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International customs law as a means of public and private law specialists training improvement

IEVHEN V. BILOZOROV^{1*}, OLENA M. IVANII² and
SERHII M. PEREPOLKIN³

“International Customs Law” subject teaching provides with the basic training of specialists both in public and private law. However, in the absence of a unified approach to understanding of the essence and content of international customs law and, accordingly, to the structure and content of the same academic subject, as well as to the methodology, means and forms of teaching offered to learners, knowledge, skills and competence often differ essentially. In this regard the article emphasizes that the initiation and further development of scientific discussion both between scientists at the interstate level and between representatives of scientific schools of different countries is a prerequisite for eliminating the existing faults and contradictions in the doctrinal study and teaching of the subject “International Customs Law”, as well as for the joint development and exchange of scientific and educational innovations in this field.

Keywords: World Customs Organization, International Network of Customs Universities, teaching, knowledge, competence.

¹Department of Theory of State and Law, Educational Scientific Institute, National Academy of Internal Affairs, 03035, 1 Solomjanska Sq., Kyiv, Ukraine

²Department of Law and Methodology of Teaching Jurisprudence, Sumy State Pedagogical University named after A.S. Makarenko, 40002, 87 Romenskaya Str., Sumy, Ukraine

³Department of International Law, University of Customs and Finance, 49000, 2/4 Volodymyr Vernadsky Str., Dnipro, Ukraine

*Corresponding author

INTRODUCTION

International law objective scientific study and highly-qualified teaching of the subjects of international law bloc are among the main factors contributing to the recognition of international law as a universal means developing friendly relations and cooperation, countering the global challenges of humanity and ensuring international peace and safety throughout the world. Awareness of the need of encouragement of teaching, studying, and dissemination by states and international organizations have increased the recognition of international law during the twentieth century which has repeatedly been reflected in the resolutions of the General Assembly of the United Nations, and the acts of the other international organizations (United Nations... 2019).

These issues remain urgent even at the beginning of the 21st century. But using the instruments developed within the framework of the international law, states try to avoid the forceful resolution of international disputes, they develop friendly relations, carry out international cooperation to resolve international problems of economic, social, cultural and humanitarian character, and encourage any activity aimed at the development of respect for human rights and fundamental freedoms regardless of race, gender, language and religion, share experiences and innovations in various spheres of domestic activities. The most recognized and used among them, and consequently scientifically studied and educationally covered are the international legal instruments in such areas of international law as human rights protection, international criminal law, international trade law, international information law, international security law, international responsibility law. At the same time we note that the introduced list of branches of international law is not exhaustive and is gradually expanding owing to the development of both international public and international private relations. The international customs law as a branch of international law deserves to be included in this list as to the instruments of which appeal more and more states, legal and physical persons from different parts of the world every year. In addition, it should also be added that the principles, norms and standards of the international customs law, taking into account their inter-sectoral nature, are studied by representatives of various scientific specialties, and teaching of the subject "International Customs Law" and related to it training courses are provided both by the states and international intergovernmental and international non-governmental organizations.

However, despite the recognition by lawyers (both practitioners and theoreticians) of the importance of the scientific study and teaching of the international customs law within the framework of the training programs for specialists in various fields of law, nowadays there are no unified approaches to the structure and content of this subject with regard to its inclusion into the training programs for the first (bachelor's) or second (master's) levels of higher education, and in some cases, even with regard to the belonging of the rules of conduct of international customs law to the system of international or domestic law. In many respects such a situation can be explained by the imperfect development of both domestic and international scientific discussions aimed at solving problems related to the teaching of the international customs law in higher educational institutions of Ukraine and foreign countries, as well as the lack of generally accepted teaching materials and educational literature on the international customs law.

Taking into account the abovementioned the objectives of the suggested study are a reflection of modern approaches to understanding the international customs law, clarifying issues related to the teaching of the subject of the same name, and the development of suggestions and recommendations aimed at improvement of the quality of teaching, studying, diffusion and increasing the international customs law recognition as a universal means of development of friendly relations and cooperation and international peace and security worldwide.

METHODOLOGY

Achieving the objectives of the study led to the need to use different methods of scientific knowledge for the processing of educational and scientific papers both of domestic and foreign scientists. In particular the historical and legal method is used in describing the evolution of the doctrinal understanding of international customs law. The use of the comparative method has

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allowed to compare existing views on the content of the international customs law and its place in the system of law, as well as to determine the peculiarities of various authors' approaches to its content and teaching subject within the training and methodological complexes of the subject "International customs law". The study of international and legal and domestic acts in the field of the international customs law was carried out using logical methods of analysis and synthesis.

Teaching of the subject "International Customs Law" for the qualitative training of lawyers in the vast majority of institutions of higher education in different countries is the best confirmation of recognition of its importance. In particular, in Ukraine international customs law is taught at the Institute of International Relations of the Kyiv National University named after T. Shevchenko, Lviv National University named after I. Franko, National University "Odessa Law Academy", Odessa National Maritime University named after I. I. Mechnikov, Chernivtsi National University named after Yu. Fedkovych, Kyiv National Economic University named after V. Hetman, National Aviation University, University of Customs and Finance, etc. In the Russian Federation and Belarus – at the Russian Customs Academy and its affiliates, the Russian University of Friendship of Peoples, the Moscow State Institute of Foreign Relations of the Ministry of Foreign Affairs of the Russian Federation, the Voronezh State University, Saratov State Law Academy, Tyumen State University, the Belarus Trade and Economic University of Consumer Cooperatives, Belarusian Institute of Law and other higher educational establishments. Considerable attention is paid to this academic subject in the Kazakh University of International Relations and World Languages named after Abilai Khan, the Institute of Customs and International Trade Law at the University of Münster (Université de Münster, Allemagne), the Center for Customs and Excise Studies at the University of Canberra (Center for Customs & Excise Studies, Université de Canberra, Australie), as well as in a number of other higher educational institutions of foreign countries. A large amount of material for the study of international customs law can be found in the information databases of various libraries, for example, in the Georgetown Law Library (Georgetown Law Library... 2019).

The analysis of the contents of the methodological and educational literature on international customs law of the above mentioned and other educational institutions showed that today, both in Ukraine and in foreign countries, there is no single approach to the teaching of international customs law. In some educational institutions international customs law is taught within the structure of complex subjects for bachelors, while in others it has the status of an independent academic subject that is compulsory for both bachelors and masters. In a few cases, as it is in the case with the Center for Customs and Excise Studies at the University of Canberra (Center for Customs & Excise Studies, Université de Canberra, Australie), teaching of the subject "International Customs Law" is carried out within the framework of an independent specialty of the second (master's) level of higher Education – "Master of International Customs Law and Management". In the educational and methodological materials of most educational institutions international customs law is considered as part of international public law: an independent branch of its system; a separate component of international economic law; or as an institution of international trade law within the system of international economic law. However, there are cases when the actual content of the subject "International Customs Law" is taught within the subject program of "International Law", and issues of international and legal regulation of customs relations are given attention only within one of its topics (theme number 17 "Regulation of Customs Relations in International Law" of the educational and methodological complex of the subject "International Customs Law" for the 3rd year students of the specialty 080115.65 "Customs" of the Tver State University). In our opinion there are also unreasonable attempts to consider international customs law as a sub-division of customs law (Educational and Methodological Complex of the subject "International Customs Law" in the direction of 03090068 "Jurisprudence", the qualification degree "Master" of Saratov State Law Academy).

RESULTS AND DISCUSSION

Within the context of the subject of our research we note that the existence of different interpretations of the essence and content of international customs law as well as approaches to

teaching the academic subject of the same name can be explained as well as a lack of understanding on many issues of theory and practice of international and legal regulation of customs relations between representatives of scientific schools within the individual countries, and insufficient level of international scientific discussion on these issues. Its (discussion) further development at the national level and establishment between the representatives of scientific schools of different countries is a prerequisite for eliminating the existing faults and contradictions in the doctrinal study and teaching of the subject “International Customs Law” and for the joint development and exchange of scientific and educational innovations in this area.

Nowadays the scientific activities of a number of scholars and lecturers of higher educational institutions in this area are whether absent or very insignificant, which can not but disturb. However, without the fruitful scientific and research work it is impossible to achieve the high quality of lectures and the consistency of doctrinal views regarding the understanding of the legal nature of international customs law.

International lawyers have repeatedly drawn attention to the fact that international law is a rather complex and specific legal system study of which has a great theoretical and practical significance (Baskin et al. 1989), that the only universally recognized, official system of its norms and institutions is absent, (Levin 1974), and the identification of its structural elements is referred to the practical aspects of the science of international law (Ushakov 1988).

Precisely from the standpoint of science, the well-known Ukrainian scientist K.K. Sandrovsky (1971) suggested to distinguish an individual category “International Customs Law” within the system of customs law in 1971. Describing the system of positive customs law he noted that international customs law is not part of the system of law, and that it is only an element of science of law. His isolation of customs law as the third component of the system along with the norms of domestic and international law is possible only for the purpose of scientific research and teaching of customs law as an educational subject. The author also pointed that: “The fact is that if an autonomous customs law and international law (as far as customs relations between states are concerned) are objectively existing groups of norms representing real legal matters, the international customs law in contrast to them is a component although reflecting the phenomena of real life but not having its own and independent basis. It can act only as a certain complex of multi-system norms and rather in terms of doctrinal than in the positive and legal aspect” (Sandrovsky 1971).

Subsequently, K.K. Sandrovsky (2001) suggested to consider the international customs law as an independent part (branch) of positive international law, published the program of the training course “International Customs Law” and the authors’ textbook of the same name.

In the same period in the Russian Federation K.G. Borisov (1997) was engaged in a similar field of study. The result of which was the publication of the textbook “International Customs Law” (Borisov 1997), as well as the program of the course “International Customs Law” in its second edition (Borisov 2001).

The papers by K.K. Sandrovsky (2001) and K.G. Borisov (1997) significantly influenced the content and structure of the subject “International Customs Law”, as well as its inclusion in the curricula of both departmental and other higher educational institutions of different post-soviet countries. Moreover, despite the subsequent emergence of alternative educational literature in this area (Alibekov 2012; Ovchinnikov 2012; Buvayeva 2013), the papers of K.K. Sandrovsky (1971) and K.G. Borisov (2001) remain the basic sources for teaching and training by the corresponding educational subject even nowadays.

In our opinion such a situation is unacceptable since not only nearly twenty years have passed from the date of their last reprint but also the conditions, content and directions of international and legal regulation of customs relations, approaches, means and methods of teaching of educational subjects have changed significantly.

One of their significant drawbacks which is not deprived of today most of the scientific and educational papers of Ukraine, the Russian Federation and other post-soviet countries is the lack in their content of the characteristics of the doctrinal views of foreign scientists regarding the

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understanding of international customs law, its scientific study and teaching. At the same time the Chinese scientist Chia-Jiu Cheng (2010) has long underlined the need to revise scientific approaches to the definition of domestic customs law which has in fact become a part of international customs law (Cheng 2010). For his part the German scholar Hans Ballreich (Ballreich et al. 2014) believes that national customs law can not be regarded as part of international customs law since it functions autonomously from other subjects of international law as part of national public law and does not create any international obligations for anyone (Ballreich et al. 2014). A Ugandan scholar Edward Kafeero (2009) analyzed the effect of international customs law which is formed of the customs rules of the World Trade Organization and the customs rules of the revised Kyoto Convention in correlation with the customs law of the East African Community (Kafeero 2009). Hans-Michael Wolfgang (2007) Michael Lux (2007), Timothy Lyons (2018) and a lot of other scholars whose scientific achievements in this field remain unknown not only for higher education graduates but also for a number of scholars and lecturers from the post-soviet countries insist on the importance of studying international customs law which significantly influences the development of the European customs law.

Also unknown to many domestic researchers and lecturers of international customs law are also the achievements and initiatives in the field of scientific research and educational activities on customs issues of the universal international intergovernmental organization on customs cooperation – the World Customs Organization (WCO) (World Customs Organization... 2019). WCO has been paying much attention to the development of innovations in the field of customs and international customs cooperation, development of scientific research and educational activities for a long time. In particular, since 2006 the WCO in the field of training of Member States for customs administrations has introduced a partnership program in the field of customs research and academic development (PICARD – Partnership in Customs Research and Academic Development), the primary purpose of which was to develop and implement professional training standards and advanced training of customs officers. Professional standards translated into six languages along with mandatory national criteria as the basis for organizing training in the field of “customs” at the levels corresponding bachelor's and master's degrees are still used by customs administrations and academic circles of different countries (Echegaray 2009).

Later the International Network of Customs Universities (INCU) was created in the framework of the PICARD program, whose institutional members now are educational institutions from twenty three countries including Ukraine: Academy of Developmental Logistics, Inc. (Philippines); Academy of the State Customs Committee of the Republic of Azerbaijan (Azerbaijan); Asian Institute of Maritime Studies (AIMS) (Philippines); Canadian Society of Customs Brokers (CSCB) (Canada); Centre for Customs and Excise Studies (CCES) (Australia); Cross-Border Research Association (CBRA) (Switzerland); Customs and Excise Department - State Finance Polytechnic STAN (Indonesia); Delft University of Technology, Faculty of Technology, Policy and Management (Netherlands); Federation of the Italian Associations of Mechanical and Engineering Industry / Federazione delle Associazioni Nazionali dell'Industria Meccanica varia ed Affine (ANIMA) (Italy); Global Maritime Legal Solutions (South Africa); Institute of Customs and International Trade Law at the University of Muenster (Germany); Institute of Export & International Trade (England); Institute of Tax Administration (ITA), Tanzania Revenue Authority (Tanzania); Instituto de Comércio Internacional do Brasil (ICIBR) / International Commerce Institute Brazil (Brazil); Kenya School of Revenue Administration (KESRA) (Kenya); Lyceum of the Philippines University - Manila (LPU Manila) (Philippines); Mexiworld and Logistics SA DE CV (Mexico); Rotterdam School of Management, Erasmus University (Netherlands); Shanghai Customs College (China); State Institute for Retraining and Professional Development of Customs Authorities of the Republic of Belarus (Belarus); The University of Texas Rio Grande Valley (USA); UK Customs Academy (United Kingdom); Universidad de Costa Rica (Costa Rica); University of Customs and Finance (Ukraine); University of International Business and Economics (China).

Joint WCO and INCU studies have allowed to start a number of new initiatives in the field

of educational programs, academic research and development. In particular, with the aim of improving the skills of individuals working in the private sector related to the activities of customs authorities without discontinuing work on-line, as well as increasing the capacity and exchange of knowledge in the field of customs in academic circles, especially among the students studying customs specialties, the WCO Academy (World Customs Organization... 2018) successfully operates.

INCU (International Network... 2019) encourages academic institutions and customs administrations of member states to expand cooperation in the field of customs education, in particular, to constantly review existing academic programs in the field of customs and border management, to develop new academic programs including joint programs in cooperation with branches and customs administrations of other members of the INCU, to make mutual recognition of educational and training programs. In addition, INCU's long-term plans include: continuing the development of professional standards in the field of customs, which would apply both to civil servants and to representatives of the private sector; develop a definition of the term "customs profession"; to identify the necessary knowledge, skills and competence for persons engaged in customs activities; review accepted guidelines and procedures for the recognition of the WCO or develop a new set of guidelines for the accreditation of educational and training programs that meet established knowledge, skills and competences requirements. In order to achieve the identified goals the INCU and the WCO are paying a lot of attention to the involvement of donor organizations as well as their broader awareness of the expected innovations and benefits of academic research and academic projects in the field of customs.

In order to establish closer ties between the customs authorities of neighboring countries and facilitate the implementation of various WCO (2019) innovative programs at the regional level, twenty-eight (28) Regional Training Centres (RTCs) are functioning successfully nowadays: seven in the Asia Pacific Region (China; Fiji; Hong Kong, China; India; Japan, Korea; Malaysia), four in the East and Southern Africa Region (Kenya; Mauritius; South Africa; Zimbabwe), three in the West and Central Africa Region (Burkina Faso; Congo (Rep. of); Nigeria), seven in the European Region (Azerbaijan; Hungary; Kazakhstan; Kyrgyzstan; North Macedonia; Russian Federation; Ukraine), two in the Americas Region (Brazil; Dominican Republic) and five in North Africa, Near and Middle East (Egypt; Jordan; Lebanon; Saudi Arabia, Tunisia).

CONCLUSIONS

Thus every year theoreticians and practitioners within the boundaries of individual countries and their international non-governmental associations and international intergovernmental organizations pay more attention to the scientific study of various aspects of international legal regulation of customs relations, prediction and analysis of the consequences of its effects on trade, economic, social, humanitarian and other types of international and domestic ties, as well as improvement the quality of subjects of international customs direction teaching of international customs law in particular.

Educational activities in this area are carried out both on the national and international levels by full-time, part-time and distance learning. At the national level the teaching of international customs law is provided by both departmental and other higher educational institutions, as well as training centers and private organizations providing training and advanced training services. At the international level issues of scientific study and teaching of international customs law are predominantly taken care of by WCO and INCU. Students, cadets, practitioners of customs and other public authorities and representatives of the private sector, whose activities are related to various issues of customs regulation, postgraduate students, doctoral candidates and other people are the purpose-oriented audience of applicants for knowledge, skills and competencies in international customs law both in the form of independent academic subject and individual training courses aimed at the disclosure of the components of the content of international customs law.

RECOMMENDATIONS

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However, in the absence of a unified approach to understanding of the essence and content of international customs law and, accordingly, of the structure and content of the academic subject of the same name, as well as the methodology, means and forms of teaching, offered to learners knowledge, skills and competence often differ essentially, which definitely affects the quality of training specialists in this field.

In order to eliminate existing disadvantages of teaching international customs law and improving the quality of services provided in educational activities on international customs law, the following recommendations are made for discussion:

1) to create an international private non-profitable association which could include all those interested in carrying out scientific research, publishing and discussing their results, providing highly-qualified teaching and improving the practice of using the acquired knowledge, skills and competencies on various issues of international customs law both at the state and the private sector, as well as in the academic community;

2) to initiate on a periodic basis annual meetings (conferences) of representatives of the newly formed Association of International Customs Law, in particular, if necessary at the regional and subregional levels;

3) in cooperation with the WCO and INCU to develop the definition of the terms “customs profession” and “international customs law”; determine the necessary knowledge, skills and competence of international customs law for persons engaged in customs activities; to elaborate a set of guidelines for the accreditation of educational and training programs that will meet the established requirements for knowledge, skills and competences; to harmonize the content of the academic subject “international customs law” and to prepare the necessary educational and methodical materials for its unified teaching in educational establishments of various countries;

4) to start working on the preparation of a new, modern educational publication (textbook, manual, workshop) on the subject “International Customs Law” in co-operation with the WCO and the customs administrations of its members, the INCU and its members as well as other international institutions;

5) to establish a Library for scientific and educational papers and audiovisual materials on International Customs Law and to ensure its filling at the expense of the resources of the Association of International Customs Law on the basis of the WCO Academy;

6) to ensure probation by the members of the International Customs Law Association in the WCO, as well as in the customs administrations of its member states in order to ensure the qualitative preparation of materials for the Library for scientific and educational papers and audiovisual materials;

7) to develop relations with the states, universities, international organizations, charitable foundations as well as with legal entities and individuals in order to receive donations to finance the activities of the Association of International Customs Law;

8) to consider the possibility of including a new direction for the training of scientific and scientific and pedagogical staff – “International Customs Law” to the branch standard of higher education by the direction of training “International Law” at the domestic level, in particular, in Ukraine. The provisions contained in its contents will be introduced in the passport of specialty 12.00.11 “International Law” after approval of the relevant Standard.

Summarizing the abovementioned, it should be noted that further scientific research of these issues remains relevant and promising not only for Ukraine but also for other countries of the world. Regarding the research conducted within the framework of this article we hope that its results will contribute to the solution of existing challenges of teaching international customs law, to intensify scientific research in this field and will be used in the latest branch standard of higher education in the field of training “International Law”.

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