The Theories of International Economic Law in China

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1. Introduction

Along with the development of international economic exchanges, international economic law has become an important new area in the realm of law. In China, the study of international economic law has progressed rapidly since China adopted an open policy. For the sake of utilizing foreign investment to develop its economy, China promulgated the Law on Chinese and Foreign Equity Joint Venture in 1979. Since then, a number of laws and regulations on foreign economic affairs have been adopted. Meanwhile, a great attention has been drawn to the study of international economic law in order to meet the practical needs of an open policy. Foreign works and theories of international economic law have been introduced in China, comparative studies have been carried out on international law and foreign laws dealing with problems of international economic matters, and great progress has been made.1 In 1982 international economic law was formally established as a discipline by the State Education Commission of China. Since then, the discipline has been practiced in universities and colleges, and some universities have established international economic law programs, or international economic law departments or institutions. As the joining of WTO approaches, international economic law studies are even more vigorous in China.

However, what is international economic law? Is it a new branch of law or just a new discipline of legal science? It seems generally acceptable that international economic law is viewed as a discipline of legal science; the focus of debate among scholars in China is whether international economic law constitutes an independent branch of law. Generally speaking, there are two schools of thought: one regards international economic law as a branch of public international law, the other considers it as an independent new branch of law.

Based on the studies of international economic law in China, this article focuses on the discussion of theoretical problems of international economic

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1. Chinese pioneers in the study of international economic law include: Professor Yao Meizhen, Wuhan University; Professor Rui Mu, Beijing University, etc. They published a series of articles on international economic law in early 1980s.
law, including its nature, its scope and its characteristics after a brief review of the controversies over the nature of international economic law in China.

2. The controversies over the nature of international economic law

As mentioned above, the schools of thought on international economic law in China can be divided into two groups.

2.1. International economic law as a branch of public international law

Some Chinese scholars maintain that international economic law refers to public international law rules applied to economic relations between states, thus it belongs to a branch of public international law. According to this opinion, the rapidly increasing rules governing economic relations between states, with the development of international economic intercourse, are enough to be formed as a new branch of international law although, traditionally, public international law mostly regulates political and diplomatic relations between states.²

These Chinese scholars often cite some European scholars' works to support their viewpoints.³ They hold that the subject of international economic law should be limited to nations as well as to some international organizations; the sources of international economic law as mainly international treaties, customary international law, and other subsidiary sources stipulated in article 38 of the Statute of International Court of Justice.⁴ With respect to resolutions or decisions of the United Nations and other important international economic institutions, most Chinese scholars believe that they have certain binding force and can be used as subsidiary means for the determination of the rule of law.⁵

2. The textbook, *International Law*, edited by Professor Wang Tieyia in 1981, has a special chapter named International Economic Law. This is the first textbook of international law in China that contains international economic law.


Obviously, the above view regards international economic law as ‘international law of economy’. From the perspective of methodology, the view emphasizes the traditional classification between ‘public law’ and ‘private law’, between ‘international law’ and ‘domestic law’. International economic law, according to the view, just refers to those international law rules governing economic relations between states and between states and international organizations. The laws regulating economic relations between private persons from different countries are not within the domain of international economic law.

Similar to the above opinion, there is another point of view, which also considers international economic law as public international law in nature. Nevertheless, it advocates that international economic law should be separated from public international law and be an independent branch of law.

2.2. International economic law as an independent branch of law

This group argues that international economic law is the law which governs economic relations among nations, international organizations, and private persons who engage in transnational business transactions. It is ‘the total range of norms concerning economic relations and economic organizations of international society,’ and ‘an independent branch of law including rules of both international law and domestic law.’ International economic law is not ‘international law of economy,’ but the law of international economy, thus, the rules governing transnational economic relations, no matter whether they are international law or domestic law, public law or private law, all belong to international economic law. Most scholars of international economic law in China support this opinion. The author also holds this view.

To scholars supporting this view in China, the correct method of legal study should proceed from objective reality, rather than from conception or theory, and the yoke of abstract conception and traditional ideas of classification of law should be thrown off. The pragmatic method used by American scholars is acceptable for the study on international economic law, since transna-
tional economic activities can inevitably cause transnational legal problems, and the transnational legal problems would inevitably involve international law and domestic law, public law and private law.10

Furthermore, this school of thought holds that international economic law has its own characteristics: its subjects cover not only nations and international organizations, but also natural and legal persons; it regulates not only the economic relations between states but also the ones between private persons engaging in transnational business transactions; it embodies rules governing international economic relations from both international law and domestic law.

Compared with the first opinion, this viewpoint pays attention to the reality, disregarding the traditional ideas of the classification of law. It recognizes the linkage and inalienability between international law and domestic law in the process of regulation of international economic relations, and tries to make the theory comply with the objective law of international economic development.

The debate between the two standpoints still continues today. The focal point of the controversies lies in whether international economic law is an independent branch of law that comprises rules regulating international economic relations from both international law and domestic law. The opponents argue that it is not acceptable to regard international economic law as systems of law or a branch of law. International law and domestic law are different legal systems, separated from each other. Thus, they should not be put together and their dividing line should not be blurred by using the name of 'transnational law' or 'international economic law.' On the other hand, the advocates emphasize the linkage between international law and domestic law in the regulation of international economic relations; therefore they hold that international economic law should become an independent branch of law.

3. The relations regulated by international economic law

It seems to me that the key to grasp the nature of international economic law is to comprehend what kinds of relations should be regulated.

Generally speaking, each branch of law has its own specific relations to regulate, and the specific relations are one of the criteria for the classification of branches of law.11 There is no doubt that international economic law regulates certain economic relations. The economic relations are those


occurring in the process of materials production of the society. Specific economic relations would be set up when people engage in such economic activities as production, distribution, exchange and consumption of goods and provision of services. The economic relations can be classified according to different standards. For instance, they can be classified as vertical economic relations (between government and private persons) and horizontal ones (between private persons). According to the territory involved, they can be classified as national economic relations and international ones.

Then, the problem is how to understand the international economic relations. On the basis of the above analysis, the international economic relations are those occurring in the process of cross-border material production and other economic activities. Specifically speaking, international economic relations refer to those engendering international investment, international trade, international financing, international taxation and other international economic activities.

International economic relations can be understood either in a broad sense or in a narrow sense. In the narrow sense, they only refer to the economic relations between states and between states and international organizations. In the broader sense, they include not only these state relations but also the ones existing between states and private persons from other countries and between private persons located in different countries. Obviously, according to the broad sense, the word ‘international’ should not be simply understood as ‘inter-nation,’ but as ‘trans-nation’ instead. The ‘international’ or ‘transnational’ economic relations cover the relations appearing in the process of administrative control on the part of government over private business activities as well as the relations arising from transnational business transactions by private persons. Evidently, the broader international economic relations are multiplex and being intersected.

It seems to me that what the international economic law regulates is the international economic relations in broad sense, namely, the economic relations among private persons, nations, and international organizations. The reasons are as follows:

First of all, from the perspective of the historical development of international economic intercourse, private persons (natural and legal persons) are the actors (or subjects) of international business transactions. It is well known that, for the purpose of improving the standard of life, the exchange of goods began in primitive times. With the development of economy, transnational business transactions by private persons became more and more frequent. Under the laissez-faire capitalism, capitalist countries generally did not intervene in private economic activities, and international business activities were matters dealt only by businessmen. Then, at the stage of

12. In broad sense, the process of material production comprises material production, distribution, exchange and consumption.
monopoly, the social contradictions existing in capitalism were intensified. Therefore, capitalist countries began to intervene in the running of the economy so as to solve the problems caused by the contradictions. However, the intervention and control over foreign economic activities by governments inevitably led to the conflicts between states. Thus the capitalist countries had to coordinate their economic relations by entering into bilateral or multilateral treaties to alleviate and solve the intense conflicts of their economic interests. Meanwhile, some important international organizations had also been established for the same purpose. From then on, states and international organizations began to take part in international economic activities and became actors (subjects) of international economic relations along with the private persons. Therefore, private persons are all along the actors of international economic relations and they should not be ruled out as the subjects of international economic relations just because of the later participation in international economic activities by states.

Secondly, in reality, private persons play more and more important roles in transnational economic activities, especially the transnational corporations which have decisive roles in the modern international economy owing to the possession of abundant funds, advanced technologies, equipment and management skills. It would be divorced from reality if we disregard this fact and just limit the subjects of international economic relations to nations and international organizations.

Thirdly, international economic relations integrate as a unity, within which the economic relations between states, between states and international organizations, between states and individuals from other countries, and between private persons located in different countries, all closely link with each other. As mentioned above, in the process of material production, the international flow of the essential factors of production, such as capital, technology, labor, gives rise to the international relations of production. The process of international production inevitably involves private persons as well as governments of related countries who act as regulators of or sometime as parties to transnational economic activities, and thus multiplex relations take place among the participants and integrate as a unity. The economic relations between private persons of different countries and the relations between those private persons and related states are the base and prerequisite for the economic relations between states and between states and international organizations. To a large extent, one of the purposes for governments to be involved in international economic relations is to safeguard the normal order of international economic transactions for their private

persons. The economic relations between states, in turn, have a great impact on those between private persons. The existence of economic ties between related countries constitutes a necessary condition for the development of the economic relations between private persons located in those countries.  

Let’s take international investment as an example. If a company in country A makes an investment in a company of country B, a joint venture would be established between the two companies, and so would the management relations of the foreign investment between country B and the company of country A. If country A has an investment insurance program to protect overseas investment, the relations of investment insurance between country A and its company would come into being. Meanwhile, country A and country B may enter into a bilateral investment treaty to strengthen the protection of the investment. They may also be parties to multilateral investment treaties. In the above two cases, the multiple relations arise between the two countries due to the investment and due to functioning of certain international organizations, such as the MIGA and ICSID. The above relations arising from the investment activity have intrinsic links with one another and form a unity. It would not be scientific if we artificially tear apart the international economic relations which are actually a unity.

It has to be noticed that some European scholars who view international economic law as the law governing the economic relations only between the subjects of international law, do not ignore the existence of transnational corporations. As Professor I. Seidl-Hohenveldern pointed out:

‘we would fail to cope with the realities of present-day international life, if we omitted to deal with phenomena like the existence of multinational enterprises or of contract concluded by states with nationals of other states’.  

In order to face the realities and make their statement consistent, the scholars regard individuals (including legal persons) as a kind of subject of international law. If this approach is acceptable, the international economic relations would not be the ones involved in the narrow sense but in the broad sense. Although the problem of whether individuals could become subjects of international law is still in heated dispute in the legal world, the important role played by individuals in international economic relations should no longer be disregarded, no matter what the result of the debate will be.

According to the opinions of Chinese scholars who support the narrow definition of international economic relations, the broad international economic relations could be divided into two parts: the international economic relations between states and ‘foreign’ economic relations between private

persons. The former is regulated by public international law, while the latter
is regulated by private international law, international business law and other
related domestic law.\textsuperscript{17} This classification has its own basis or reasons, but it
also has obvious and insurmountable problems. First, foreign economic
relations can be established not only between private persons located in
different states but also between a state and private persons from other
countries. Second, the foreign economic relations of private persons usually
link with the economic relations between states. Under the conditions of
today’s economic globalization, the domestic markets are closely linked with
the international market, and the conditions of both markets rely on the degree
of regulation and coordination by nations and international economic
organizations. Third, the ‘foreign’ economic relations are regulated not only
by private international and domestic law, but also by public international
law. Thus, foreign economic relations should not be separated from the
unity of international economic relations.

4. The scope of international economic law

Now we turn to discuss which laws and rules should be contained in inter-
national economic law, that is, the scope or the extension of the scope of
international economic law. There is also a controversy over this issue because
of various views on the subjects and the objects of international economic law.
The scholars in favor of a narrow definition on international economic rela-
tions deem that international economic law is only confined to the public
international law rules, such as the international treaties and customs con-
cerning economic relations between states. The scholars who support the broad
definition argue that international economic law comprises rules from ‘public
law’ and ‘private law’, international law and domestic law. The author here
agrees to the latter opinion.

As an integrated body of law that regulates both private persons and
states, international economic law encompasses two components: domestic
law and international law.\textsuperscript{18}

(1) Domestic law. The following laws and rules within domestic law could
also be absorbed into international economic law: (a) Private law governing

\textsuperscript{17} For example, Professor Yao Zhuang at Diplomatic Institution in China holds this point of view.
See Qin Xiaocheng, ‘The Symposium on International Economic Law Organized by Chinese

\textsuperscript{18} The two components have the same content as the three components expressed by Professor
John H. Jackson: private law, national government regulations, and international law. See John
H. Jackson, \textit{Legal Problems of International Economic Relations, Cases, Materials and Text on the
National and International Regulation of International Economic Relations}, pp. 2–3, third edition,
foreign business transactions of private persons. The private laws are generally applied to both domestic and foreign economic activities, and they in principle belong to domestic law. Only those specifically applied to foreign economic activities, such as the former Chinese Law on Foreign Economic Contract, can be included in the domain of international economic law. (b) Public law governing government regulation of foreign economic relations, such as customs law, antidumping law, foreign investment law.

(2) International law. The international law rules governing economic relations could be simultaneously comprised in international economic law, and they include multilateral and bilateral economic treaties or conventions, international customs, and law of international economic institutions.

International commercial customs and practices recognized by international treaties or domestic laws could be respectively embraced by the above two types of law. For instance, a simple international transaction for sale of goods would often involve both domestic law and international law. The contract for sale of goods has to be concluded and carried out in accordance with the contract of law and other private laws of related countries. The export or import of the goods would have to be subject to control by laws or regulations of those countries. Meanwhile, the export or import control of those countries shall not deviate from related international treaties, such as WTO Agreements.

Why should international economic law include multiple laws and rules? Generally, this is determined by the characteristics of the subject and the object of international economic law. As mentioned above, the actors of international economic activities could be not only states and international organizations but also private persons. While the economic relations between states or between states and international organizations are governed by public international law, the foreign business activities by private persons are generally regulated by domestic law. Since the international economic relations cover economic relations among nations, international organizations, and private persons in all, the law governing the aforesaid relations would also include both international law and domestic law.

In fact, both international law and domestic law play important roles in regulating international economic relations. Firstly, the law on foreign economic matters of a state has its effect within its territory, but it can also influence the relations with other countries. For example, the customs law or antidumping law of a state would inevitably affect the import from or export to other countries. Secondly, public international law also has its significant position in regulating transnational economic activities by private persons. The purpose of certain international treaties, such as UN Convention on International Sale of Goods, is to regulate international commercial transactions by private persons. Thirdly and most significantly, certain domestic law and international law rules regulating particular economic relations may be kept consistent with each other through the efforts of international
economic institutions. For instance, the TRIMs Agreement in WTO requires Member States not to implement TRIMs inconsistent with Articles III and XI of the GATT 1994. That is to say, if a State wants to become a member of WTO, it has to eliminate legal provisions inconsistent with the TRIMs Agreement. Under these circumstances, there is no justification to tear apart the laws that regulate the same economic relations and which have similar content in two branches of law.

Furthermore, in order to regulate the unified international economic relations, international law and domestic law need to cooperate, support and complement each other. For example, the law governing international investment includes international law and such domestic laws as foreign investment law, law on foreign exchange control, and tax law. Taking the United States as an example, the US law properly dealing with overseas private investment insurance includes the Foreign Assistance Act and bilateral investment guarantee agreements concluded by the US with other countries. The prerequisite for investment insurance scheme based on domestic law is that there must be a bilateral investment guarantee agreement between the US and the related host country. Only the investment by an American company in a country concluding such an agreement with the United States could be eligible to get the insurance for political risks under the above insurance scheme of the United States. If an incidence of insurance occurs, whether the incidence belongs to political risk must be determined in accordance with the law of the United States. After having made compensation to the company, the government of the United States subrogates the company to claim compensation from the host country according to the investment guarantee agreement. The international law and domestic law complement each other in this way to reinforce their effect and fulfill the functions of regulating the unified international investment relations.

Some Chinese scholars argue that the substantive rules, methods and procedures of remedy between ‘public law’ and ‘private law’ and between international law and domestic law are different from each other, and if both international law and domestic law were included in international economic law, the two legal systems would be mixed up and their functions would be confused and disregarded. Therefore the distinction between the systems of law should be maintained. However, it seems to me that this view reflects a misunderstanding of the broader international economic law.

19. Article 2, Agreement on Trade-Related Investment Measures.
In fact, international economic law does not intend to make the two legal systems mixed simply as one legal system or confuse their boundary, nor to negate or change respective functions of the two systems. International law remains the law governing relations between states or between states and international organizations. Domestic law is still the law regulating certain social relations within the territory of a nation. Only those laws or rules within the two systems of law that directly regulate international economic relations could be integrated into international economic law. As discussed above, the reason for this classification is that these laws or rules with different functions at both national and international levels actually link to, support and complement each other in the regulation of the multiplex and unified international economic relations. Moreover, the penetration between international law and domestic law, between public law and private law objectively exists. This has been recognized by scholars around the world, which is even more apparent in the field of international economic law. To put the related international and national law rules commonly regulating international economic relations together as an independent branch of law is the reflection of objective needs of the reality rather than pooling them artificially.

Another misunderstanding on international economic law is to regard it as ‘transnational law’.22 The ‘transnational law’ proposed by Professor Jessup is composed of all laws involving transnational affairs, regardless of political, military, or economic affairs. It is criticized by Chinese scholars of public international law that the theory of ‘transnational law’ disregards states’ sovereignty and obscures the bounds between international law and domestic law and thus is unacceptable in legal science.23 However, different from the above attitude, Chinese scholars of international economic law hold that the transnational law as a new way of thinking is acceptable, though the system of transnational law is untenable.24 Meanwhile, international economic law is built on the principles of respect for sovereignty, of equality and mutual benefit, aims at the promotion of international economic intercourse, and regulates only transnational economic affairs. Thus, the evident distinction between ‘transnational law’ and international economic law can be easily seen.

There are two other misgivings that have to be taken into account here. One is that if domestic law rules were included in international economic law, the domestic law would be put in the same position as international law, which would provide a theoretical basis for a state to claim for extraterritorial

23. See Shi Jiuyong, supra note 4; Qin Xiaocheng, supra note 17, pp. 433–437.
application of its domestic law. The other is that if domestic law were put into international economic law, the latter would become too broad to study, because it is only slightly possible for anyone to make a detailed study on the laws of more than 100 countries. The former view is based on the misunderstanding of international economic law, regarding international economic law as public international law or the third system parallel to international law and domestic law. If one realized that the nature of the domestic law rules within international economic law is not changed and their effect is only within a state’s territory, the misunderstanding would be cleared up. As to the latter view, it should be noticed that the domestic law within international economic law only refers to those specific laws or rules governing foreign economic relations in a related country, not to those of all kinds of domestic laws.

As the law governing international economic relations, international economic law deals with the problems arising from the activities of international trade, investment, finance and so on. Thus it embraces the following main sub-branches through which it fulfills its functions of regulation of international economic relations.

(1) International Trade Law. International trade law is the law governing international trade relations and other economic relations involving international trade. This consists of trade in goods, trade in technology and trade in services. The other economic relations involving international trade could be produced by the transportation of goods, insurance, payment, settlement, etc. International trade involves not only that conducted between private persons but also that between the related nations and international organizations, thus its legal sources come from international trade treaties, international commercial conventions and domestic law on foreign trade as well.

(2) International Investment Law. This sub-branch is to regulate the relations of international investment, such as the relations caused by foreign direct investment, overseas investment insurance and protection of investment between or among nations. International investment law is composed of foreign investment laws of capital-import countries, the overseas investment

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25. Generally, international economic law mainly comprises five sub-branches: international trade law, international investment law, international financial law, international tax law and international economic institutional law. If making further classification, it may also include international maritime law, international intellectual property law, international environment law, etc.

insurance systems of capital-export countries and bilateral and multilateral investment treaties. 27

(3) International Financial Law. The law regulates international financial and monetary relations occurring within international financial transactions (such as international loan, financing, and securities transactions), international payment and settlement, the administration of monetary matters and the activities of international monetary organizations. The international financial law covers the law and rules drawn from both international law and domestic law, such as the International Monetary Fund Agreement, the legal regime of World Bank, banking law, securities law, and laws on the control of foreign exchange. 28

(4) International Tax Law. This law governs the relations of international taxation existing in tax allocation between or among related nations, in the taxation between states and transnational taxpayers. International tax law is composed of international tax treaties and the foreign tax law of related countries. 29

(5) International Economic Institutional Law. Generally, international economic institutional law refers to international treaties or conventions concerning the constitution, policies, and functions of international economic institutions including global economic organizations as well as regional ones. 30 The International Monetary Fund, the World Bank, and the World Trade Organization are the most important. They are playing active roles in economic globalization and have had, and must have, great influence on the development of international economic law.


5. The relationship between international economic law and other related laws

Some Chinese scholars argue that there is no necessity for international economic law to stand by itself because public international law, private international law and domestic law are all able to fulfill the functions of international economic law. It is true that international economic law is connected with public international law, private international law and domestic economic law. However, it also has its own characteristics and functions that distinguish it from the laws mentioned above and could not be replaced by them.

5.1. Public international law and international economic law

It is well known that public international law is a system of law that governs the relations between states. Historically, it mainly deals with the non-economic international relations as political, diplomatic, military ones between states although it also touches economic relations. Only after World War Two, with the development of international economic relations, is the public international law getting more and more involved into the regulation of economic relations between nations.

There are connections as well as differences between public international law and international economic law. Due to the fact that international economic law includes parts of public international law, its subjects, objects, and sources overlap with those of international law. However, international economic law only regulates international economic relations, including all transnational economic relations arising from activities engaged in by nations, international organizations, and private persons. Thus their characteristics are also different.

Public international law is not sufficient to deal with unified international economic relations only by itself though it plays an important role. According to the theory and practices of international law, individuals are not the complete subjects of international law, although they are admitted to have certain limited personality in international law under certain exceptional circumstances. Thus international law does not regulate the

31. In the opinion of scholars of international law in China, only States and international organizations are the subjects of international law, individuals (natural and legal persons) are not. See Wang Tieya, ed., International Law, Law Publishing House, p. 98, 1981. However, now there are several famous scholars of international law in China who have argued that individual persons may become ‘part of the subject of international law’ or ‘special subject of international law’ to some limited extent due to the fact that the individuals can directly enjoy the rights and bear the obligations of international law. See Li Haopei, The Conception and Sources of International Law, The People’s Publishing House of Gui Zhou Province, p. 22, 1994; Liang Xi, ed., International Law (second edition), Wuhan University Press, pp. 85–89, 2000.
economic relations between states and individuals and between private persons in different countries. So, public international law could not fulfill the functions performed by international economic law.

5.2. Private international law and international economic law

Private international law governs foreign civil relations between private persons, including the personal and property relations arising from cross-border activities by individuals, indirectly by norms of conflict of laws. Its purposes and functions are mainly to solve the problems of conflict and application of law, that is, which state's law should be applied to decide the rights and obligations of the related private parties.

The subject, the object, and the way of regulation between private international law and international economic law are different though there exist certain connections between them. First, the subjects of international economic law include not only private persons but also nations and international organizations. Second, while private international law regulates transnational civil relations (including both personal relations and property relations), international economic law regulates only transnational economic relations, excluding personal relations. Third, private international law regulates transnational civil relations indirectly by conflict of laws, whereas international economic law governs international economic relations directly by substantive law.

Today private international law is faced with challenge. With the development of international exchange, more and more unified substantive rules on private matters have been made and many of them take the form of international treaties. Thus traditional private international law (conflict of laws) gradually shrinks. This challenge has in turn caused debate on the definition and scope of private international law in China. The theory of 'broad private international law' currently in a leading position in China holds that private international law regulates international civil and commercial relations; it embodies conflict of laws as well as the unified substantive law on international commercial matters, because private international law is developing from the solution of conflict by conflict of laws to the preven-


33. There are three different views on the definition and scope of private international law in China: (1) private international law is limited to or includes mainly conflict of law; (2) private international law includes conflict of law, as well as the unified substantive law concerning foreign civil relations; (3) private international law regulates foreign or transnational civil and commercial relations.
tion of conflict by unified substantive law. 34 It seems that private international law, according to this opinion, is no longer the traditional one but a mixture of traditional private international law and international business law, and thus it can be renamed as ‘transnational civil and business law’. However, it appears that the main content of private international law should still be the norms of conflict of laws, otherwise, its nature, its characteristics, as well as its functions would be changed.

Nevertheless, no matter the scope of private international law, it could not replace international economic law due to the simple fact that private international law just regulates private relations involving foreign elements between individuals.

5.3. International business law and international economic law

International business law generally deals with transnational business relations between private persons, such as the matters concerning business organizations, sale of goods, transportation of goods, insurance, and payment. Not so much attention has been paid to international business law in China, because scholars prefer international economic law to international business law. For instance, recognizing that an international commercial transaction involves not only private law but also public law, some Chinese scholars put international commercial law in the area of international trade law for the reason that international trade law comprises both traditional commercial law (private law) and government regulations (public law) on international commercial transactions. 35 It is also acknowledged that international trade law is a sub-branch of international economic law, thereby, the international commercial or business law is also a part of international economic law.

5.4. Economic law and international economic law

Economic law is the public law governing economic relations between a government and its private persons. 36 It generally applies to domestic economic relations as well as to foreign economic relations. Some government regulations are specifically used to deal with foreign economic relations, such as customs duties, antidumping law, foreign investment law, and they can be

36. There has been a controversy on the definition of economic law in China. Most scholars in China now believe that economic law regulates economic administrative relations between a government and its private persons, and that the civil relations between private persons are not included in economic law. See Yang Zixuan, ed., Economic Law, Beijing University Press and the Higher Education Press, 2000.
integrated into international economic law. Thus the overlap between economic law and international economic law appears. Nevertheless, economic law does not regulate or touch the economic relations between states, so its subjects, object and functions are also different from those of international economic law.

In general, the connotation, extension and function of international economic law are different from those of public international law, private international law and domestic economic law. Though connections and overlapping exist, they are not replaceable. Neither traditional public international law nor private international law nor domestic law can fulfill the task of regulation of the unified and complex international economic relations which can be accomplished by international economic law. This justifies the appearance of international economic law.

6. Conclusion

The classification of law depends on the nature of social relations to be regulated, but it is not immutable. With the development of a new type of social relations and new rules regulating such social relations, new branches of law would also appear and develop. This is the case for the development of international economic law.

The emergence of international economic law is an inevitable outcome of the development of international economic relations. Owing to the rapid development of international economic relations, neither traditional public international law nor private international law nor domestic law could fulfill the task of regulating the complex and multiplex relations. Thus, international economic law emerges to meet the need arisen from the reality. Meanwhile, because of the diversity and multiplicity of international economic relations it regulates, international economic law has to integrate both international law and domestic law rules and therefore becomes a new branch of law.

Moreover, it conforms to the developing trend of economic globalization to view international economic law as an independent branch of law. Since the early 20th century, with a view to promoting international economic exchange, some legal barriers unfavorable to international economic intercourses have been gradually removed, private laws in various areas have been gradually unified, and economic laws of many countries have also been coordinated with the rules established by important international economic institutions. The development of economic globalization would accelerate the process of the integration or unification of international economic relations, and this would in turn contribute to the unification of private laws and the coordination of public laws of the countries in the world. More significantly, some important international economic institutions, like the WTO, are becoming more and more important in adjusting international
economic relations, and function as the bridges for keeping domestic law of member states consistent with international law. Therefore, the development of an international economic law that integrates relevant domestic law and international law rules conforms to the trend of objective economic advancement of the world.