The New Neo-Confucianism and International Economic Law

Guiguo Wang*

One of the main characteristics of the world today is economic interdependence among all nations of the international community. This interdependence exists between the developed and developing countries and among the developed countries themselves as well as among the developing countries themselves. It also exists among countries with different histories, cultures and political and legal systems. This international economic interdependence has resulted in every regional market being instantly affected by what happens in other markets. The Asian financial crisis of 1997-1998 is an example. In this economically interdependent world, no country, large or small, can fully exploit its potential without the assistance of other countries. That explains why, in the last few decades, a number of countries have carried out the policy of economic reform and co-operation with other countries. It is common knowledge that where there is a set of economic relations there is also a set of commensurate legal prescriptions governing economic relations. With the development of international economic interdependence, international law, which traditionally mainly regulates political relations and activities of the international community, has moved into the economic sector, since without a relevant legal system governing the activities of the sovereign countries every country is bound to suffer more. The establishment of the World Trade Organization, the International Monetary Fund (IMF) and the World Bank are important examples in this regard.

It appears certain that this international economic interdependence will be dominant in the 21st century. It is therefore practically important and theoretically necessary to study systematically the nature and characteristics of the laws governing the relationship of international interdependence and transnational economic activities, which are referred to by some as international economic law. Studies conducted over the last few decades on international economic law and transnational law either focused on national laws or public international law. Very few of them have given international economic law a thorough and systematic treatment. This is so for

* Woo Po Shing Professor of Chinese and Comparative Law, City University of Hong Kong; Member, International Academy of Comparative Law; Visiting Professor of Law, Nankai University, Tianjin and People’s University of China, Beijing, China; Arbitrator, China International Economic and Trade Arbitration Commission; and Vice President, The Chinese Society of International Economic Law.
many reasons, including research methodology and preferences of the scholars concerned.

This article will employ the ontology of the New Neo-Confucianism (in Chinese, Xin Li Xue)\(^1\) initiated by the renowned Chinese philosopher and contemporary Confucianist, the late Professor Feng Youlan of Peking University, to examine and analyse the relationships, differences and similarities between international economic law, transnational law and public international law. In doing so, the point of view of Western scholars will be compared with that of Chinese scholars. Through this study, a distinction will be made in respect of the nature, in particular the main nature, of law, international economic law and public international law. The essential conditions for the coming into being of international economic law; the effect of international economic integration, as a general trend of the world today, on the development of international economic law; the contents, scope and the basic principles of, including the reasons for incorporating such principles into, international economic law will be examined in detail. Through this systematic treatment it is hoped that most of the important issues relating to international economic law will be clarified.

I. NEW NEO-CONFUCIANISM AND LAW

There have been debates over the last few decades with regard to whether international economic law is an independent discipline of law or a branch of public international law. Before an answer to this issue is attempted, however, the question of whether or not international law and public international law are law must first be answered. Accordingly, what the main features of law are must be examined first. Under the New Neo-Confucianism:

"All the things in the world can be comprehended by means of li (Principle). If a thing exists, there must be a law to it. That is, for each thing, there must be a governing Principle (li)."\(^2\)

"Hence the coming into existence of men and things must be endowed with Principle before..."\(^3\)

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\(^{1}\) The New Neo-Confucianism was articulated by Professor Feng Youlan in six books, namely, *A New Treatise on Neo-Confucianism (Xin Li Xue)*, Commercial Press, Changsha, 1939; *A New Treatise on Practical Affairs (Xin Shi Lun)*, Commercial Press, Shanghai, 1940; *A New Treatise on the Way of Life (Xin Shi Xian)*, Kaiming Press, Shanghai, 1940; *A Treatise on the Nature of Man (Xin Yuan Ren)*, Commercial Press, Chongqing, 1943; *A New Treatise on Chinese Philosophy (Xin Yuan Dao)*, Commercial Press, Chongqing, 1945; and *A New Treatise on the Methodology of Metaphysics (Xin Zhi Yan)*, Commercial Press, Shanghai, 1946. The *Xin Yuan Dao* was translated into English by E.R. Hughes under the title *The Spirit of Chinese Philosophy*, Routledge and Kegan Paul Ltd., London, 1947. All six books were included in *Classics of Contemporary Chinese Academic Research* (Zhong Guo Xian Dai Xue Shu Jing Dian), Education Press, Hebei, 1996.

According to Professor Feng, the New Neo-Confucianism derives from the Neo-Confucianism of the Song and Ming eras. "Thus, in regard to its practical application it bears a resemblance to the Confucians' concern for the common. In so far as it speaks of li (Principle) it bears a resemblance to what the pre-Chi’in logicians designated as universals. At the same time it discovers a suitable position for what in Chinese philosophical language is known as the nameable. In its use of 'ch'i' (emanative material force) the meaning bears a resemblance to the early Taoists' Tao..." The *Spirit of Chinese Philosophy*, ibid., at 204. "If I may be allowed to say so", said Professor Feng, "although it is a continuation of the Neo-Confucianists, it is, if not an entirely new metaphysic, at the least an opening of a new road in metaphysical thinking..." ibid., at 205.

\(^{2}\) Feng Youlan, *A New Treatise on Neo-Confucianism*, supra, footnote 1, at 38.