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Development of International Trade Mechanisms

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Abstract: The analysis of the notion, judicial nature and mechanisms of international trade law is carried out. International trade law was historically comprised of trade customs which were subsequently consolidated into commercial codes. Later on bilateral contracts were concluded. However, a tendency towards multilateral regulation came into being only in the second half of the 20th century. Seven periods are singled out in the development of international trade law. Formation and development of international trade law is dependent on the foreign policy and domestic policy prerequisites as well as tendencies typical of international trade relations as such. Basic principles of international law are a system-forming centrepiece of international trade law.

Key words: International law, international trade law, international legal regulation, principles, domestic policy prerequisites

INTRODUCTION

The study of the notion, judicial nature and place of compound structural complexes of international legal norms, created by the international organisations to regulate the world trade turnover, allows for deeper understanding of the mechanisms and consequences of the influence that the international organisations have on legal regulation of international trade, enriches our views on the content of the concept of international trade law. An additional argument in favour of conducting such a study is lack of thorough theoretical examination of the indicated questions both in Russian and foreign scientific research into international law (Calster, 2000).

For example, the publications of the Soviet union period do not contain one standard methodology for studying various institutes of international trade law, variants of which however, can be found in the works of the famous scientists. Besides, total lack of the concept of international trade law can be observed. Certain aspects of it were either studied in applied practical terms-in works devoted to international trade, international private law (L.A. Lunts "Foregn Trade Purchase and Sale" in 1972; M.M. Boguslavsky "on the international economic Relations" in 1970; the collective monograph written under the guidance of V.S. Pozdnyakov and entitled "On the Legal Regulation of Export-Import Operations" in 1970) or in the concepts on "International Business Law", "Universal Economic Law" (Koretsky "Essays on International Economic Law"), "international public civil law", "international property law" (Genovsky, 1979).

During the post-Soviet period the situation did not change significantly. Now a days researchers either touch upon only certain issues of legal regulation of international trade relations or study them from the standpoint of other concepts and aspects of research. For example, professor V.M. Shumilov proposed his own conception of "the global legal system", in which he gives a new definition of the notion of international trade law different from his previous one. He defines it as a set of norms that regulate the relations between states in the sphere of international trade (Shumilov, 2001, 2008). On the whole, the definition given along the lines of his conception in the context related to the international trade law reiterates and interprets V.M. Koretsky's views on public and private elements being interwoven: only as the authors writes, … one should look at reality not within the framework of "International Economic Law" (IEL) but from a wider viewpoint. It is not only IEL but the entire international law that is gradually interweaving with national law and thus, gives rise to some qualitative unity of legal system's (Nikiforov, 2008).

Foreign scientists who addressed some aspects of international trade law in their research by I. Brownlie, R.

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Buckley, B. Cheng, W. Choi, G. Creamer, S. Croley, V. Degan, J. Edwards, M. Espinosa, D. Esty, L. Fetuni, W. Friedman, D. Griffith, B. Harold, D. Harris, D. Irwin, Ph. Jessup, Yu. Junsong, K. Kawasaki, H. Lauterpacht, P. Mavroidis, D. McRae, D. Palmeter, C. (Schmitthoff, 1993) Sucharitkul, J. Trachtman, J. Weiler and others (Jansen and Lugard, 1999; Cooney and Lang, 2007; Crawford, 2012; Calster, 2000; Charnovitz, 1998; Connell, 2012; Conrad, 2011; Lukashuk, 2005).

Unfortunately we have to state that all the studies cited above have not been nor still are carried out systematically, theoretical problems connected with international trade law are not developed sufficiently enough even on the initial conceptual level and some progress made is in most cases local and thus negligible. However, justice should be done to the creative staff of the Russian Foreign Trade Academy (RFTA) whose members under the leadership of A.S. Komarov, translated and popularised the book "the export trade: the law and practice of international trade" by Clive M. Schmitthoff who has been an undisputed internationally recognised intellectual leader in the sphere of international trade law since the postwar decades up to the present day.

MATERIALS AND METHODS

Prerequisites for international trade law formation: A peculiar phenomenon of the international organisations can be observed in modern international relations and is characterised by their rapid growth and intensification of their role and impact on finding solution to the problems of today's world. The function of the universal international organisations is to be the centre of joint actions of all states in solving global problems of the modern world, favour strengthening of international peace and security, promote disarmament be conducive to the economic and social progress of different nations as well as further development of international law.

The establishment of the United Nations (UN) was a major political achievement in the sphere of intergovernmental relations and international co operation, the beginning of the epoch of global structuring of the international organisations, creation of the universal system of the international organs and organisations, of their institutionalisation on the world arena. The major principles of modern international relations and international law are embodied in the United Nations Charter. They include the following ones: prohibition of threat or use of force, peaceful settlement of international disputes, equal rights and self-determination of peoples, extensive international co-operation of all nations, provision of human rights and fundamental freedoms, respect for obligations which ensue from agreements and other sources of international law, etc. The United Nations Charter is a multilateral universal treaty that has a unique character and function. The charter did not only outline the rights and responsibilities of its members, it consolidated universally recognised principles and norms of international law. Therefore it has become the main source of modern international law. The provisions of the charter have primacy over other international treaties. Article 103 of the charter states, 'In the event of a conflict between the obligations of the members of the United Nations under the present charter and their obligations under any other international agreement their obligations under the present charter shall prevail' (Genovsky, 1979). A considerable amount of bilateral and multilateral treaties have been concluded on the basis of the charter and bear explicit reference to it.

It is well known that the main principles are the centrepiece of the international law system. They are used as guidelines for the entire mechanism of international legal regulation. The principles of international law are consolidated norms which reflect the typical features and essence of international law and are endowed with supreme legal force. Particular importance is attached to peremptory norms which are defined in Article 53 of the Vienna convention on the law of treaties adopted in 1969. It is written in the article that, 'a peremptory norm of general international law is a norm accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character' (Blatova, 1982). Norms endowed with supreme legal force are called jus cogens. Basic principles of modern international law, specialised (sectoral) principles as well as some other norms are referred to this category. Normative complexes, institutes and branches of law are grouped according to the subject of legal regulation and function in full compliance with these principles and each of these principles in conjunction with other principles can serve as a criterion of legitimacy of sectoral norms as well as a criterion of their effective implementation.

One of the means of implementation of basic principles which cover the entire sphere of international legal regulation is intersectoral, sectoral and intrasectoral principles which regulate some complexes of international relations. Broadly defined international relations in the sphere of international trade are often referred to international economic relations along with industrial, scientific and technical, currency and financial relations

and many other types of relations. We cannot but share this opinion because the history of world trade indicates a clear correlation and interaction between trade and other economic relations. Besides, relations in the sphere of international trade, undoubtedly have a specific character and represent a separate subject of legal regulation. Analysis of the international legal acts in the sphere of international trade makes it possible to single out specific principles and institutes that are typical of this type of economic activity and that require a present-day interpretation and understanding. The study defines this group of international legal principles and reveals their role in the formation of international legal institutes. It is well known that modern international legal principles of international trade began to take shape in the 1960's with active participation of the United Nations and its subsidiary organs and organisations and by the end of the 1970's their content was consolidated (Velyaminov, 1994; Kolosov, 1974).

At the same time, the events of the end of the 20th century (the collapse of the Soviet Union and of the world socialist system) could not but have an impact on the principles of international trade which has been based on free-market theories since then. This fact requires a careful analysis of the changes that took place and that is why it will be difficult to work out a global strategy for developing international markets by goods and services without regard to newly acquired content and significance of these principles.

International law as an independent legal system (Kopylov, 2007) can be divided into branches-large groups (complexes) of international legal norms that regulate homogeneous (it terms of their object) relations. The formation of branches is determined by the current situation in the intergovernmental affairs and the level of international legal regulation. Some scientists hold the view that a branch attains its full development since the creation of either a codification act (Kovalev, 2007) or of a complex of international legal acts which in the aggregate form a certain kind of "a judicial environment" of homogeneous groups of international relations, in which the conditions necessary for the adoption of the codification act have not yet been met. International trade in this respect is a bright example of special (causal) contractual legal regulation of relations when agreements are concluded on various trade issues (commodity trade, agricultural trade, service trade, border trade, etc.), new international organs and organisations are created which either promote the conclusion of multilateral trade treaties or codify some institutes of international trade law or adopt acts of "soft law" which exert influence on trade policy of some states or groups of states. Such an arrangement of legal relationships that together constitute international trade law, increases the importance of both intersectoral, sectoral and subsectoral (intrasectoral) principles that serve not only as legal guidelines but in a number of cases as direct regulators of some international trade relations which have not been negotiated in a contract. This circumstance presses for the study of the place and role that these principles play in the overall mechanism of legal regulation of international trade.

RESULTS AND DISCUSSION

Mechanisms of legal regulation of international trade: Owning to recent tendencies in the development of international trade against the background of the emerging "second generation" globalisation (Genovsky, 1979) we would like to draw your attention to the fact that in order to solve global problems it is necessary to secure an adequately high level of global governance at large and of its separate subsystems to which international trade can be referred to. It follows that the universal international organisations will inevitably play a more important role have the powers vested in them enlarged and increase their efficiency. The United Nations emphasises the fact that, 'multilateral mechanisms have a unique role to play in meeting the challenges and opportunities presented by globalisation'. At the same time, the question about the judicial nature and character of international legal norms which are created by the international organisations in order to regulate international trade relations is fundamental for international jurisprudence. The approaches that exist in legal science and can be termed traditional during the analysis of these issues focus attention on procedural aspects of the problem and pay more attention to the legal force of acts of different international organisations and to their classification on the basis of referring them to one or another type of international legal sources (international contracts-noncontractual sources). We do not deny the significance which this approach retains, however, it should be noted that during the analysis of the mechanism of international legal regulation we ought not to overlook the content aspect of international legal acts, adopted by the international organisations.

Referring a certain act to such a widely used in international trade act as "international agreement" does not get us much further in our understanding of its role and place in the general context of international legal regulation of international trade. For example, the Marrakesh Agreement Establishing the World Trade Organisation, 1994 (WTO founding Charter); the General

Agreement on Tariffs and Trade (GATT) in 1994; the International Tropical Timber Agreement, 2006; the Convention on a Code of Conduct for Liner Conferences in 1974; the Model Law on Electronic Commerce in 1996 and some other acts were adopted in the form of international agreements but undoubtedly their roles and significance in the mechanism of international legal regulation of international trade are quite different. Moreover, one of the distinctive features of the majority of multilateral international trade agreements is the fact that their terms and conditions have a direct influence not only on the member states but also on the internal subjects (individuals and legal entities) that directly participate in international trade. As a result, when a state becomes a member of an international trade treaty, it, in agreement with the basic principles of its constitutional and legal framework, implements the provisions of this international treaty into its legal system. The consequences of this action may be of significance both to private and public law of this state. In other words, the conclusion of an international trade treaty does not finalise the process of regulation of the corresponding international trade relations but on the contrary, its content necessitates the adoption of a series of internal legal norms that will regulate both private-law and public-law relations. This fact enables us to conclude that the process of law-making and in some cases, of norm-setting by the international organisations, aimed at international trade regulation has a final goal to form complexes of norms which have a compound inner structure (that includes international legal and internal norms) and regulate relations in the sphere of international trade.

The category of "complex" is the most suitable for the description of the current judicial situation because it enables us to focus our attention not only on separate objects of international legal and internal legal regulation but also to study the mechanism of regulating influence of international legal norms on the corresponding relations of all its elements which have different legal nature (Kopylov, 2007). In complexes one can observe a combination of phenomena and actions which differ in nature but form a single entity. This notion does not defy traditional and widely accepted division of law into the systems (international and internal) which are in their turn divided into branches, subdisciplines and institutes. At the same time, it does not deprive different norms which regulate the corresponding relations, of their logic and character because in the course of time each state may change its strategy of participation in international trade towards more emphasis on innovative legal approaches inside its legal system or because a state may assume new international obligations in this sphere, caused by its joining a regional or international organisation with international trade regulation within its competence. The study carefully explores the character and typical features of such compound structural complexes taking into account practical experience of Russia.

Thus, the processes of globalisation that take place in the modern world impose new requirements on international and internal law of a state, on their interaction and reciprocal influence. However, it would be more precise to speak in this context not about globalisation but rather about internationalisation of internal law of states as this term more accurately reflects "the growing influence of international law and legal systems of other states on internal law" including such an influence on legal regulation of foreign trade activity of Russia.

Using different methods of export-import regulation that have taken shape during the development of international trade, the government establishes a regime regarding the goods that cross the customs border, makes provisions for compulsory licensing of the export or import of certain goods, sets out specific requirements for confirmation of goods quality, limits the amount of imported/exported goods when it is necessary.

When a government regulates its foreign trade activity, it determines who can act as subjects of a foreign trade contract and in doing so it has a right to either limit the number of subjects of a foreign trade transaction in certain spheres or to admit to transactions regarding a particular group of goods only the subjects that meet the necessary requirements.

Foreign trade activity is mainly within the scope of each state's public law regulation, however, beyond the set of methods of state (public) regulation foreign trade activity is controlled by market and private-law tools.

CONCLUSION

The undertaken analysis of the problems under study enables us to draw the following conclusions. International trade law was historically comprised of trade customs which were subsequently consolidated into commercial codes. Later on bilateral contracts were concluded but it was only in the second half of the twentieth century when a tendency towards multilateral regulation came into being. It is possible to single out the following periods in the development of international trade and International Trade Law (ITL): The Italian period (11th-first half of 15th century) is characterised by class stratification; trade law manifested itself exclusively in customs which differed from area to area. The leading role

in the establishment of trade customs was played by Italy which served as an agent between Western Europe and Asia; the French period (the second half of 15th century-the middle of 19th century) was marked by the issue of the French Commercial Code that gained widespread currency in many European countries, especially in Italy, Switzerland, Belgium, Netherlands, etc.

The German period (the middle of 19th century-1870) was marked by legal and economic unification of different German principalities which was inspired by their joint protection of their homeland against Napoleon; the arrival of customs unions and attempts to codify commercial law; the British period (1870-1918) is connected with the creation of the first prerequisites for future globalisation of international trade; the Anglo-American period (1918-1945) was marked by the fact that many tendencies in the development of international relations and international trade which originated during "the British period" were elaborated on during this historic period. However, the leading roles in the formation of new trends in international trade and economic development of the leading countries were now played by two states: Great Britain and the USA.

The period (1946-90's of 20th century) of economic confrontation ("cold war") between the socialist and capitalist world systems; the period of globalisation (the 90's of 20th century-the present day) is a new stage in the development of international trade relations, marked by the establishment of the World Trade Organisation (WTO).

The undertaken analysis of the subject of International Trade Relations (ITR) demonstrates that their state and development are under the influence of both general regularities of international economic relations (continued economic inequality between of the countries, closer interdependence between them, emergence of economic multipolarity, etc.) and the tendencies typical of international trade relations as such (inequality of trade capacities of different countries, marginalisation of the least developed countries, instability and price volatility in raw materials and agricultural markets with emerging restrictions and imbalance in the latter, ensuring of access to markets, further trade liberalisation and tendency towards provision of fair conditions in it, regionalisation of international trade). The functioning of regularities common for both international economic relations and international trade relations may also mean the existence of some common international legal principles of their regulation but at the same time it implies a high degree of autonomy of different institutes of ITR (Voytovich, 1988).

Basic principles of international law (sovereign equality, refraining from the threat or the use of force, settlement of international disputes by peaceful means, etc.) play an important role of a system-forming centrepiece for international trade law while some of its basic principles have a direct influence on the process of formation of the norms and principles of International Trade Law (ITL). These are the principles of collaboration, bona fide compliance with international obligations and universal respect for human rights and fundamental freedoms.

Special principles of international trade law determine the foundations of international trade relations. Some of them bear resemblance to principles of international economic law. Among them are the principles of state sovereignty over its economic activities and natural resources, non-discrimination, solidarity of all states, reciprocity, transparency, condemnation of dumping, fairness, interdependence, common interest and assistance in development. Of considerable importance for international trade relations are principles based on legal levels of treatment: most favoured nation treatment, national treatment, preferential treatment, special and differential treatment.

Moreover, some other principles can be referred to special principles of international trade law. For example, the principle of free trade and universal participation in it, the principle of liberalisation of international trade and provision of fair access to multilateral trading system, the principle of freedom to conclude Regional Trade Agreements (RTA) on regional economic integration based on their consistency with principles of multilateral trading system, the principles of priority, of specific needs of developing countries, of restriction and prohibition of unilateral actions of economic coercion, including unilateral sanctions (Lazarev, 1983).

International trade law has its own auxiliary principles (freedom of the seas, preferential application of direct (material) international legal norms, international commercial arbitration, etc.). The study ascertains that globalisation complicates governance not only of the national but of the international system as well. States have to co-operate not only to solve international problems but also to solve the tasks that used to be internal but have now assumed international nature. A bigger and bigger amount of public relations exceed national boundaries and their regulation is possible only with the assistance of joint actions of different states and international organisations (Feldman, 1983).

In order to solve global problems, it is necessary to provide an adequately high level of global governance at

large. It will inevitably necessitate a more important role of the universal International Intergovernmental Organisations (IIO) their further empowerment and efficiency growth. Multilateral mechanisms are beginning to play a leading role in terms of challenges and opportunities engendered by globalisation.

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