

**Tübinger Schriften  
zum internationalen und europäischen Recht**

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**Band 1**

# **Reforming the International Economic Order**

**German legal comments**

**Edited by**

**Thomas Oppermann  
Ernst-Ulrich Petersmann**



**Duncker & Humblot · Berlin**

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**Herausgegeben von  
Thomas Oppermann  
in Gemeinschaft mit  
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Wernhard Möschel, Wolfgang Graf Vitzthum  
sämtlich in Tübingen**

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and

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Dedicated to The Right Hon. the Lord Wilberforce,  
CMG., OBE., in recognition of the inspiring leader-  
ship he gave to the International Law Association  
over many years



## Preface

The idea to bring out this collection of joint and individual contributions from the German Branch Committee – “Legal Aspects of a New International Economic Order” – of the International Law Association finds its roots in the ongoing work of this group of practitioners and academics specialising in economic law. The intention is to make available German thinking in the area of the international legal advancement of the international economic order, especially for our non-German opposite numbers.

We would like to take this opportunity as editors to express our thanks to all our colleagues who have submitted contributions, whether in a personal capacity or as a member of the committee. We also express our thanks to Ms P. Conlan, B.A., LL.M (NUI), Galway/Tübingen, who as a “native speaker” monitored our “Anglo-German”. Full responsibility for the text remains of course with the authors. We are most grateful to Mr. Ernst Thamm for his vigilance as regards the actual publishing. It seems to us that the “Tübinger Schriften zum internationalen und europäischen Recht” is the appropriate place to publish given that our committee was founded in 1983 in Tübingen.

Tübingen/Geneva, Spring 1987

*Thomas Oppermann · Ernst-Ulrich Petersmann*





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THOMAS OPPERMANN

## **Introduction**

### **Ideas and Initiatives on Legal Reform of the International Economic Order, within the Framework of the International Law Association (ILA) since 1978 in particular – German Participation in this Field**

#### *I. On the Necessity for Peaceful Change in International Economic Relations*

Following the emergence of the Third World – and of the Fourth World – in the wake of the decolonisation period since the end of the 1950s, it is common to find the reform of the international economic order as rooted in the 1945 and subsequently – “Bretton Woods-System” – as an item for discussion on the agenda of the international community. The political future of mankind is heavily dependent on the reasonably satisfactory economic and social development of numerous states in Africa, Asia and Latin America.

The reform of the international economic system has legal as well as economic aspects. If the evolving system is to imply binding obligations for states and economic subjects, then it has to be based on accepted norms of public international law, private international law and municipal law. This was seen by the developing countries when they induced the United Nations into making the Declaration and drawing up the Action Program for the establishing of a “New International Economic Order”. It was their intention from the very first stages to bring about the projected transformation of the liberal Bretton Woods-System by means of binding Resolutions within the United Nations, which were to be accorded the status of international treaty law or customary international law, or at the very least that of “soft law”. The continuing controversy relating to the standing of the “Charter of Economic Rights and Duties of States” adopted by majority vote in the United Nations in 1974 shows quite clearly the significance of the legal aspects for all those involved.

Certainly by the time the Heads of States meeting took place in Cancun in 1981, one could detect the onset of disillusionment and stagnation in the

North-South Dialogue. This was confirmed by the disagreements experienced in relation to the passage of the 1982 UN Convention on the Law of the Sea. It is a fact that the numerically small, but at the same time, internationally economically very important group of western industrial countries – of which the Federal Republic of Germany is a member – has been consistently voted down in the international conference diplomacy of the 1970s by the “automatic” Third World majority. This does no more than highlight the difficulty of trying to achieve an effective renewal of the international economic system. The necessary reforms of international economic law will not be achieved through the pseudoparliamentarism of the United Nations General Assembly, and never have been. The difficult task of seeking to achieve voluntarily accepted inter-state consensus in one form or the other is to be replaced internationally by nothing – by a void. It is for this reason that right up to the present day important elements of the real existing international economic system are still based on the (reformed) fundamental principles of “Bretton Woods”, in the shape of the GATT system, the International Monetary Fund system, and latterly the “Lomé Conventions” concluded between the European Community and parts of the Third World.

It must be said on the other hand, that the international debt crisis and the dangers of the “new protectionism” in the 1980s have underlined the everpresent and unabated problems of international economic reform. It would be a dangerous misjudgment if the view were to spread abroad in the industrialised countries that with the foundering of the radical plans regarding the “New International Economic Order” in the style of the 1970s, the topic was closed. The disillusionment phase should act as a starting point for a renewed search in a spirit of improved mutual understanding, for the many compromises, big and small, which are necessary for the emergence of a peaceful change in international economic relations. What is needed is not a “revolutionary” approach to a New International Economic Order but rather a restrained approach with all interests being taken into account in the reform. Public international law theory has its role to play here.

## *II. The Contribution of the International Law Association to the Reform of the International Economic Order*

The International Law Association (ILA), a world-wide association of lawyers enjoying consultative status with the United Nations, and active since 1873, took the decision in 1978 mainly on the initiative of the Third World, but also on the urging of Yugoslavia (for example), to set up an International Committee to look into the legal aspects of a New International Economic Order. Resulting from this decision and subsequent activity, the ILA became involved in the world-wide discussion regarding the reform of

the international economic order. Dr. *Kamal Hossain*, former Minister of Justice in Bangladesh was appointed Chairman, and Dr. *Milan Bulajic* from the Yugoslavian Foreign Ministry was appointed Rapporteur. In line with ILA practice the committee members were drawn so as to represent an international balance. The Federal Republic of Germany gave due recognition to the important task of the Committee from an early stage, and nominated Professor *Günther Jaenicke* (University of Frankfurt a. Main), Professor *Thomas Oppermann* (University of Tübingen) and Dr. *Ernst-Ulrich Petersmann* (GATT-Secretariat, Geneva) to take part in the deliberations of the International Committee. The German Branch of the ILA took the decision in 1983 to follow the example of other countries, and set up a national parallel committee to look into the legal aspects of a New International Economic Order. The members of this Committee – for the most part<sup>1</sup> practitioners and academics active in the field of international economic law – saw it as their task to prepare considered German contributions for the work proceeding on the international level. It was consciously decided not to confine activities to purely ILA matters, and for example, a submission was prepared relating to the signing by the Federal Republic of Germany of the UN Law of the Sea Convention, under the auspices of the “Deutscher Gesprächskreis für Internationales Wirtschaftsrecht” (“German discussion group for international economic law”). The opportunity was also taken to make clear the restricted acceptance of the term “New” International Economic Order by the German side (regarded as a discredited term), allowing for a purely terminological reference to its authors in the Third World.

### *III. The Activities of the International ILA Committee on “Legal Aspects of a New International Economic Order”*

Regular meetings of the International ILA Committee were held to coincide with the biennial meetings of the Association (Belgrade 1980 – Montreal 1982 – Paris 1984 – Seoul 1986) as well as at regular intervals in the intervening periods. The underlying theme of the work was to use the opportunity of free and frank discussion between academics from all corners of the world (as well of course, as written contributions) in order to achieve a softening of fixed attitudes which had appeared in the official dialogue between the industrialised and developing countries since the 1974 Charter of Economic Rights and Duties of States. This should not be interpreted as having been in the sense of “easy compromise” but rather more in the sense of searching out and building on common ground. With the setting up of four Sub-Committees the problem priority areas could be identified. These four Sub-Committees were (I. General Principles with Judge *Manfred Lachs*

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<sup>1</sup> The names of the German participants are in the German Papers Part I.