

## A debate over International Economic Law: the discussion between Adolfo MIAJA DE LA MUELA and Mariano AGUILAR NAVARRO in 1971/72

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In the Spanish doctrine of international law, debates over issues related to the international legal order are quite rare. This dearth of polemics may be the result of a certain uniformity in the theoretical approach taken to legal questions, due to their shared foundations in Roman law doctrine, updated by means of European doctrinal contributions, especially from Italy and Germany. More circumstantially, it might be due to the competitive nature of the processes by which university professorships are obtained, which has encouraged candidates to be cautious in their theoretical approaches, in order to avoid conflict with the committee members responsible for deciding the outcomes of these processes, as well as with potential future academic colleagues.

The debate over international economic law between Adolfo MIAJA DE LA MUELA and Mariano AGUILAR NAVARRO, which took place between 1971 and 1972, was the result of a modest syllabus reform at the Faculty of Law at the University of Valencia that prompted a professor there to propose and advocate the introduction of a subject on international economic law. In the 1950s and 1960s, authors such as Georg Schwarzenberger, Clive M. Schmitthoff, Georg Erler, and Pierre Vellas, amongst others, had drawn attention to the unique features, and even the autonomy, of a new branch of international law regulating economic relations known as “international economic law” (“derecho internacional económico”, “Internationales Wirtschaftsrecht”, “droit international économique” or “droit économique international”). The debate between Miaja de la Muela and Aguilar Navarro was contemporaneous with the symposium held by the *Société française pour le droit international* in Orleans in 1971 under the title “Aspects of International Economic Law”, a fact that serves to underscore the relevance and controversial nature of the question at the time.<sup>1</sup>

Miaja de la Muela (1908-1981) was a jurist who completed his training in the period prior to the Spanish Civil War; by the time the war broke out, he already held the chair in public and private international law at the Faculty of Law at the University of Santiago de Compostela. The civil war truncated his academic career, as he was imprisoned for nearly five years for his republican ideas. He was removed from the chair until 1952, during which period he taught private classes to get by. In 1953, he accepted a teaching position at the University of Valencia,

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<sup>1</sup> *Société française pour le droit international, Aspects du droit international économique. Élaboration, contrôle, sanction. Actes du Ve Colloque d'Orléans, 25-26-27 Mai 1971* (Editions A. Pedone, Paris, 1972).

where he remained until he retired, faithful to his liberal ideas. He published numerous works, on both public and private international law, and trained followers such as Joaquín GARDE CASTILLO, Manuel DIEZ DE VELASCO and Enrique PECOURT GARCÍA, a group that subsequently grew into one of the largest schools of Spanish internationalists.<sup>2</sup>

Aguilar NAVARRO (1916-1992) was named chair of public and private international law at the University of Seville in 1948. There, he belonged to a circle of academics who embraced Christian social thought and followed his fellow faculty member, Manuel GIMÉNEZ FERNÁNDEZ, the former Minister of Agriculture during the Second Spanish Republic. In 1960, when the chair in private international law at the University of Madrid opened, due to the retirement of its current holder, José YANGÜAS MESSÍA, MIAJA DE LA MUELA and AGUILAR NAVARRO could have crossed paths, as both men could have applied for a transfer to fill the important position. However, MIAJA DE LA MUELA renounced to apply, and the chair was awarded to AGUILAR NAVARRO. His “disciples” Juan Antonio CARRILLO SALCEDO, Julio D. GONZÁLEZ CAMPOS and Roberto MESA GARRIDO, who formed the core of a flourishing school of internationalists, followed him to Madrid from Seville. As the chair of private international law, Aguilar Navarro adopted a democratic attitude in his relationships with his colleagues and encouraged faculty meetings and academic debate.<sup>3</sup> With the effective support of his colleagues, he oversaw one of the most brilliant periods of the *Revista Española de Derecho Internacional*. AGUILAR NAVARRO was “an atypical academic who”, according to one of his colleagues, “had not a proper school nor wished to have one” in the clientelistic sense in which it is often understood in the Spanish university context.<sup>4</sup> Politically, Aguilar Navarro staked out increasingly left-leaning positions. He even sympathized with leftist attitudes, which led him to support the student movement against Franco, a stance for which he was sanctioned in 1966 with his removal for two years from the chair. In 1977, following the political changes that took place after Franco’s death, he was elected senator as a member of the Socialist Party and appointed chair of the Senate’s Foreign Affairs Committee.

MIAJA DE LA MUELA’s study *An Attempt to Define International Economic Law*,<sup>5</sup> of which a selection of excerpts is presented here, is an “absolutely innovative” text that made its author a “true pioneer in the teaching of the subject”.<sup>6</sup> Characteristically, MIAJA DE LA MUELA took a panoramic approach to the question, framing international economic law within the parameters of general theory in light of the dual dichotomy of domestic law-international law, on the one

<sup>2</sup> M. Diez de Velasco, “El profesor Miaja de la Muela: ensayo biográfico”, in *Estudios de Derecho Internacional. Homenaje al Profesor Miaja de la Muela*, Vol. I (Editorial Tecnos, Madrid, 1979) 17-29.

<sup>3</sup> J. C. Fernández Rozas, “El Profesor Julio D. González Campos y el arte de la paz”, in *Pacis Artis, Obra Homenaje al Profesor Julio D. González Campos*, Vol. I, (Eurolex, UAM, Madrid, 2005) 65-68.

<sup>4</sup> R. Mesa, *Las buenas compañías* (Fundación El Monte, Seville, 1977) at 68.

<sup>5</sup> A. Miaja de la Muela, *Ensayo de delimitación del Derecho internacional económico* (Secretariado de Publicaciones, Intercambio Científico y Extensión Universitaria, Universidad de Valencia, Valencia, 1971), 67 pp.

<sup>6</sup> N. Fernández Sola, *El pensamiento internacionalista del Profesor Miaja de la Muela. Su contribución al Derecho internacional público y al Derecho europeo* (Mira Editores, Zaragoza, 1999), at 227.

hand, and public international law-private international law, on the other, noting how economic matters were distributed amongst each of these branches. He then examined the structure of international society as a decisive factor in the new regulation of economic relations at the global or regional level. Next, he offered an overview of the doctrinal constructions most related to international economic law. Drawing on this broad general framework, he then addressed the crucial question of the autonomy of international economic law. From the point of view of its content, he noted the plurality of matters regulated by international economic relations (question of substantive autonomy) and the plurality of rules regulating them (question of regulatory autonomy), before concluding that international economic law could not be said to be autonomous from public international law. However, unlike Prosper Weil, MIAJA DE LA MUELA did not accept the notion that, because of its lack of autonomy, international economic law could be classified as a “simple commodité de langage”,<sup>7</sup> but rather considered it to possess certain unique aspects that affected its sources and subjects. At the end of his study, he even suggested a possible syllabus for a subject on international economic law. To this end, he took a very broad approach intended to fill the gaps in the curriculum then used at Spanish law faculties. Following an introduction, the syllabus included a general part, covering sources, subjects (including companies and individuals) and legal transactions, as well as guarantees, legal remedies and sanctions. This, in turn, was followed by a special part divided into three broad areas: universal international economic law (foreign investment, international economic organizations, international trade, international monetary law, and international labour law); European economic law; and, finally, Spanish international economic law. The subsequent autonomy of the universities, the consequent proliferation of law curricula, and the adaptation to the EU’s Bologna system have led many institutions to include subjects on international economic law that are largely consistent with the approach he outlined.<sup>8</sup> MIAJA DE LA MUELA’s contribution was the result of his essentially analytical and descriptive expository and intellectual temperament; though he sought to identify new aspects, he also situated them within a general framework in order to assess their importance. Moreover, as a result of his tendency to avoid cut-and-dried conceptual profiles, he shied away from categorical conclusions; all statements were provisional and subject to exceptions and conditions. MIAJA DE LA MUELA later returned to the subject of international economic law, relating it to the New International Economic Order proclaimed by the United Nations, in works such as “Principios y reglas fundamentales del Nuevo Orden Económico

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<sup>7</sup> P. Weil, “Le droit international économique”, in *Aspects du Droit international économique* (Editions A. Pedone, Paris 1972), at 29.

<sup>8</sup> Cf. L. M. Hinojosa Martínez and J. Roldán Barbero (coords.), *Derecho internacional económico*, (Marcial Pons, Madrid, 2010), which includes the regulation of international trade, the financial and monetary system, development cooperation, and international company and labour law. Unlike Miaja de la Muela’s proposal, it naturally does not include European law, which has taken on, from the point of view of instruction, an autonomy and importance of its own, especially following Spain’s accession to the European Community.

Internacional” (Principles and Fundamental Rules of the New International Economic Order)<sup>9</sup> and “Conjeturas sobre la incidencia del Nuevo Orden Económico Internacional en el Derecho mercantil” (Conjectures Regarding the Impact of the New International Economic Order on Commercial Law).<sup>10</sup>

AGUILAR NAVARRO’s response, some of the most important paragraphs of which have been excerpted here, shares the same title as MIAJA DE LA MUELA’s study<sup>11</sup> and begins with a somewhat disconcerting introduction. He calls MIAJA DE LA MUELA’s study an “anti-monograph”, without offering any rationale for this decision, and then goes on to describe his response as an “anti-review”. One possible explanation is that he considered MIAJA DE LA MUELA’s study to be a reaction and response by a Spanish author to questions raised by foreign doctrine, and his own response to be a reaction to that reaction; that would offer some basis for the labels “anti-monograph” and “anti-review”. It might also be a bit of intellectual flirtation, inspired by the publication, just a few years earlier, by André MALRAUX of a book of biographical excerpts entitled, precisely, *Anti-memoirs*. All of this points to the restless, spirited temperament of AGUILAR NAVARRO, always inclined towards dialectical confrontation. In his “anti-review”, he essentially takes a comparative approach based on his discrepancies with MIAJA DE LA MUELA’s proposals, acknowledging that he has limited himself to “compar[ing] his maps with my drafts”.<sup>12</sup> His response is basically doctrinal and anti-dogmatic, advocating a sociological, ideological and political treatment of the question of international economic law, and his style is allusive; many ideas and considerations are merely sketched, taking for granted that the grist of the references he hints at is obvious or known.

AGUILAR NAVARRO begins his critique by questioning the theoretical framework used by MIAJA DE LA MUELA based on the domestic law-international law and public international law-private international law dichotomies. In his view, this was “classical and somewhat conservative language”.<sup>13</sup> Moreover, he argued, MIAJA DE LA MUELA’s analysis of international society did not give “due attention to the problem of structures and social formations”,<sup>14</sup> as an approach based on structuralism along with Marxism and the ideas of the anti-establishment left would result in a completely different perspective on the phenomenon of international society.

AGUILAR NAVARRO’s disruptive analysis yielded insights and glimpses that led him to identify what today is known as “global law”. Most situations simultaneously pose problems of

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<sup>9</sup> A. Miaja de la Muela, *Principios y reglas fundamentales del Nuevo Orden Económico Internacional. Anteproyecto de ponencia del Congreso del Instituto Hispano-Luso-Americano de Derecho Internacional celebrado en Madrid, 4-12 de octubre de 1976* (Secretaría General del IHLADI, Madrid, 1976), 22 pp.

<sup>10</sup> A. Miaja de la Muela, “Conjeturas sobre la incidencia del Nuevo Orden Económico Internacional en el Derecho mercantil”, in *Estudios de Derecho Mercantil en homenaje al Profesor Antonio Polo* (Editoriales de Derecho Reunidas EDESA, Madrid, 1981) 537-573.

<sup>11</sup> M. Aguilar Navarro, *Ensayo de delimitación del Derecho internacional económico* (Universidad Complutense de Madrid, Facultad de Derecho, Sección de Publicaciones, Madrid, 1973), 72 pp.

<sup>12</sup> *Ibid.*, p. II.

<sup>13</sup> *Ibid.*, p. 21.

<sup>14</sup> *Ibid.*, p. 33.

public and private international law. “International life”, he wrote, “is acquiring a global nature similar to that already acquired by domestic or national life.”<sup>15</sup> It was necessary to move beyond the consideration of the domestic law-international law and public international law-private international law dichotomies in order to analyse what was “a global legal system”<sup>16</sup> based on the matters involved in international trade. In short, his diagnosis was that we were dealing with “a new *law on legal circulation*, intended for new subjects and new matters”,<sup>17</sup> which, ultimately, describes what we now call “global law”.

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<sup>15</sup> *Ibid.*, p. 24.

<sup>16</sup> *Ibid.*, p. 22.

<sup>17</sup> *Ibid.*, p. 63.

Adolfo MIAJA DE LA MUELA, “An Attempt to define International Economic Law”, *Anales de la Universidad de Valencia* (1971) (excerpts)

## 1. Background

At its meeting on 7 July 1965, the University of Valencia’s Faculty of Law agreed to request that the ministry now known as the Ministry of Education and Science implement, on a trial basis, a new curriculum consisting of two stages: an initial three-year stage made up of the common subjects and a subsequent two-year stage for specialization in one of three areas, public law, company law or private law. Following the faculty’s submission of the request, along with an identical or at least quite similar one submitted by the Faculty of Law at the University of Seville, a pilot curriculum was approved, to be the same at both schools, by the Ministerial Order of 13 August 1965, published in the Official State Gazette of 3 September that same year, in accordance with what had been requested.

Under the new curriculum, international studies consisted of a general course on international public law in the second year of the common stage of the programme and two additional courses on international public law and international private law, offered in the respective specializations identified by the same adjectives.

It was clear that, within the disciplines the Ministerial Order had designated as the core requirements, students who chose to specialize in company law would not have the chance to supplement the necessarily elementary internationalist training they received in the common stage of the programme. To fill this gap, the University of Valencia Faculty of Law, at the proposal of its professor of international law, the author of this essay, agreed to create the subject International Economic Law as a new subject for the students of this group.

In the mind of the initiative’s author, and no doubt also those of his colleagues at the faculty who had agreed to the proposal, the primary reason for preferring this name to any other similar one was that its breadth would give the lecturer a certain amount of leeway to choose which topics to include in the new subject, depending on the needs arising as a result of his or her teaching practice and in light of the students’ interests.

Once the author of the current essay was tasked with explaining the new discipline, the primary difficulty became the sheer *embarrass de choix* he faced in selecting the topics to be included in it from amongst the many with some fundamentally economic aspect that were typically included in the syllabi of courses on public and private international law.

In addition to the ultimate felicitousness or infelicity of the selected topics, the greatest challenge was ultimately to form a clear vision of the concept, content, and limits of the new discipline, as well as of its specializations, where applicable, methods and techniques.

One attempt to address these issues can be found in the obligatory preface to the two subjects taught in the academic years 1969/70 —the first in which students who had begun their studies under the new curriculum in 1965 enrolled on their fifth year— and 1970/71. Meanwhile, several comprehensive volumes and numerous monographs published in those years made it possible to compare their authors’ ideas with those that had driven the creation of the discipline of international



economic law at the University of Valencia, as well as the (unavoidably provisional) definition of its scope by the lecturer responsible for teaching it.

In light of this situation, even knowing how poor the results are likely to be, it seems somewhat expedient to systematize certain ideas and data with a view to enabling a possible characterization of international economic law, a task that will be attempted in this essay.

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## 7. Outline of some theoretical approaches to International Economic Law

H) The heterogeneity of the fruits of the aforementioned contributions. The unavoidably exhausting, although far from exhaustive, presentation of the new forms of regulation of international economic issues leads to the conclusion that there is an eclectic tangle of rules, which have in common solely the fact that they refer to economic issues in the broadest sense and for wholly different purposes, amongst which, private interest, that is, the profit motive that has always characterized the participants in economic relations, whilst not entirely absent, combines two fundamental aims that have long been present in national legal systems: increased production and a more equitable distribution of wealth. The minute these and other related goals, such as full employment, free trade, currency convertibility, etc., are pursued by means other than strictly national ones, they call for international cooperation, which must be governed by laws that, in some ways, transcend those of each national legal system. To the extent that classical international law has sought to govern the relations between states, one of its sections has always been devoted to the economic relations between them and, albeit indirectly, to regulating the inter-individual relations intrinsic to extra-national trade, both insofar as the effects of trade agreements are projected in them and by means of conventional rules regarding disputes and others of similar origin in the sphere of uniform law.

At the very least, it can be said that these types of international regulations of commercial phenomena have been strengthened to a hitherto unprecedented degree, and that, alongside these classical forms, new ones have emerged, such as the resolutions of international organizations in this field, especially those specialized in economic affairs, and the expansion of the purposes of international law to include cooperation on economic and related matters.<sup>(49)</sup>

Beyond these general observations, it would be quite difficult to pinpoint any universal aspects with regard to the content brought to the field of international economic law by each of the aforementioned contributions individually or by all of them taken together. The subject matter comprising this new branch of law covers a wide variety of materials. In some cases, the international aspect consists of no more than a declaration or guideline that each state must implement by means of the procedures and resources of its national law. At the opposite end of the spectrum are principles and rules that refer directly to the relations between states and which are binding on them to considerably different degrees. In areas involving freedom of choice, some relations are regulated by rules that seem not to fall under national or international law. And in between these different

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<sup>(49)</sup> W. Friedmann, "Droit de coexistence et droit de coopération. Quelques observations sur la structure changeant du droit international", *Revue belge de droit international* (1970) 1 et seq.

categories are still other relations whose regulation occupies the middle ground of clearly drawing on both national and international regulations.

In terms of its content, international economic law has a core matter when it comes to regulation: international trade and its related institutions. However, neither the degree of connection required for each of these institutions (the monetary regime, taxation, loans, etc.) to fall within the scope of international economic law, nor whether the insufficient nature of such a connection could turn any one of them into an autonomous sector within international economic law, is clear.

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## 8. The question of the autonomy of international economic law

Once one accepts the working hypothesis that international economic law comprises each and every one of the branches assigned to it by the different jurists who have written about it, there arises the question of whether all or some of these branches constitute an autonomous system with regard to national and international law.

This question bears mentioning, as the distinction between these two legal systems is no longer as clear as it was when the proponents of Triepel's and Anzilotti's dualist doctrine represented the *communis opinio*.

There has been no lack simplistic solutions, such as that proposed by Jessup, who grouped all the national and international rules intended to apply to relations that transcend a state's borders under what he called transnational law,<sup>(91)</sup> but even if such a broad category were accepted, it would still be necessary to find a criterion to distinguish between the different types of rules included in that repertoire.

The assertion of a *tertium genus* between national and international law, in which Verdross includes the rules governing the relations between states and foreign individuals in matters of capital investment,<sup>(92)</sup> affords somewhat greater precision. By that and other names, those who advocate the autonomy of the new *lex mercatoria* reach a similar conclusion, a conception that has been bitterly contested by, amongst others, Quadri.<sup>(93)</sup>

The truth is, as already noted, the field is marked by a trend towards the autonomy of that sector of law, which, whilst still weak, has been steadily advancing.

However, even if this trend towards autonomy were to become consolidated, its maximum effect would most likely be the creation of a more consistent body of commercial applications, common to several states, and a sort of non-receptive *renvoi* to this law by the international order. In the author's view, this is how the International Court of Justice's judgment in the Barcelona Traction case, of 5 February 1970, should be interpreted, when it cites as one of the *rationes decidendi* in finding the claimant state to lack legitimacy the distinction drawn by comparative company law between company

<sup>(91)</sup> P.C. Jessup, *Transnational Law* (Yale University Press, New Haven, 1956).

<sup>(92)</sup> A. Verdross, "Die Sicherung von ausländischen Privatrechten aus Abkommen zur wirtschaftlichen Entwicklung mit Schiedsklauseln", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1958), 135 et seq.

<sup>(93)</sup> R. Quadri, *Diritto internazionale pubblico* (5<sup>th</sup> ed., Liguori, Naples, 1968) 90 et seq.



rights, the direct rights of shareholders, and the simple interests thereof, which are not considered a subjective right, and the need for the company's rights be respected.<sup>(94)</sup>

There is no disguising the fact that, in this case, the differentiation between company rights and shareholder rights is more than a mere commercial practice, given that the rules governing corporations are carefully regulated by almost all national legal systems. However, in addition to the fact that it has not always been so, meaning the aforementioned differentiation was the result of private initiative prior to state intervention in the matter, the distinction between laws and commercial practices is attenuated due to its reflection in international law, under which national laws are considered to be simple facts.

One of the most typical parts of international economic law, that referring to foreign trade, was regulated until recently by the standard private international law procedure, the use of rules of conflict of laws. However, once the scope of this discipline begins to widen to include other types of material rules insofar as they help to regulate foreign legal transactions, private international law and international economic law have certain overlapping areas in which they come to be identified, unless one accepts the extreme position embraced by a certain subset of *lex mercatoria* cheerleaders, who advocate the inclusion under the latter of all the economic content of relations involving multiple sovereignties, leaving for the former only questions of capacity and family relations.

Not only do economic law and private international law often overlap with regard to a certain type of relations in life, but the same question can be posed regarding both of them, namely, that of whether they should be limited to rules of international origin or should also include national rules in their respective fields. In private international law, the latter solution has prevailed, as the opposite course would mean stripping it of most of its content. If one accepts that the proportion of international rules is greater in economic areas other than the standard conflictual ones, such as those related to currency, international payments or competition, then these international rules, like those of private international law of this nature, cannot be isolated from the corresponding national ones.

Another part of the content of international economic law is of a distinctly public nature, to the extent that, in a certain sense, it affects the rights and interests of the state, or insofar as, even should it refer directly to relations between private individuals, these relations are legally implemented in accordance with the conditions and limits imposed by the laws of a state or, at times, of multiple states at once.

As soon as there exists in a given sphere sufficiently extensive international regulations, for example, as a result of the conventions and recommendations of the International Labour Organization, there arises an autonomous sector within international economic law, regardless of its degree of universality. The same can be said for the countries of the Common Market with regard to certain areas of the Community regulations, although there is also a symbiosis between the rules emanating from this source and those of a national origin.

In short, the expansion of the scope of international law to include the regulation of relations other than those maintained between states, in addition to broadening the circle of those subject to its

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<sup>(94)</sup> International Court of Justice, pp. 33 and 34, Judgment of 5 February 1970.

rules,<sup>(95)</sup> has led, in just a few short years, to the enrichment of that legal system with multiple rules, primarily regarding economic matters, which, as a result of their very content, tend to be grouped into new chapters or branches of public international law, such as those of international labour law, European Community law, international trade law, international law regarding monetary issues and international payments, international law on loans granted by international organizations, and international law promoting economic and social development, to cite only the most important and highly evolved.

This evolution is apparent in two ways. First, it can be seen in the shift of matters hitherto exclusively pertaining to national law towards an international regulation. It is worth recalling the influence, in the genesis of the so-called exception of domestic jurisdiction, laid out in Article 2, paragraph 7 of the Charter of the United Nations, of the desire of US policymakers to safeguard their country from the potential consequence of the broad programme of economic and social cooperation envisaged as the organization's purpose and set out in Article 55 of the Charter.<sup>(96)</sup> That attitude was one of the swansongs of US isolationism, intended to make it compatible with the obligations that the UN Charter imposes on its members. Although US foreign policy has prepared observers for any attitude, no matter how contrary it might be to the logical principle of contradiction or the legal principle of estoppel, it is nearly impossible to imagine that in today's world, in which Western states co-exist with socialist and developing ones, it could again be possible to hold an attitude opposed to the internationalization of economic and social matters.

The other aspect of the aforementioned evolution within international economic law refers to the differences in the speed or sluggishness, abundance or scarcity, and degree of enforceability of the rules that, owing to their subject matter, are grouped under each of its branches. These factors dictate the degree of autonomy of each of these sectors from international law.

This means that the judgment formed with regard to this degree of autonomy cannot be made based on dogmatic criteria, but is rather the result of historical circumstances. At the time of writing, the autonomous nature of the economic law of the European Communities and of that arising as a result of the ILO's work with regard to general international law is clear. In the field of relations between states and international organizations, the loans granted by certain ones of the latter, such as the World Bank, cannot help but be governed by international law, in a sector thereof clearly differentiated from the rest of its system,<sup>(97)</sup> in contrast to the doctrinal approach to loans of not too many years ago.<sup>(98)</sup>

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<sup>(95)</sup> H. Mosler, "Die Erweiterung des Kreises des Völkerrechtssubjekte", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1962) 1 et seq.

<sup>(96)</sup> E. Pecourt García, "La dimensión económico de la soberanía estatal: sus perspectivas actuales y su repercusión en el Derecho internacional contemporáneo", *Revista Española de Derecho Internacional* (1963) 489 et seq.

<sup>(97)</sup> G.R. Delaume, "The Proper Law of the Loans Concluded by International Persons", 56 *American Journal of International Law* (1962) 63-87.

<sup>(98)</sup> G. van Hecke, "Problèmes juridiques des emprunts internationaux" (Lyden, 1955), at 288 and 289.

Not quite as far along on the path to autonomy is the sector related to the new *ius mercatorum*, although here the work of UNCITRAL is likely to expedite the process.<sup>(99)</sup> For now, contrary to the views of those who would classify this branch of law as completely autonomous, it seems more realistic to limit ourselves to pointing to this tendency towards autonomy, whilst at the same time noting that currently the phenomenon of international trade is unlikely to be extracted for some time as it is largely regulated by national law.

The simultaneous regulation of legal situations by rules of both national and international law also applies to the relations between states and foreign investors, which, as already noted, is a typical instance of what many feel should be regulated by an intermediate order, or *tertium genus*, somewhere between national and international law. Recently, Professor Weil has written of the “relocation” of these contractual relations, in the sense of their removal from the scope of national law; however, this assertion, he adds,<sup>(100)</sup> is of a negative character only and must be completed with a positive one with regard to the system to which they are to be subject instead from hereon. Easier and more logical than sustaining the existence of such a *tertium genus* or settling for a “transnational law” in which these relations are mixed with other national and international ones is to understand that they are subject, albeit not exclusively, to the rules of international law. Until not too many years ago, this thesis was considered unorthodox due to the lack of international personality of private organizations that contract with a foreign state.<sup>(101)</sup> Today, however, this obstacle can be considered to have been overcome in light of the aforementioned broadening of the circle of subjects of this system, as well as the fact, recognized by the International Court of Justice, that the subjects of international relations need not be identical in terms of their structure or the scope of their rights and obligations.<sup>(102)</sup>

Once the current rules of international economic law have been grouped into sectors by legal field, each with its own degree of autonomy with regard to general international law, it is impossible to find any unifying threads amongst them all that would allow one to state that international economic law as whole shows a tendency to break away from international law.

Signs of such a link could only be found if the trend that we have qualified here, with unavoidable ambiguity and following the lead of renowned jurists, as socializing were found to be present in all of the fields likely to be included in international economic law and absent from the rest.

This is the view taken by Professor Vellas, in whose opinion public international law, which, like all legal orders, is, at its core, a social order, corresponds to the characteristics of this order and is thus primitive, inefficiently stabilizing and thoughtlessly liberal.<sup>(103)</sup> In contrast, international economic and social law are, again according to Professor Vellas, characterized by a supranational orientation, an

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<sup>(99)</sup> E. Ustor, “Le développement progressif du droit commercial international”, 13 *Annuaire Français de Droit International* (1967) 289 *et seq.*

<sup>(100)</sup> P. Weil, “Problèmes relatifs aux contrats passés entre un état et un particulier”, 128 *Recueil des Cours* (1969-III), at 157.

<sup>(101)</sup> Lord McNair, “The General Principles of Law Recognised by Civilized Nations”, *British Yearbook of International Law* (1959) 19 *et seq.*

<sup>(102)</sup> International Court of Justice. Advisory opinion of 11 April 1949 (“Reports of Judgments, Advisory Opinions and Orders”, 1949, p. 178).

<sup>(103)</sup> Vellas: *Ob. cit.*, p. 24 to 26.

empirical and hardly formalistic nature, pragmatism, insofar as they seek to achieve effective results, and marked flexibility and mobility.<sup>(104)</sup>

It is not necessary to enter into a discussion of these characteristics here, but it should be observed:

1. That the characteristics attributed to economic and social law are not those that might constitute the opposite of the characteristics assigned to international law in general, but rather are quite different.

2. That some of them, such as that of having an empirical nature, are not absent from the rest of international law, which, almost by definition, due to the limited number of its subjects and their role in the creation of their obligations and the areas of enforceability, often has as its content the regulation of individualized situations.

3. That even if, based on the accurate part of these characteristics indicated by Professor Vellas, one were to fully or partially accept them, they would not serve as a differentiating criterion for the inclusion of certain matters under international economic law or the exclusion of others from its scope.

There is a deeper reason than those already noted to mistrust attempts such as the aforementioned to define economic and social law, namely, that in long-established fields of traditional international law, in which it has always been necessary to accommodate conflicting economic interests, today these same interests are more radically opposed than ever. One need only look to the law of the sea, which, despite emerging as a coherent body of customary rules in the 17th century, did so only as a result of the major economic controversy over the freedom of the seas, in which not only the interests of states came into play, but also those of companies, such as the Dutch East India Company. And today, not only is it possible to correctly identify the influence of the economic factor in the four conventions on the Law of the Sea, adopted at the Geneva Conference of 1958, but the passage of just a dozen years has sufficed to require the imminent revision thereof and, perhaps, even the adoption of new ones, to which end a Conference on the Law of the Sea has already been announced for 1973.

Thus, although there may not be a radical difference between some parts of international law and others, some do have a directly economic content whilst others are not of a predominantly economic nature. Likewise, some fields of international law have made more progress in terms of the spirit of cooperation or the path to socialization than others. Nevertheless, this merely historical difference hardly seems to be the most suitable to proclaim the autonomy of the entire sector, which, today, is either socialized or open to socialization. This is in addition to the fact that many manifestations of international economic relations are based on national policies rooted in nationalist criteria, and yet that is not grounds to exclude them from international economic law.

In short, today international economic law consists of a repertoire of matters regulated not solely by international law, but rather with the help of certain rules of national law. Although some of its branches show signs of autonomy, this autonomy cannot be asserted for international economic law as a whole with regard to the international legal order.

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<sup>(104)</sup> L. García Arias, *Historia del principio de la libertad de los mares* (Editora Universitaria Compostelana, Santiago, 1946).

In its current state, international economic law, insofar as it is defined by both its content and its international sources, is a repertoire of rules, not a system, which is not to say that it is not integrated in a regulatory system: in the sole international law. And this is clearly due to its content and the conflicting interests it harbours, more subject than other parts of international law to the socializing influences of the socialist and developing countries, amongst whose conceptions and those advocated by Western countries, which are logically more reluctant to relinquish the solutions offered under international law in the capitalist era, vital transactional solutions are slowly but surely being developed to ensure the peaceful coexistence of all peoples.

Based on the above discussion, the inappropriateness of concluding with a definition of international economic law is clear. To do so, it would be necessary to specify its two logical elements: genus and specific difference. The first is relatively easy to identify, as it is constituted by the fact of consisting of a set of rules pertaining to the international legal order. The specific difference lies in the economic content of these rules, a content that can be found in almost all public international law. To prevent the latter from being absorbed by the new branch of law, one would have to resort to using as a criterion for inclusion of certain matters in the new branch their predominantly economic character, that is, a merely quantitative aspect subject to historical contingencies.

Following this selection based on the preponderance of economic aspects, there would remain only two ways to take the next step: either to enumerate a list of international rules concerning investments, development, international trade, etc., or to synthesize the content of all these rules under the heading “economic” or something similar, probably of a narrower scope. This latter course would lead to an inaccurate definition, as it would be incomplete. Using the adjective “economic” to describe those rules would be a tautology, all of which once again goes to show the soundness of Roman legal wisdom, as in the saying *Omnis definitio in iure periculosa est*.

Mariano AGUILAR NAVARRO, “An Attempt to define International Economic Law”, *Universidad Complutense de Madrid/Facultad de Derecho* (1972)

[...]

## II. Review of an “anti-monograph”

Recently, ADOLFO MIAJA DE LA MUELA published an essay entitled “Ensayo de delimitación del Derecho internacional económico” (An Attempt to define International Economic Law). Having read the study in some detail and with genuine interest, I have come to the conclusion that it could be an excellent test for my purposes. Indeed, after analysing it, I realized that it could well offer me an opportunity—in this case, both a reason and a cause—to try to enrich my “praxis” in the genre of reviews. In fact, MIAJA DE LA MUELA’s essay could be described as an “anti-monograph”. On closer consideration, it may simply go to show that, in the extremely complex world of human thought, there is always room for a new form. That is especially true with regard to countries and mentalities in which art and imagination run strong. MIAJA DE LA MUELA “attempts a high-seas exploration”, whereas I, more modestly, stop to compare his maps with my drafts. From Valencia, land of maritime trade and long-established trading houses, their professor of international law meditates on the current economic and commercial reality of a world that has not only oceanographically moved on to other seas, but is now attempting to move on to other galaxies as well. And from this Madrid of sprawling bureau staffs, this emporium of finance, and, in a word, this emerging cradle of leftist opposition that questions the notion of *Homo faber*, of the ethical exaltation of work, and yearns for the arrival of a world of leisure and absolute freedom, I contemplate the same economic and commercial issues, only with a different horizon, combining that playful dimension with a growing sense of pessimism, even tragedy... In such conditions, it is hardly surprising that I would grant myself licence to engage in these “anti-monograph” and “anti-review” acrobatics.

[...]

At both the national and the international level, the radical distinction once drawn between public and private law has begun to erode, a phenomenon that has gradually expanded outwards from the domestic sphere, with serious consequences for the nineteenth-century understanding of the relationship between private international law and public international law. It is increasingly common to speak of questions and issues that, to a certain extent, lie “at the crossroads” (to borrow the serendipitous expression used by the Italian jurist FERRARI BRAVO). By way of example, one might point to the problem of international companies and European societies (CONFORTI).

This is nothing new: it is merely the intensification of a long-established phenomenon. In many cases, the public and private spheres interact; private and public international law complement each other.



Today, most situations simultaneously involve issues of both public and private international law. International life is acquiring a global nature similar to that already acquired by domestic or national life.

MIAJA DE LA MUELA continues to advocate what would be called the classical position, which today includes a clear dose of conservatism. I am referring to the significance of foreign public law. He maintains the traditional view that allows, at most, for what might well be termed the indirect effects of foreign law. Various legal techniques are invoked, especially on the basis of the degree of autonomy found in what some call space law, or it is simply acknowledged that the rules of public law should indeed be delimited in space, but in practice each national legal system unilaterally defines “its own rules of public law”, thereby excluding both the extraterritoriality of the rules of public law and the enforcement or differentiated recognition of foreign public laws. In my view, this attitude should be revisited, especially if we are to seriously address the issue of international economic law. We are unlikely to get far in the creation of this new field of law, if we continue to embrace such traditional attitudes on this pivotal point. We cannot ignore that this commercial activity, these many facets of the economic process, takes place in a socialized world and one with an interventionist state, whether in its role as an important tool within a socialism that is currently state capitalism or within the context of a neo-capitalism that does not stray far in its attempt to achieve “an organized economy” based on a likewise state capitalism. These different paths, both translated by the empire of bureaucratic apparatuses, lead to an economic process heavily conditioned by public law.

If we wish to move beyond the purely national, and nationalist, contours of the current economy – and we inevitably will – then we must devise a procedure to give international legal significance to a multistate economic system highly focused on public law. Scholars, and even certain legal texts, such as the Bretton Woods Agreements, have considered it logical to revise negative attitudes towards foreign public law, especially in matters of contracts and the exchange system. Little by little, this revision is taking place, and recently even an author as vaunted and ungiven to radicalism as NEUHAUS, has come to view the gradual recognition and enforcement of the rules of foreign public law as a change we must make for the better.

This dichotomy based on the interplay of idealized and abstract “archetypes” may be a useful reference point for divvying up the various matters cited by the learned professor from Valencia. In practice, however, things will be somewhat different. We are dealing with an economic reality that requires highly complex measures and regulations from the legal system, in which the public and private, the national and international, intersect and, in so doing, help to change its original characteristics. Pure, clear situations will be a rarity, and we will gradually witness the rise of a legal system that mixes the public and private, the national and international, only not until these fields have first exerted a reciprocal, modifying influence on each other.

[...]

A true observer, and, by the same token, one whose desire to understand lends him a critical perspective, can only wonder whether this way of presenting the “changes in the structure of international society” does not suffer from a marked mismatch between the plan, the path followed,

and reality. I have the impression that the parties involved are “acting” from the surface, somewhat removed from the actual phenomena. We are given the impression that these structural changes are created “exclusively through the concurrence, in their daily doings, of a group of very different actors, each of whom recites his agenda and, in so doing, makes his own small contribution”. No wonder that, in following this method of observation and analysis, the Valencian professor had no choice but to conclude the relevant section expressly noting the “heterogeneity of the fruits of the aforementioned contributions”. The hotchpotch is too great for us not to get lost along the way. And I would note that none of the factors considered by MIAJA DE LA MUELA is lacking in significance. However, in my view, certain unavoidable distinctions should have been drawn between them. Perhaps the root of this procedure, which I consider to be relatively misguided, lies in having failed to give due attention to the problem of structures and social formations.

Throughout historically, groups of humans (whatever their make-up, numbers or goals) have always had a structure and a system of rules governing human behaviour. However, it would be highly inaccurate to accept an analysis that failed to identify the quantitative and qualitative differences between the various ways in which these social structures and sets of rules have historically taken shape. Today, at both the national and international level, speaking of structures and legal systems is a vastly different problem than it might once have been. A new way of understanding history that pays considerable heed to the science of human behaviour, the problem of structuralism itself, and its inevitable overlap with the conceptions of Marxism and the opposition left, together with a critical and functional assessment of positive law, yields an entirely different view of the phenomenon of the structure of international society. It involves examining the constituent elements of the largest social formation, namely, international society (without neglecting the tensions and contradictions between it and those represented by national societies), which requires taking two things into account: the primacy of the economic factor, which is given an even greater role than in Marxism, not so much due to the specific weight of the economy, which today tends to be more qualified, but rather because of the greater complexity of the economic reality and the existence of these *multiple levels*, which, although already taken into consideration by the classic Marxist thinkers, are today more involved, more subject to their own contradictions and dialectical tensions. As a result, class conflicts and the power dynamics between the classes are diversified depending on the nature of each layer of the social formation. This different way of understanding the relationships between the levels of a social formation, coupled with an equally different way of understanding social class and class struggle, renders the issue of the structure of international society problematic in a way that has previously not been considered. If we add to this a review process with regard to assessment of the subjective factor, of the actions of the ideological superstructure, which is these days especially evident in Maoism and the behaviour of protest groups, but is likewise reflected in the national ways that peoples of colour have chosen to interpret socialism, our horizon is even more complete.

One way of addressing these structural problems, without avoiding the subject matter arising from what the structures represent today, is to start from certain primary realities. A hugely important line can be traced from the field of international politics to understand the structural changes. In recent times there has been talk of the replacement of the bipolar world with a sort of “lopsided” triangle (as

it has been described by certain Italian commentators) that was established once the Maoist regime was recognized. In this triptych (which, as FRIEDMANN noted in his course at the Hague, is eerily reminiscent of the world described in ORWELL's 1984), we can see the coexistence in time of three different structures, given the notable differences in their social formations. The neo-capitalist world, the world community of socialist peoples (of state capitalisms, the determining factors of which are their respective bureaucratic formations), and the Maoist world, which, at least for now, has clearly distinct characteristics at all levels constituting the structural edifice of its social formation. To analyse the structural changes in international society today, we must start with this reality. Some proponents of the current school of leftist thought maintain that LENIN's was the last bourgeois revolution carried out on behalf of the bourgeoisie (the Tsarist bourgeoisie's historical incompetence and its lingering impact on how Russian social democracy understands political action is a fascinating topic of utmost importance). Setting aside the critical reservations and requisite qualifications one would have to make with regard to this statement, the fact of the matter is that, albeit by following a different path, the USSR has ultimately come to behave well in the critical field of how it understands the apparatus of state power and of designing a diplomacy not wholly at odds with that used by the capitalist formations. The case of Mao's China theoretically introduces an element of rupture. The Maoist revolution presents a whole complex cast of characters that markedly differentiate it from that famous October. Thus, the changes in the structure of international society now have certain features that are clearly different from those taken into account in previous eras. In the simplest possible terms, one could speak of three major changes in the structure of international society. The *first* would have occurred as a result of the effects of a civil war in the capitalist world (which was exactly what the war of 1914 was); the *second* would have arisen as a consequence of WWII and of the prominent role achieved by the USSR; and the *third* is taking place right now when, through Mao's people, the Third World is gaining new momentum and political stature.

The first two major changes in the structure of international society gave rise to, and retain, a bevy of PhDs and specialists. The *first change* was the subject of a vast body of literature focused on the international crisis and the need to create a collective security system. The *second change* was closely related to the legal analysis of peaceful coexistence, the scope of the principles of friendly relations and co-operation, according to the Charter, and the process of modernization and democratization of international law. As for the *most recent* structural revolution, that which could give a more prominent role to Maoism, the first hesitant voices have not yet been heard.

As for Chinese Maoism, the judgments will need to be made in keeping with the pace at which Chinese praxis develops. Within the Maoists' particular interpretation of Marxism and, especially, understanding of man's historical task, it remains to be seen which path the Chinese will choose now that they are becoming "involved" in the problems of international society. What is already an especially relevant fact is the different way in which the Maoists assess the anthropological problem, the role of the cultural revolution, the scope of technocracy and economic development models. This arena contains important factors for predicting how Peking will influence future changes in the structure of international society.

For now, insofar as the *economic and trade order* is concerned, we have witnessed a confrontation between the Western capitalist world and the Soviet Union, which, in the current state of affairs, has won the support of decolonized peoples and the Third World. All the legal and economic strategy, which has served to constrain a United Nations initially manipulated by the United States, has been the result of a Soviet-led offensive backed by the developing countries. *Legally*, it has been enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation. *Economically*, it is patent in the Development Strategy and in new international institutions, including, amongst others, the highly significant UNCTAD, UNIDO and UNCITRAL. With regard to the chosen problems and the criteria we select to outline the structure of international society (including stratification and social classes), attention should be called to the contribution to these realities attributable to the Western, socialist, and developing worlds. When we speak of the contribution of individuals, we are not adding another hub comparable to the other three. We are simply giving special treatment to the actions of economic groups that are not purely state-based; in fact, however, these groups are part of the capitalist world and of the transitory ways of organizing relations of peaceful coexistence in the realm of economics and trade. Scientific doctrine, which MIAJA very selectively included in his interesting work, is a likewise heterogeneous item in the list of contributions.

[...]

#### 7. *The contribution of individuals*

“Current international society”, writes MIAJA DE LA MUELA, “cannot be reduced to coexistence between states. By their side are numerous intergovernmental and non-intergovernmental organizations whose actions often transcend national borders”. These organizations are the context within which international economic law is formed. The actions of non-governmental organizations are thus tremendously significant, and they moreover enable the introduction of the individual element, of this emerging international community of merchants.

The contribution of individuals, of professional groups, is an extremely complex problem. In terms of the simple acknowledgment of facts, it cannot be denied that certain professional corporations, institutes, etc., have given rise to a type of company that has acted as the catalyst for this move towards an international economic law. If we look at the formation of essential focal points, such as international commercial arbitration, the exchange system and international payment methods, international sales, the seeds of an international banking law, standard contracts and terms of trade, etc., we cannot help but conclude that this new legal system intended to govern trade and the international economy was conceived of in the archives of these private institutions. This is a true and perfectly explicable fact. Law, in general, arises out of need, out of practice. General law operates most intensely with regard to activities in which praxis is decisive. And so it is with the economy and trade. There is an upside to this process, namely, the distance it provides from government bureaucracy and its proximity to the groups directly involved. We are left with the sensation that the law formed through these channels is realer, more spontaneous and authentic. There is also a downside, which is

that situations of force and inequality can easily form and harden in the nature of these groups. It is the world of lobbies that we brush up against when we consider the actions of these non-governmental bodies. They are bodies of interests that are unilaterally polarized around two different situations of hegemony. Nearly all of these bodies represent only corporate, capitalist interests; and in these areas, wealthy peoples maintain an obvious leadership. Until the forces are balanced, through the participation of labour and a prominent role by developing peoples, the action of these “individuals” must be assessed with extreme caution. And this is essential to understanding forms of unification based precisely on this so-called spontaneous action by stakeholders.

MIAJA DE LA MUELA examines some of the most spectacular achievements of this private action, of this contribution by individuals. Specifically, he looks at arbitration, the international sale of goods, international contracts (e.g. contracts with no governing law) by international companies, etc. One might add other, equally essential issues, such as exchange law, bank loans, the international payment system, shipping, insurance, etc. It is not hard to find our fears confirmed in each one. International contracting, through the free use of general conditions, of standard contracts, could eventually turn the weak into mere satellites of the strong. Shipping was regulated by imposition of the countries whose merchant fleets dominate this form of transport (the law is skewed in favour of shipowners). International commercial arbitration has responded to the interests of the powerful, which explains the ultimate resistance to it on the part of decolonized peoples. As for business corporations with international operations, one hardly needs extensive arguments to see how they can be the instruments of a dominant economy (this is especially clear in the case of so-called multinationals, which, as VERNON himself has pointed out, pose an economic danger and perceived threat to developing countries).

[...]

## VI. An outline for a system

With MIAJA DE LA MUELA's theoretical framework in hand, all that remains to be done is simply to add to it and offer an outline for a system.

In my view, it should include a series of theoretical works, which, in some cases, do not even claim to address the problems that my colleague from Valencia and my department in Madrid have been working on. It is necessary to review the most important studies in the field of international commercial and economic institutions (e.g. Professor SERENI's course at the Hague Academy, *International economic institutions and the municipal law of states*)[<sup>18</sup>], which continues to offer pertinent suggestions today. We must delve deeper into the literature on the new international trade law (in which the work of MANN, GOLDMAN, KAHN, etc., is of obvious instructional value). Above all, and must urgently, we must examine the legal channels through which a new “law on the legal circulation”, intended for new subjects and new matters, might flow. In this regard, the analysis of the types of contracting used in commercial relations between states and international organizations, or

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<sup>18</sup> A.P. Sereni, “International economic institutions and the municipal law of States”, 96 *Collected Courses of the Hague Academy of International Law* (1959) at 133-237.



between states and individuals, is invaluable. The same is true of the ad hoc means for settling legal and other types of disputes. It is a reality that calls for appropriate and perhaps even unprecedented instruments and institutions.

The system on which our department has been working, which is currently only a draft work plan, consists of the following key developmental stages. We believe that, with all curricula of this kind, historical instruction is essential. In the case of the subject at hand, this historical perspective is justified by even more complex and sound reasons than in others. The historical reflection must include an institutional analysis, careful consideration of the organic schemes used to contextualize and root these problems. The more or less case-based development, always flexible and mutable, of a repertoire of problems, with knowledge of what each one is and means in itself, and of what links them together, is the programme's third and perhaps central step. These foundations must then be used to form the core of what this General Part of which ERLER has spoken must be. It is necessary to address the autonomy and physiology of the different types of laws to be used to regulate this reality. The issue to be addressed likewise includes forms of production and unification. The special significance of the Principles and Standards must motivate students to look at the sociological and even socio-psychological elements that influence economic and commercial behaviour. The problem of the relationship between an imperative regulation and a markedly dispositive one, contractual and conventional, is certainly one of the key stages of this work plan.

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#### VII. *Programmes based on problems and overlapping disciplines*

Reading the programme outline that MIAJA DE LA MUELA presents (pp. 66 and 67) confirms our initial idea: we are at the start of a process, and more than anything else what we have to do is to record, case by case, the most individualizing traits of this international economic and trade reality. One recommendation we would all do well to follow, and to apply to ourselves, is to strive to prevent the plasticity found in the realities from leaking into the exposition of what will one day need to be built as a system in the form of relative disorder. MIAJA's programme falls victim to a certain anarchy with regard to the organization of certain issues, which is clearly visible in two key areas: in universal or general international economic law, due to the significance that could be given to the triad that would constitute the special part, that is, commercial sales, monetary law and labour law, and in the exposition of the European Communities, in which the jumble seems even greater (different problems, such as competition law and the approximation of laws, the recognition and enforcement of judgments, and association agreements, are included in the same list).

Creating a legal unit, introducing a new private legal science relying on economic and commercial matters, is no mean feat. We need not be Marxist to know that the scope of economic activity is immense, and that it is not feasible for us as lawyers to transform it into the specific subject matter of an autonomous legal science. The failed attempts at creating an economic law, which once so excited the mercantilists, bear witness to this difficulty. The mercantilists have long since given up on seeing the complete regulation of mercantile or commercial activities in their discipline. The challenges faced



by company law are due to similar reasons. Before us stand the world of economics and the world of trade, which, far from being at odds, are often intertwined. This relationship is more visible to the mercantilists, who, like Professor POLO amongst us, see in commercial law the economic performance that, as a professional, one carries out in trade. Law has to provide the corresponding regulation, but it must be drawn from multiple legal disciplines, which remain distinct, that is, which are not merged to create something entirely new.

If we wish to reduce this dispersion, operating with groups rather than individualities, I would venture to submit a working hypothesis based on three dimensions: an international development law (which could be like the peculiar legal philosophy of this reality, with a vision that, whilst clearly not at all metaphysical, is nevertheless profoundly anthropological and, therefore, historical), an international trade law (primarily focused on the regulation of foreign trade), and a private commercial law, such as that which UNCITRAL has set for itself as its programme and object. This would be the core; later would come the complementary disciplines, amongst which, labour law and social security law would certainly be examples of the first magnitude, but which would ultimately operate based on whatever socio-political systems might prevail in future.

Finally, another recommendation: in my view, the existence of various forms of socioeconomic integration (of differing natures and degrees of development), such as the European Communities, LAFTA and Comecon, should be taken as a sign that we should focus our basic studies on them as well. The existing literature on Community law, that which is gradually being developed around LAFTA (a good example being M. A. VIEIRA's course "Le droit international privé dans le développement de l'intégration latino-américaine"<sup>19</sup>) would seem to support this view.

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<sup>19</sup> M.A. Vieira, "Le droit international privé dans le développement de l'intégration latino-américaine", 130 *Collected Courses of the Hague Academy of International Law* (1970) 351 et seq.