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China’s Private International Law (1978–2008)

Abstract Since 1978, China’s private international law has made great achievements in publication of textbooks and reference materials, translation of foreign works, academic research, construction of subjects and disciplines as well as participation in international exchanges. The research on academic issues, to some extent, has helped to address various puzzles in legislation, judicature and construction of the discipline of China’s private international law, and has formed some theories in the representation of “one body of two wings.” Although there are still some flaws and issues, Chinese scholars in this field have both the capability and the mission to create a theoretical system for private international law with Chinese characteristics.

Keywords private international law, legislation, judicature

The birth and development of law is inseparable from the social environment in which it exists. What private international law regulates is international civil and commercial legal relationship. Therefore, both its occurrence and development are not possible without an open state policy and a social environment in which people of China can have equal interaction with foreigners. From 1949, when new China was founded, to 1978, due to historical reasons, China was in a relatively closed social environment, and it was not possible for China’s private international law to develop quickly. The theory of China’s private international law mainly followed that of the USSR, and there were very limited relevant studies and publications of private international law papers and works. In 1978 the implementation of the reform and opening up policy and the consequently increasing civil and commercial intercourse involving foreign parties have not
only provided the soil in which private international law exists, but also led to the healthy development of private international law. The development of China’s private international law started to step in the normal track.

1 Development Process of China’s Private International Law over the Past 30 Years

In 1978, China started to implement the reform and opening up policy, when private international law regulating international civil and commercial legal relationship gradually attracted attentions, and some works of private international law started to appear. In 1981, Private International Law (Book 1 and Book 2) compiled by Ding Liu and Shangjin Zhang and Fundamentals of Private International Law by Zhuang Yao and Jisheng Ren were the first works on private international law of new China, and Private International Law by Depei Han (ed.), was the first textbook of private international law under unified national compilation since new China was founded in 1949, (Han, 1983) and had undoubtedly played an important role in the dissemination of knowledge in private international law throughout China, further facilitating the research of China’s private international law. Depei Han, compiler of the textbook, and such scholars as Ding Liu, Lixin Chen, Shuangyuan Li, Xueshan Zhu, Xianyu Yu, Jisheng Ren, Zhuang Yao, Zhongbo Zhang and Hua Qian have not only become leaders of private international law in various key universities, but also trained a large number of scholars in private international law, laying a solid foundation for the development of China’s private international law. Ever since 1986 when the General Principles of Civil Law was promulgated, Chinese scholars have been more and more enthusiastic about the research of private international law, and private international law has witnessed the rapid development in China, as is introduced in the following paragraphs.

1.1 Academic Discipline

The research office of international law, Law Institute of the Chinese Academy of Social Sciences was the first to resume enrollment of graduate students in private international law in 1978. Thereafter, Peking University, Wuhan University, Renmin University of China, China University of Political Science and Law and Foreign Affairs College also recruited graduate students in private international law. In 1982, Wuhan University and Peking University enrolled doctoral candidates in private international law. The Academic Degree Office of the State Council combined public international law, private international law and international economic law in the discipline of international law in 1997. At