

Global Business Law

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Global Business Law

Principles and Practice of International Commerce and Investment

Third Edition

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Preface to the Third Edition

John Head

In the Preface to the Second Edition, I highlighted several ways in which it differed from the First Edition. For example, I emphasized how I had given special attention to clarity in presentation of what is surely complicated and unfamiliar material for most readers. This is why, for example, I introduced Study Questions at the opening of each chapter. I also explained how I had decided to trade away some depth for greater breadth of coverage, thus omitting several long excerpts from other books, articles, or judicial decisions in favor of shorter explanatory narratives of my own creation.

In those and most other respects, this Third Edition follows the lead of the Second Edition. Indeed, I have continued to omit or shorten excerpted readings—providing my own summaries instead—in an effort to facilitate the easiest possible understanding of central points of interest. I have reformulated some explanations in an effort to improve readability. And I have modified several Study Questions to highlight new developments.

Naturally, the biggest challenge I have faced in preparing this Third Edition is to reflect the wide array of changes that have occurred in the past five years since the Second Edition was published. They are too numerous to mention here; suffice it to say that my research assistants and I have spent countless hours trying to identify such changes and update the text accordingly. In this process, of course, I have also corrected some errors in the Second Edition. No doubt I have (despite my best efforts) introduced some new ones now, for which I apologize in advance.

I would urge readers to bear in mind a few of the other points made in the Preface to the Second Edition, including these:

- This book does not cover international trade law and regulation, except for a few passages focusing on such elementary and transaction-oriented aspects as (i) calculating tariff rates and (ii) handling questions of export controls.
- Instead, this book focuses predominantly on the nuts-and-bolts transaction-oriented practicalities of international business law from a private-sector perspective.
- This book follows a logical substantive progression—from (i) exports to (ii) licensing of production abroad and then to (iii) foreign direct investment (“FDI”), a progression that many businesses do in fact follow as they “go international”.

Let me also emphasize the importance I attach to *legal authority*. It is, in my view, absolutely crucial to gain some familiarity with the primary documentary sources bear-

ing on international business law—especially the relevant authoritative statutes, treaties, and multilaterally-generated guidelines. In the Second Edition, I collected a great many such documentary sources of legal authority in a separate book called a *Handbook*; and I included numerous cross-references to the *Handbook* throughout the main text of the *Global Business Law* book.

For the purposes of this Third Edition, I have decided to take a somewhat different approach. Instead of having two books (the main text and the *Handbook*), I have incorporated the contents of the *Handbook* into the same bound volume with the main text. In doing so, I have performed a lot of necessary editing, so that what remains of the authoritative documents—appearing now in appendices to this book—reflects my judgment of the most important items. Readers are encouraged to move back and forth frequently between the main text and the documentary appendices (following the numerous cross-references in the main text), in order to gain fluency in the key documents that a practitioner of global business law should have at ready reference.

Lastly, I encourage readers to bear in mind the following few points that I consider essential in commencing a study of international business law using this book:

- *New and old.* The content and practice of international business law can be regarded as a balancing act. A balance must be struck between (1) understanding the historical foundations—how letters of credit were developed, for example, or how the Vienna Sales Convention finally emerged after many decades of effort to codify the centuries-old *lex mercatoria*—and (2) embracing the new and exciting aspects of international business transactions in the fast-changing technological and social environment of today. (The rise of electronic commerce comes to mind in this regard.) A practitioner who gives much more emphasis to the historical foundations than to the current developments obviously runs the risk of obsolescence; on the other hand, a practitioner who disregards the historical foundations and context will be destined to see the new developments as “free-floating” items and will be unable to understand and use them effectively.
- *Risk.* Another kind of balancing act relates to risk. In many respects, the information and perspectives presented in this book reflect the need for international business lawyers to help their clients deal with risk. A mantra of such lawyers might be this: “Reduce risk, reduce risk, reduce risk, then insure”. Countless techniques are available to the well-trained international business lawyer for reducing the intimidating mountain of risk inherent in international sales, licensing, franchising, and investment transactions. The smart lawyer learns to use those techniques effectively, and to advise his or her client as to the outer limits of those techniques—in other words, when to insure (either through commercial insurance or through self-insurance).
- *Ethics.* A focus on ethical behavior in cross-cultural settings is more important now than ever before. If there is any validity to the mid-twentieth-century belief in “world peace through world trade” (and I believe there still is), then surely such world trade (in the form of commercial sales, foreign investments, etc.) must be conducted in a way that respects both culture-specific and global values. Increasingly, a core set of global values are seen as able to “trump” contradictory local values; and some of those core values center on ethics. Transparency, good faith, non-discrimination—these and other values are contributing to the gradual coalescence of an international business ethic. Modern international business lawyers need to be attuned to that ethic and to see how it is gradually get-

ting codified in authoritative law that matters to them and their clients. Two examples of this would be the OECD Anti-Bribery Convention and the expanding influence of international human rights norms in international economic relations.

I shall close with some observations about what I call “normative maturity” in global business law. Having engaged in the practice and teaching of international business law for nearly four decades, I perceive a growing concreteness and harmonization of the disparate rules and processes of international law as it applies to cross-cultural economic relations. From a world in which transborder business transactions occurred in a largely *laissez-faire* environment occupied by a relatively small number of actors, the world of economic relations (especially private-sector economic relations, the focus of this book) has now become criss-crossed with common rules, processes, and institutions, partly because of the leveling and globalizing influence of technological change. Moreover, it is now the workplace (and maybe playground) of thousands of businesses and millions of people, all of whom operate under the influence of those rules, processes, and institutions, and whose activities affect nearly every single one of the seven billion people on Earth.

In short, there is today an unprecedented “normative maturity” governing private-sector transborder business transactions. This is invigorating, of course, but I find it also worrisome—worrisome because the growing integration of the world economy makes it ever more susceptible to shock and collapse. The adage that comes to mind is this: “The bigger they are, the harder they fall.” As enthusiastic as we might be about the growing ease and regularity of selling, licensing, or investment across borders—and about the benefits such transactions can indisputably bring—I would urge that we also be alert to the dangers that can come from global economic integration, or more precisely from the surrender of local and individual self-reliance that such integration makes possible and attractive.

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October 2011

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Preface to the Second Edition

John Head

In the Preface to the First Edition, Professor Bhala has offered the reader an introduction to this book, and to some key choices that he and Professor Frisch made in first creating it. Now I should briefly explain the approach I have taken in writing this Second Edition.

Unlike Professor Bhala and Professor Frisch, I did not undertake this project with a sense of doom or complete it with a sense of failure. After all, my job is substantially easier than theirs, and it is not only a blessing but also a privilege for me to be able to build on the strong foundation that they have laid in their First Edition. In nearly all respects, I concur in the choices that the first authors have taken. Although I have made many changes—some of these are highlighted below—I have done so in an attempt merely to make an already good thing a little better.

My own experience in teaching courses in international business transactions and a range of other courses in the larger field of “international economic law” has led me to place great emphasis on clarity of presentation. For many students, much of the content of this book will be completely new material, taking them into areas of business and law with which they have very little or no experience. In the face of this reality, I have attempted to enhance the clarity of the First Edition by identifying at the beginning of each chapter the key points that students should watch for in reading the material. I do this in part by posing a list of Study Questions that students should have in mind as they undertake the reading. At the same time, I have included—also at the beginning of each chapter—an outline of its contents so that the reader can see at a glance a “map” of the material presented therein. These and other elements (for example, the inclusion of numerous Illustrations in textual boxes) all have a common aim—to bring clarity by giving the reader a fairly discernable “story line” in his or her study of global business law.

In addition, this Second Edition trades away some depth for breadth. While I agree with Professor Bhala that there are benefits to long readings that permit students (and teachers) to get “inside” an important topic, I have struck the balance at a somewhat different point by omitting some of the long case decisions that were found in the First Edition. In exchange, I have tried to offer more explanatory text—and especially to provide more descriptive narratives that I have written myself—for the purpose of filling in a larger portion of the landscape that I believe global business lawyers need to be prepared to traverse. Like Professors Frisch and Bhala, I thoroughly dislike the “snippet” approach that some coursebooks take (to the annoyance, I think, of students and teachers who are often left to wonder just why various “snippets” were included). But I place great value in presenting a broad enough array of topics to equip a student in an

introductory global business law course to recognize many issues that will likely arise in practice. Hence, while I have included shorter (and fewer) excerpts from cases and secondary materials than appear in some portions of the First Edition, this Second Edition includes much more explanatory text. It also includes more extensive references to other sources to which students can refer for further information. These references appear largely in footnotes, which I have used liberally in order (again) to maintain as clean a “story line” in the text as possible, and also in a bibliography that highlights some of the most valuable texts in the field. I have drawn extensively from innumerable authorities, and I wish to cite them not only in the interest of disclosure and attribution but also to provide authenticity to what I have written—and in doing so to emphasize to readers the importance I place on finding, and properly citing, authority for propositions made in any kind of careful legal writing.

Having identified a few respects in which this Second Edition is distinguishable from the First Edition, I should emphasize that the underlying thesis and themes remain unchanged. Allow me to highlight a few of these.

First, this book does not cover the law of international trade regulation. That should, in my opinion, be left to a separate course for reasons that Professor Bhala has already explained. A brief survey of some aspects of trade practice that are quite private-sector-specific—such as the nuts and bolts of making tariff calculations and obtaining export licenses—does appear in Chapter 6, but otherwise international trade regulation (the GATT, the WTO, antidumping duties, and the like) need separate treatment. (An excellent place to find that treatment, of course, is in Professor Bhala’s own *International Trade Law—Theory and Practice* or in his recent treatise entitled *Modern GATT Law: A Treatise on the General Agreement on Tariffs and Trade*.)

Second, this book also gives only brief attention to (or leaves aside entirely) certain other topics that, while closely related to international business, are too broad to include here—as evidenced by the fact that they often constitute the subject-matter of free-standing courses. One such topic is dispute resolution; aside from some brief references to it (in various chapters) in the context of offering guidance about drafting governing-law and dispute-resolution provisions in international business contracts, I have devoted only a small section to dispute resolution in the next-to-last chapter.

Third, this book follows the logical substantive progression that Professor Bhala noted in his Preface to the First Edition. That is, it proceeds from exports to licensing of production abroad and then to foreign direct investment (“FDI”), a progression that many businesses do in fact follow as they “go international.” The logic of this progression is aided, I believe, by my addition of two introductory chapters summarizing the methods and special challenges of global business and of “getting oriented” in a foreign legal and cultural landscape.

Fourth, as Professor Bhala eloquently expressed it, “[t]his is not simply a book for *Americans* who are interested in ‘going international’.... *Global Business Law* aims at the present or aspiring world citizens who are going to practice, and world law professors who are going to teach, in an increasingly borderless business world.” In preparing this Second Edition, I have attempted to go even further than the First Edition did in speaking from a global (not American) point of view, to a global audience. Hence, where the text refers to US law, I have tried to emphasize that the reference is intended to be representative, not restrictive.

Fifth, I have also tried in this Second Edition to focus mainly on the practicalities of global business law, leaving aside most excursions into policy issues—tempting as it is to take such excursions—unless doing so is essential to an understanding of the practicalities. Likewise, I have taken a decidedly “nuts and bolts” approach to the subject of public international law, confining the treatment of that subject (largely in Chapter 1) to those bare fundamentals that a practitioner must know in order to be minimally conversant with and competent in this larger context in which private-sector business transactions take place.

Finally, I have also updated and revised the documentary supplement, now called the *Handbook for Global Business Law*. The title intentionally carries two possible meanings. First, the documentary supplement is a “handbook” for the course in global business law that this text envisions; and indeed numerous cross-references to the *Handbook* appear throughout these pages. Second, the documentary supplement is a “handbook” in its own right—that is, completely separate from the course—in the sense that it contains numerous documents that a practitioner of global business law should have at ready reference in providing advice to his or her clients.

I would greatly appreciate receiving comments, criticisms, even condemnations, of this Second Edition, in hopes of learning from my readers and from my mistakes and thereby becoming a better lawyer and teacher myself. All of us—that is, students, teachers, and practitioners of global business law—are embarked on a path that both demands and deserves our best efforts. Indeed, it is on that rather philosophical point that I wish to close these prefatory remarks, having largely resisted the temptation to dwell on it in the pages that follow. In my view, there are few areas of human endeavor more worthy of our personal efforts in today’s world than that of bridging cultural divides in order to create an Earth of better understanding and hence better cooperation. And, being a believer in the old credo of “world peace through world trade,” I regard the conduct of international commerce and investment not just as a means to financial return but also as a means to that greater end. I would like to think that my contribution to the teaching and learning of global business law can at least indirectly serve that greater end.

John W. Head
May 2006

Preface to the First Edition

Professor Raj Bhala

Perhaps it will come as a surprise to admit that I took on this book project with an impending sense of doom, and that my excellent co-author and dear friend, Professor David Frisch, and I complete it with a sense of failure.

Global Business Law, and the accompanying documents supplement and teacher's manual, are designed for what is now a standard course in the curriculum of American, and indeed many overseas, law schools: "International Business Transactions" (frequently abbreviated as "IBT"), which sometimes is called "International Business Law." The rubric is of no consequence. The real problem is that after teaching the course two or three times, every professor should realize that it is an impossible one. Not even the best of professors with the most gifted of students can cover all aspects of international business law in one semester. There is no clear way to determine what topics should be covered, and what should be omitted. There is no obvious way to focus the course. There is no one best way to organize the voluminous subject matter. In short, teaching a second or third year law student, or LL.M. candidate, the transactional, legal, and policy aspects of global business in one semester is about as easy as explaining to a foreign guest what America is like in one hour.

Given the inherent impossibility of the course, why should I have enlisted Dave, and why should we together have started what is possibly a march of folly? We offer five reasons.

First, because we believe that whatever topics are covered, wherever the emphasis is placed, whichever organizational framework is used, the course can "globalize" law students and professors alike. . . . In this respect, the course makes the notoriously parochial American legal curriculum just a little less so. That is a good thing.

In turn, this introductory survey course in international business can provide the necessary foundation for advanced courses in the specialty areas of international business law, which ought—both in a positive and normative sense—to be offered with increasing frequency in American law schools in the New Millennium. . . .

Second, because while we believe that there are excellent course books available for use in the course, we believe we offer a distinct and attractive alternative. We very much believe in "letting 100 flowers bloom". . . .

Professor Frisch and I have enormous respect for the courageous scholars who have gone before us down the treacherous path on which we now find ourselves. But, we put ourselves on this path because we are not complacent about many of the extant course books. Many try to be all things to all readers. Many are characterized by a very large

number of very short excerpts on an uncontrollably wide array of topics. Many lack vision....

Yes, the IBT course is supposed to be a survey. But, the law student and, dare we admit, law professor ought not be left as confused as she is stimulated, as frustrated as she is enthusiastic....

Professor Frisch and I, therefore, have tried to prepare *Global Business Law* with the “big game” in mind. We endeavor to cover a still-impressive array of topics, but not at the expense of depth. We strive to choose excerpts in *Global Business Law* that convey the range of legal and policy problems, and risk issues, in global business, but then edit them in a way that allows the reader to get as complete a picture as possible about these problems. Thus, we have a smaller number of challenging readings, but the average length of each reading is longer, than most other course books....

Third, and closely related to the second, because we believe that exporting and foreign direct investment (FDI) are the essential foundations of contemporary international business. Here, then, is the vision: the most essential global business transactions a law student must understand are exporting and FDI. These two transactions are the “big game” in global business (excluding finance)....

Fourth, because we believe our alternative is user-friendly.... Most law school academic semesters are fourteen weeks. We have constructed *Global Business Law* so that most of the Chapters are of roughly equal length and difficulty, and thus can be covered in one week’s worth of classes (i.e., assuming a three-credit course, two 75 minute classes, or three 50-minute classes, per week). This plan leaves two weeks, to be used at the discretion of the professor....

Of course, there is more to being user-friendly than organizing a casebook in a way that fits naturally with the academic calendar. We—and our friends at Carolina Academic Press—have done our best to minimize errors, which obviously annoy us all and, to a certain degree, are inevitable. But, we also have taken a few editing liberties to make the excerpts in *Global Business Law* and the accompanying *Documents Supplement* easier on the eye to read....

Fifth, because we believe our alternative is a uniquely cosmopolitan one. The word “global” in the title of this Casebook is no accident. This is not simply a book for Americans who are interested in “going international,” any more than it is a book for a law student—or again, dare we say, law professor—who does not want to take the time to read learn about exporting, FDI, and related regulatory issues in depth. *Global Business Law* aims at the present or aspiring world citizens who are going to practice, and world law professors who are going to teach, in an increasingly borderless business world.... *Global Business Law* tries to provide differences across legal cultures without providing the reader with a false sense of certainty. To the contrary, perhaps the most valuable pedagogical contribution *Global Business Law* can make is to leave the student and teacher alike with a higher level of comfort with, and a greater understanding of, uncertainty....

So, if, for these five reasons, we believe sincerely in the course and are proud of the alternative we offer you, then why do we confess a sense of failure? Because we know from researching and writing *Global Business Law* how vast international business law is, how there is no end to detail, and—most importantly—how there are legitimate competing visions. There are always those readings not included, those organizational frameworks not selected, and those themes not highlighted, that give us pause, indeed doubt, about our own work. In brief, we know that our choices are not necessarily “right,” and that in truth it is impossible for anyone to get it “right.” The more we learn, the more we realize

that there are no right—much less easy—answers, only hard questions that cry out for exploration. Thus, we commend *Global Business Law* to you with intellectual humility...

Raj Bhala
Professor of Law
August 1999

Acknowledgments

I find it more difficult to compose an “Acknowledgments” page for this book than for other books I have written because in this case nearly all the inspiration and insights and incentives for my work have come from hundreds of individual students. Over the past twenty-one years, the men and women who have paid me the compliment of coming to my classes in international business law have made a great contribution to my understanding of the subjects covered in this book. Many of those students have asked interesting and provocative questions, prompting me to dig deeper in my own study and research; some of them have shared their own experiences, thereby bringing to life this or that topic being discussed in class; and nearly all of them have brought an enthusiasm to the study of international business law that has fueled my own efforts to give them at least the basic tools with which to build a successful career as international business lawyers were they to choose that direction for their professional lives.

It would be impractical to try to name all those students, or even to pinpoint the ones whose contributions were greatest, and so I will simply offer this general acknowledgment and expression of gratitude to them. I am deeply indebted to my students, and I hope they will regard this book as a tangible manifestation of what I learned from them.

My acknowledgments do not stop there, however, for several other people have made important contributions that have made this book possible, or at least easier to complete. Obviously, I owe a great deal to the authors of the first edition of this book, and in particular to Raj Bhala, who encouraged Carolina Academic Press to allow me to attempt a second edition. To the editors and other staff at Carolina Academic Press who gave guidance and showed patience, I also issue a “thank you” for yet another successful and enjoyable venture with this third edition.

In addition, I offer an acknowledgment and a note of appreciation to the “big names” who have written coursebooks and treatises from which I have drawn so liberally—both in terms of detailed material and in terms of inspiration and perspective—in composing this book. I would mention in particular the scholars whose names are familiar to lawyers throughout the USA who have taken law school courses in international business transactions since the late 1980s: Folsom, Gordon, and Spanogle. Although he does not know this, I took John Spanogle’s course in International Business Transactions in early 1990, when I was still working at the International Monetary Fund before starting my academic career. Ever since then, I have relied heavily—as have all of us in this field—on the work that he and his co-authors have done. Other “big names” whose work I have found especially helpful in preparing this book are these: John Murphy (my former colleague here at the University of Kansas) and his co-author Alan Swan; Ron Brand; and Paul Vishny. I have also benefitted greatly from the work of Jan Ramberg, James Klotz, and Jerold Friedland, and others whose writings emphasize a practitioner’s perspective. And where would we be without the contributors to the work

of the International Chamber of Commerce and to the practical guides published by Business Laws Inc.? In short, the value I have gained from the work of many authors, and that I have tried here to organize logically and present clearly (with attribution, of course), is what has made this book possible. Hence, whatever contribution this book makes in the understanding of global business law is truly a collective enterprise.

A big note of gratitude also goes to several research assistants who have provided such valuable help to me in the work that culminated in this book. They include in particular Sarah Briley, Jack Brooks, Carrie Coulson, David Dean, Alexandra Lasley English, Maria Neal, Aleks Schaefer, Amanda Sisney, Erin Slinker Tomasic, Dana Watts, Scott Wheeler, and Xing Lijuan. A special nod of gratitude is due to Michele Rutledge for her help in formatting and correcting the text. Support from the University of Kansas General Research Fund is also gratefully acknowledged. And lastly, as usual, I thank my wife Lucia Orth, who remains my most trusted and stalwart critic and conscience.

J W H

About the Author

John W. Head holds the Robert W. Wagstaff Distinguished Professorship at the University of Kansas, where he concentrates on international and comparative law. He earned his English law degree from Oxford University (1977) and his US law degree from the University of Virginia (1979). Before starting an academic career, he worked in the Washington, DC, office of Cleary, Gottlieb, Steen & Hamilton (1980–1983), at the Asian Development Bank in Manila (1983–1988), and at the International Monetary Fund in Washington (1988–1990). Both his teaching and his published works concentrate in the areas of international business and finance, public international law, and comparative law, with a special focus on Chinese law. His principal books, in addition to *GLOBAL BUSINESS LAW*, include *GREAT LEGAL TRADITIONS: CIVIL LAW, COMMON LAW, AND CHINESE LAW IN HISTORICAL AND OPERATIONAL PERSPECTIVE* (Carolina Academic Press, 2011), *CHINA'S LEGAL SOUL* (Carolina Academic Press, 2009); *LOSING THE GLOBAL DEVELOPMENT WAR—A CONTEMPORARY CRITIQUE OF THE IMF, THE WORLD BANK, AND THE WTO* (Martinus Nijhoff, 2008); *GENERAL PRINCIPLES OF BUSINESS AND ECONOMIC LAW* (Carolina Academic Press, 2008); *THE FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS—AN EVALUATION OF CRITICISMS LEVELED AT THE IMF, THE MULTILATERAL DEVELOPMENT BANKS, AND THE WTO* (Transnational Publishers, 2005), and *LAW CODES IN DYNASTIC CHINA—A SYNOPSIS OF CHINESE LEGAL HISTORY IN THE THIRTY CENTURIES FROM ZHOU TO QING* (Carolina Academic Press, 2005, with Yanping Wang). Mr. Head has also written numerous monographs, articles, and other works relating to international law, some of which have been published in Chinese and Indonesian. He has been awarded Fulbright teaching fellowships to China and Italy and has also taught in Austria, Hong Kong, Jordan, Mexico, Mongolia, Turkey, and the United Kingdom and has undertaken special assignments in numerous locations for international financial institutions and development agencies. Mr. Head is married to Lucia Orth. He and his wife live in the quiet wooded countryside southwest of Lawrence, Kansas.

Acronyms

The study of global business law involves gaining a command of many acronyms. The Study Questions that appear at the beginning of the chapters of this book refer to many such acronyms, as well as to numerous specialized terms. The following list provides a fairly comprehensive list of the acronyms and their meanings.

AAA	American Arbitration Association
BIT	bilateral investment treaty
CCC	Commodity Credit Corporation (of the US Department of Agriculture)
CCL	Commerce Control List (in US Export Administration Regulations)
CIF	cost, insurance, and freight (in Incoterms or other, nation-specific usage)
CIP	carriage and insurance paid to (under Incoterms)
CISG	UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention)
CLOUT	Case Law on UNCITRAL Texts (for CISG interpretation)
COCOM	Coordinating Committee on multilateral export controls
COGSA	Carriage of Goods by Sea Act (USA, 1936)
DDP	Delivery Duty Paid (under Incoterms)
EAA	(US) Export Administration Act (1979)
EAR	(US) Export Administration Regulations
E-SIGN Act	(US) Electronic Signatures in Global and National Commerce Act (2000)
ETC	(US) Export Trading Company
EU	European Union
EXIMBANK	Export-Import Bank of the United States (USA)
EXW	Ex Works (under Incoterms)
FCPA	(US) Foreign Corrupt Practices Act (1977)
FDI	foreign direct investment
FOB	free on board (in Incoterms or in other, nation-specific usage)
FSC	Foreign Sales Corporation (USA)
FTZ	free trade zone (or, in USA, foreign trade zone)
G-7	Group of Seven—USA, UK, France, Germany, Japan, Canada, Italy
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product (one measurement of national income)
HTSUS	Harmonized Tariff Schedules of the United States
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for the Settlement of Investment Disputes
IFIs	international financial institutions (MDBs and the IMF)

ILM	International Legal Materials (by American Society of International Law)
IMF	International Monetary Fund
Incoterms	international commercial terms, as published by the ICC
JV	joint venture
LCIA	London Court of International Arbitration
LDC	less (economically) developed country
MAI	Multilateral Agreement on Investment (proposed)
MDBs	multilateral development banks
MIGA	Multilateral Investment Guarantee Agency
MNCs	multinational corporations
MNEs	multinational enterprises
NAFTA	North American Free Trade Agreement
NGOs	non-government organizations
OECD	Organization for Economic Cooperation and Development
OPEC	Organization of Petroleum Export Countries
OPIC	(US) Overseas Private Investment Corporation
PRC	People's Republic of China
SEADOCS	(a form of electronic bill of lading)
SEC	(US) Securities and Exchange Commission
TRIMs	(Agreement on) Trade-Related Investment Measures
TRIPs	(Agreement on) Trade-Related Intellectual Property Rights
UCC	(US) Uniform Commercial Code
UCP	Uniform Customs and Practice for Documentary Credits
UETA	(US) Uniform Electronic Transactions Act (1999)
UFCMJRA	(US) Uniform Foreign-Country Money Judgments Recognition Act
UFMJRA	(US) Uniform Foreign Money Judgments Recognition Act
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	UN Conference on Trade and Development
UNIDROIT	International Institute for the Unification of Private Law
US	United States (used as an adjective)
USA	United States of America (used as a noun)
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Styles, Usages, Citations, and Other Conventions

As noted in the Preface, this book tries to take a global perspective on global business law, rather than a purely American view. One reason for this is to make the book suitable for use outside, as well as inside, the USA. Hence, although many examples are drawn from US law and practice, they are intended usually as illustrations of how one relatively sophisticated legal and economic system handles certain topics (and they are often accompanied by examples from other countries as well). This non-US-specific perspective has some implications for the styles and usages found in the following pages. I have summarized below some of the specific approaches I have taken to several matters of spelling, citation, punctuation, terminology, and formatting that reflect that perspective, or that, for other reasons, I have considered appropriate for this book, and which might be unfamiliar to some readers.

- *Citations in general.* Citations to books, articles, and other legal materials appear in a less abbreviated style than that used by many US law journals and books. I believe the heavily abbreviated style used in US legal texts can be so unfamiliar to a general audience as to create confusion or uncertainty. In addition, in the case of books, I have departed from the practice of putting the authors' names in all capital letters. Instead, authors' names for all works—books and articles and other items—appear in regular upper case and lower case letters; then titles of books appear in large and small capitals and titles of other works appear in italics or, in a few cases depending on the nature of the work, in regular font with quotation marks.
- *Internet citations.* In the case of citations to sources found through the internet, I have not included details of “last updated” and “last visited”, on grounds that such information is likely to be of little use. Most of the citations to such sources were operational as of sometime in 2011. However, it is not uncommon for a document on a website to change from one location to another within the website, so a reader wishing to retrieve such a document might wish to use the “search” function within that website in order to find the new location—bearing in mind that sometimes documents are in fact removed from the internet entirely.
- *Internal citations.* Many of the passages that I have quoted from other authors included, in their original publication, citations to authority in the form of footnotes or endnotes. Throughout this book, unless noted otherwise, I have omitted these citations without expressly indicating “(citations omitted)” or “(footnote omitted)”.
- *Wikipedia.* I also have omitted (in nearly all cases) citation to the authorities that support the factual accounts and explanations that I have occasionally drawn

from Wikipedia. Although I am fully aware of the shortcomings of relying on Wikipedia for many types of research and analysis, I have felt comfortable drawing on such accounts and explanations if (i) they cite sources that, in my judgment, warrant confidence and (ii) they relate to general information that I am confident can easily be substantiated elsewhere if curiosity prompts someone to pursue the issue further.

- *Specific usages.*
 - Throughout this book, the term “state” typically carries the meaning it has in international law—that is, as a nation-state and not as a subsidiary political unit such as the individual domestic states that make up federal nation-states such as India or the USA or Mexico.
 - In most references to the People’s Republic of China, I have used the abbreviation “PRC”, rather than using the name “China”. This facilitates separate reference, when necessary, to (i) the Republic of China (“ROC”) on Taiwan or to (ii) China as a single social and political entity, especially in the years before 1949.
 - The acronym noun “USA” is often used in this book in preference to the commonly-used noun “United States”, inasmuch as there are other countries (such as Mexico) with the title “United States” in their official names. However, the term “US” has been retained for use as an adjective referring to something of or from the USA, such as “US legislation” or “US states”.
 - I have opted for the use of “US” and “USA” without periods, as this seems to be the more modern trend and also follows the usage found in acronyms for other political entities such as the United Nations (UN) and the People’s Republic of China (PRC). Naturally, I have not changed “U.S.” to “US” in any quoted material or official citations.
 - References are sometimes made to US\$, not just \$, given the fact that several countries use dollars as the name (or at least “\$” as the sign) for their currencies.
 - I have used the abbreviation “CE”, for Common Era (or Current Era), to carry the same meaning as the increasingly outdated abbreviation “AD”, for *Anno Domini*; and I have used the corresponding abbreviation “BCE”, for “before Current Era”, instead of “BC”, for Before Christ.
- *Punctuation with quotation marks.* I have followed the less-used but more logical convention of placing quotation marks inside all punctuation (unless of course the punctuation itself is included in the original material being quoted). Doing so allows the text to reflect more faithfully how the original material reads.¹

1. In defense of my decision to use this approach, I would refer readers to H. W. Fowler, *A DICTIONARY OF MODERN ENGLISH USAGE* 591–92 (2nd ed., 1965):

Questions of order between inverted commas [quotation marks] and stops [periods] are much debated.... There are two schools of thought, which might be called the conventional and the logical. The conventional prefers to put stops within the inverted commas, if it can be done without ambiguity, on the ground that this has a more pleasing appearance. The logical punctuates according to sense, and puts them outside except when they actually form part of the quotation.... The conventional system is more favored by editors’ and publishers’ rules. But there are important exceptions, and it is to be hoped that these will make their influence felt. The conventional system flouts common sense, and it is not easy for the plain man to see what merit it is supposed to have to outweigh that defect; even the more pleasing appearance claimed for it is not likely to go unquestioned.

- *Italicization.* I have used italicization in six main circumstances: (i) where I wish to add emphasis (or where emphasis was already inserted in material being quoted from other authors); (ii) in textual references to case names (such as the *Raynor* case or the *Filartiga* case); (iii) in textual references to titles of books (such as Justinian's *Digest*); (iv) in citing law journal articles or other works appearing within larger publications; (v) to signify words or terms from languages other than English (mainly Latin, French, and Chinese); and (vi) in certain "levels" of subsection headings, as a navigational aid to the reader. I assume the context will allow easy distinction between these various usages.