

BRIEF INTRODUCTION OF INTERNATIONAL ECONOMICS LAW

Introduction

IEL or International Economics Law covers a broad range of subjects as the subject deals with economic relations between countries. IEL is broad subject that includes in itself international investment law, international fiscal law etc.¹

It is the branch of public international law, it represents an aggregate of norms governing relations among subjects of international law in regard to their activities in the area of international economic law²

In regard to the definition of IEL, no clear definition has been developed either in practice or in theory. In the broad sense, international economic law could be defined may be defined as consisting all legal subjects which have international and economic elements.

International economics law represents itself as a conglomerate of state/ private laws and public international law. With an array of bilateral and multilateral treaties, or executive agreements between states – “secondary law” enacted by international organisations, declaration of principles, recommendations, resolutions, basic principles of law, private and commercial contracts and judicial decisions³

One major question that comes to mind is: If IEL is part of the system of International Public Law, is it a branch of it or a specialist? IEL, it is contended, is not a specialist for the following reasons.

Firstly, economic activities are central to the government affairs and international law, also international law and an essential part of international economics law-international trade law are each underpinned by inconsistent assumptions, or fundamentally opposed assumptions. Whereas international law is specifically

¹ <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1428&context=auilr>

² Ibid

³ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1458&context=jil>

based on the countries and the notion of state sovereignty, International economics law is based on the comparative advantage, for promotion of individual trans border exchanges and specialization. Third of all, when international law is basically oriented towards economic self sufficiency, peace and defense, IEL is based on market economy and not much about prevention of economic welfare.⁴

Sources of International Economic Law:

The sources of International economics law as of international law basically are treaties and agreements.

These treaties include international economic treaties and the various political treaties that include decisions relating to economic matters. In addition, treaty sources consist of charter and other founding statutes of economic and other international organizations operating in the area of international economic relations.⁵

The traditional norms of intellectual law play a very important role in the legal regulation of international economic relations. In the making of International economic laws as a branch of general international law, a significant part is played by the resolution adopted by the global international organizations and conference.

The Historical Foundations of International Economic Law:

In today's modern world, most States have decided to limit their freedom of economic choices in the field of trade liberalization at the global, regional and bilateral levels. There exists today in the network of free trade agreements, hundreds and thousands of treaties.

The concept of free trade movement was first brought into existence by the writings of Adam Smith and David Hume. Adam Smith believed and relied on the allocation of market resources driven by self interest as the most effective source of productivity, for both national and international markets.

Later on, a theory of comparative advantage was developed by David Ricardo and John Stuart Mill. This theory put Adam Smith's theory on a broader conceptual

⁴ http://shodhganga.inflibnet.ac.in/bitstream/10603/150446/8/08_chapter%202.pdf

⁵ *ibid*

perspective. According to this theory, countries should make use of their factors of production to produce relatively low cost products and import high cost products. Therefore, this theory relied on the self interest of each country in a broader integrated international market.

There was a high degree of capitalistic market prevailing in the late 19th Century, during the First World War. Ever since the turn of the 19th Century, the concept of universal minimum standard arose as the relevant parameter for protection. This concept aims at protection by use of police powers and therefore calls for a decent treatment.

The minimum standard is still relevant for foreign investors and often dominates the interpretation of investment treaties.

Between and after the two world wars, the emergence of state economics and waves of nationalizations in communist countries challenged established rules on full compensation for the expropriation of foreign property.

The basics of modern international economic law emerged towards the end of the second world war. The International Monetary Fund was established as well as the World Bank Group. Loans to countries with payment deficits and soft currencies became a crucial element of trade relations. GATT came into establishment in 1947 with an aim to liberalize world trade through reduction of tariffs. The post war bilateral treaties in friendship, commerce, etc., acted as a precursor to the modern day investment treaties and preferential trade agreements.

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1. STATE AUTONOMY IN ECONOMIC CHOICES

As a matter of principles, states are free to choose their economic and social system:

Every country has a fundamental right to choose and enforce its own political economic and social system.⁶

Similarly states are at liberty to maintain or not relations with other countries. This freedom flows from sovereign equality of states (Article 2 No 1 UN Charter) and maybe exercised through treaty commitments. On the one hand, it is certainly true maybe excercised through treaty commitments. On the one hand, it is certainly true that few treatioes and other international instruments provide for a specific economic system like a market economy. On the other hand, international agreement nowadays govern structural economic choices for a very large part of the international community. They do so in particular with provisions on

- The guarantee for private property, the freedom of profession ad communication
- Elimination of non tariff barriers to trade including state monopolies;
- The liberalization of trade in services;
- The freedom in establishment and capital movement
- The protection of foreign investment; and
- Restraints on subsidies.

No country with the pure state economy is among the member of WTO. The CSCE Charter of Paris for New Europe (1990) proclaims the standard for market economy. The system of a market economy without being explicitly entrenched in national cpnstitutions, is the only economic model compatible with the EU. The treaty of European Union now emphasizes in its Article 3 adherence to the principles of social market economy:

The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a

⁶ Military and parliamentary activities in and against nicargua

high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.⁷

The UN Charter adheres to international cooperation including the economic social sector. (Article 1, 3, 55 lit a and b, article 56) and the principles of good-neighbourliness (Article 74). The principles of non intervention into the international affairs of other states (Article 2 No 7 UN Charter) restrains regulatory freedom as to economic activities pursued abroad or things located outside a state's territory.

1. REDUCTION OF TARIFF AND ELIMINATION OF NON TARIFF BARRIERS

The modern economic order aims at the liberalization of transboundary economic transactions through the reduction of tariffs and the elimination of other barriers to trade. Trade liberalization reflects the insight that the international trade and the division of labour in the international community are advantageous for the national economies involved. This approach builds on the argument for a free trade system stemming from Adam Smith's work 'The Wealth of Nations' (1776) and the theory of 'comparative advantage' developed by David Ricardo and John Stuart Mill.

In this vein, the preamble of the WTO Treaty relates trade liberalization to the optimal use of the world's resources and qualifies the agreements on removal of trade barriers and on the elimination of discriminatory treatment as "mutually advantageous".

The principal instruments of trade liberalization are the reduction of tariffs and elimination of non-tariff barriers. Whilst the principles of 'national treatment' and the 'most favoured nation treatment' serve equal competitive conditions in the market, the reduction of tariffs and the elimination of non-trade barriers directly remove impediments to international trade. On the basis of GATT, a substantial reduction of tariffs has been reached on a global level.

2. FAIR TREATMENT OF FOREIGN INVESTORS.

Over the last decades, foreign investment has come to be recognized as a pivotal factor of development and economic stability. In the so-called "Monterrey Consensus", the International Conference on Financing for Development (2002) underlined that private international capital flows, particularly foreign direct investment along with economic financial stability are vital components to national and international development efforts.

Fair treatment of foreign investment is nowadays a cornerstone of IWL in terms of customary law, as well as treaty provisions.

3. NON-DISCRIMINATION

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https://en.wikisource.org/wiki/Consolidated_version_of_the_Treaty_on_European_Union/Title_I:_Common_Provisions

The elimination of discrimination plays a fundamental role in international trade and investment relations. Non-discrimination of foreign nations, goods and services and investment operates on two different levels:

- Equal treatment on international level by exceeding benefits granted to one state to trade and investment relations with another state. And;
- Equal treatment in a domestic context by granting national treatment to nationals, goods, services and investment of other states.

On both level non discrimination ensures a level playing field and equal condition on national market. Both MFN treatment and national treatment form a cornerstone of GATT and WTO agreement as well as of modern investment treaties.

(a) Most Favoured Nation Treatment

A most favoured nation clause in treaty allows the parties to that treaty to benefit from the advantages granted to another (third) State in another treaty concluded between one of the parties to the first treaty and third state.⁸

The application of MFN clauses depends on its scope and context benefits to be claimed must come within subject matter of most favoured nations clause and be the same kind. The ILC Draft Article on the Most Favoured Nation Clause of 1978 provide in article 9:

“Under a most-favoured-nation clause, the beneficiary State acquires, for itself or for those persons or things in a determined relationship with it, only those rights that fall within the limits of the subject-matter of the clause.”⁹

Second, article 10(1) provides:

“Under a most-favoured-nation clause the beneficiary State acquires a right to most-favoured-nation treatment only if the granting State extends to a third State benefits within the subject matter of the clause.”¹⁰

(b) National treatment

National treatment as a treaty obligation may stimulate the elimination of non-tariff barriers to trade, because under this principles such measures must be equally applied to domestic industries.

In rather broad terms, Article III: 4 of the GATT provides national treatment of foreign products:

⁸ https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

⁹ http://legal.un.org/ilc/texts/instruments/english/reports/1_3_2015.pdf

¹⁰ Ibid

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The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph.

MFN treatment and national treatment are also standard in modern investment treaties. Thus the USA model Bilateral Investment Treaty 2012 for example provides:

Article 3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the treatment accorded, in like circumstances, by that regional level of government to natural persons resident in and enterprises constituted under the laws of other regional levels of government of the Party of which it forms a part, and to their respective investments.

Article 4: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

4. FAVOURABLE CONDITIONS FOR DEVELOPING COUNTRIES

- (a) Preferential treatment

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Besides the interest in raising standard of living and stipulating economic growth solidarity towards developing countries and regards for the specific needs is a guiding principle that the economic needs of developing countries require due respect.

The demand of less developed countries for greater consideration of their interest, for more 'fairness' in international trade and investment and for more regulatory freedom in the administration of their resources is the driving force behind the call for 'New International Economic Order'

Apart from direct transfer payments there are also other ways to address a specific concern of a developing state:

- Preferential treatment in tariffs
- Ensuring adequate prices for natural resources
- Exemptions from certain treaty obligations
- Technology transfer
- Debt relief in particular least developed countries.

5. SUSTAINABLE DEVELOPMENT

The concept of sustainable development is the most salient examples of soft law standard which has not yet achieved the status of strict principles of international law, but which has significant consequences for international economic relations. The concept has emerged in international environment law, aiming at a responsible use of natural resources, the concept of sustainable development has considerable impact. It has repercussions in a number of treaties which transform the relatively abstract concept into binding legal rules.

6. RESPECT FOR HUMAN RIGHTS

Human rights like the guarantee of property have a strong impact on the structure of an economic and social system. Protection of human rights may even establish rather finely tuned production standards like precautionary principles in case of possible risks to health or undisturbed family life.

Recent discussion in international trade law addresses the implication of the right to 'adequate food' and 'the fundamental right of everyone to be free from hunger' (Article 11(1) and (2) of the UN Covenant on social, economic and Cultural Rights):

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and

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to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.¹¹

The globalization of international economic relations assists the protection of human rights in so far as turns trade sanctions and other economic sanctions into relatively effective tools. Many states or groups of states with a highly developed sensitivity for human rights issues, dispose of a considerable potential for economic sanctions. Thus globalisation of economic relations may in the long run contribute to the global protection of universal standard of human rights.

¹¹ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>