 'International Economic Law: Reflections on the Boilerroom of International Relations', 10 *Am. U. J. Int'l L. & Pol'y*, 595.