

# Formation and development of international customs law: periodisation issues

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## Abstract

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This article considers and analyses the history of the origin and evolution of international customs law from ancient times up to the present and offers a perspective on its periodisation. The article covers the evolution of norms of international customs law from the norms of international courtesy, norms of international traditions, separate articles of bilateral peace and union international treaties, trade treatises and the first special agreements on customs tariffs before their fixation in the texts of multilateral international customs conventions, as well as the acts of international organisations. It analyses the contribution to the formation of a system of universal international customs law by the League of Nations, the World Customs Organization, the United Nations and other international organisations.

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**Keywords:** international customs law; international customs relations; international conferences; international conventions; international organizations

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## 1. Introduction

Establishing the time of origin of international law and periodisation of its history are among the most complex problems of the science of international law. Scientists specialising in this topic almost unanimously conclude that despite the duration of research and the considerable number of published works, solutions have not been arrived at. For example, Butkevych (2009) states the following: ‘Historians of law speak more about the chronology of adopting legal acts and transmit their content than about the evolution of international legal categories, principles, norms or institutions, and theorists of law point to the definition of law, its sources, principles and norms, specific spatial and time framework of their application, rather than the genesis and historical development of these norms and institutions (Butkevych, 2009, p. 136).

Emphasising the necessity to study international law history, Lukashuk (1997, p. 40) wrote the following: ‘None of the phenomena can be considered outside of its own history. Attempts to ignore the peculiarities of history were unsuccessful in learning the phenomenon. Studying the past is necessary to understand the nature of international law, identify its capabilities, enhance its effectiveness and clarify its prospects’.

In our opinion, such a statement can also be applied to international customs law, but the history of its origin and development, one of the integral components of international law history, has not yet attracted due attention of scientists. In scientific and educational publications, researchers mention only specific historical events, facts and sources, or discuss the prospects or consequences of applying international legal acts to customs matters at national or international levels, without giving particular importance to the genesis of international customs law.

Therefore, in view of the lack of comprehensive research of international customs law history, it can be argued that the defined problem is relevant and deserves exploration.

Generalising the viewpoints of researchers regarding the origin of international customs law, we identify two emerging approaches to the problem. The first of these is based on the writings of scientists who have recognised the emergence of international customs law in the system of international public law but have not specified the time and place of its origin. At the same time, the dynamic development of international customs law is most often associated with the establishment of the World Customs Organization (WCO) and its predecessor, the Customs Cooperation Council (CCC), and their activities in the second half of the 20th century. As for the second approach, its representatives, while exploring some aspects of the legal nature of international customs law, fail to mention its origin and formation.

An article, published at the beginning of 1991, entitled 'The evolution of international legal regulation of international customs relations' (Mytsyk, 1991), is an exception. Its content is based on a set of factors relating to the formation of a new branch of international law – international customs law. The author of the article analysed the historical stages and current trends of its formation and provided a general description of the contractual and institutional forms of the international legal regulation of international customs relations used by states during the 20th century.

An attempt to consider the history of emerging and developing international customs law was made by the Russian researcher Buvaeva in the textbook *International Customs Law* (Buvaeva, 2013). However, the chapter of the textbook devoted to this issue is focused on exploring the concepts, forms and stages of formation and development of international customs cooperation, mentioning the history of international customs law only indirectly, in the context of its connection with the history of such cooperation. In addition, the main stages of formation and development of international customs cooperation (Buvaeva, 2013, p. 56–67) were described without proper reference to previously published theses (Perepolkin, 2007), having been further developed in a separate monographic study (Perepolkin, 2008).

Therefore, significant results in studying international customs law history have not been achieved by representatives of international law science to date. This includes such fundamental issues as establishing the spatial and time boundaries of the origin of international customs law and its periodisation. As to the difficulty of correctly answering such a question, the well-known Soviet historian-encyclopedist Zhukov (1980) stated the following: 'Absolutely accurate dating of major historical processes and phenomena is virtually impossible, and any periodization is approximate and relative'.

## 2. An epoch of local international customs law

A modern understanding of international customs law as an integral system of legal norms was preceded by a long practice of local regulation of international customs relations based on customary and treaty norms of law. While some such norms were relevant in the past, they have lost relevance in today's world. The norms that have stood the test of time now occupy an important place in the system of modern international customs law and have been adapted to reflect best practice in regulating cooperation on customs issues.

In considering historical prerequisites for developing international customs law in the context of international law it is worth beginning from the time that bilateral international customs relations were developed, that is immediately upon states' awareness of the importance of these relations for satisfying individual (national) and common (international) interests. This is evidenced by the readiness of states to comply with legally binding rules of conduct, established by regulatory acts.

Consequently, from the time of creating international customs relations between states, there was also a necessity to directly influence such relations through international legal norms. Due to various factors, the content and orientation of these norms, the method of creation, the scope and the number of participants, have been continually changing. However, the main purpose of the international legal norms, namely the regulation of international customs relations, have remained unchanged.

Scientists take a different approach to establishing the time and place of origin of international customs relations. For example, Mytsyk associated their appearance with the development of international customs cooperation in the early 20th century due to the necessity to resolve the issues of simplification and standardisation of customs formalities in the field of international trade (Mytsyk, 1991). Although not indicating precisely when international customs relations became the subject of international law regulation, Yershov stated the following: 'Having created as a system of relations on regulating trade and exchange processes (initially – between a limited circle of the nearest neighbours), customs relations gradually became a form of interaction between border territories on foreign trade issues' (Yershov, 2000). At the same time, despite differences in establishing the time of origin of international customs relations, researchers almost unanimously associate the appearance of such relations with the development of foreign trade and its regulation by states. In comparison, some propose that the periodisation of the development of customs relations parallels the main stages of state system development (Mazur, 2004).

The inability to obtain an accurate historical picture of the regulation of international customs relations is possibly because not all sources have survived to this day, and possibly because there is little evidence of relevant practice at all. Consequently, we propose to focus on well-known facts about the evolution of international customs law based on the norms of international courtesy – a combination of bilateral customary and treaty norms – to the system of rules of conduct within the framework of modern international law.

Adhering to the most popular view in international law science on the creation of international customs relations, we can assume that the first examples of such regulation existed in the states of the ancient world as early as the third millennium BC in the context of foreign trade between ancient Egypt and the Phoenician cities and inhabitants of the lands of the Red Sea basin; at the turn of the third–second millennium BC in ancient Assyria where a duty was levied to the benefit of Ashur state on trade with its colonies in Asia Minor; or in Babylon, which united the entire valley of Mesopotamia in the beginning of the second millennium BC and became, for almost two thousand years, an important economic and cultural centre of the ancient world (Markov, 1987).

The interest of the states to maintain lively trade relations facilitated the development of diplomatic contacts between them and with that the creation of the first examples of exemption (granting immunity) from paying duties for state representatives engaged in official relations. Thus, the ambassadorial law of India in the mid-first millennium BC reserved for ambassadors the opportunity to bring with them money, travel goods, commodities of their country, which were not subject to duties (Baskin, 1990).

The practice of regulating customs relations in foreign trade based on peace and union treaties became widespread in both ancient Greece and in remote Hellenic colonies (Havrylenko, 2006). For example, in the text of the trade agreement, which supplemented the union treaty between Macedonia and Chalcis, dated from the fourth century BC, the right of exportation and importation was provided to both states without paying duties, except for specifically identified scarce goods such as spruce wood and resin (Levin, 1962).

A long-standing practice in international relations has been the possibility of using customs privileges to obtain a right to free trade. As a significant privilege in international relations, free trade treatment was granted only to a particular category of foreigners based on a special honorary act (proxeny) that belonged to public resolutions (decrees).

In various countries the nature of proxeny differed. Referring to the work of Monso 'Les proxenies grecques' in 1886, Nikitina (1978) pointed out that proxeny 'was a religious institute in large religious centers, trade – in the cities of trade, political and diplomatic – in the great powers, playing a prominent political role' (p. 98). For example, in Delphi numerous proxenic acts were adopted to ensure the reception of ambassadors sent by the Delphi Sanctuary to announce times of celebration in various ancient cities and to facilitate religious relations (Nikitina, 1978).

The use of proxeny changed in the ancient world and surrounding territories, especially during the dominance of the Roman Empire, and innovations appeared in the legal regulation of international customs relations. In particular, the number of international treaties concluded by Rome was reduced, with a focus on treaties with more powerful states – the Parthian Kingdom, the Khan Empire in China, the Kushan state and the allied states, having managed to maintain independence in the customs and tax sphere, for example, as the Bosporan Kingdom.

Considering the international status of Roman society, intrastate norms of law replaced the international legal norms in regulating customs relations between the nations controlled by the Roman Empire. A tendency towards legal regulation of international customs relations remained until the division of the Empire into western and eastern and after the fall of the western Roman Empire gradually began to lose its domination.

In this regard, the period of renewal of the positioning of international customs relations in international law occurred for several centuries. Consequently, at the beginning of the Middle Ages legal regulation of international customs relations remained relatively unchanged, as the norms developed by the ancient states continued to have effect. However, during that period, the number of both intrastate legislative acts and international treaties increased significantly, in the content of which, along with regulating trade relations, attention was also devoted to customs issues (Havrylenko, Novikova, Syroid, 2016). However, this did not contribute to improving legal regulation of foreign trade relations, promoting trade or eliminating customs barriers, since the main factors that influenced its emergence were the lack of strong centralised power in the newly formed monarchies and a high level of feudal disunity.

In some official intrastate legislative acts of general character of Medieval Europe in the ninth – tenth centuries can be found the first mentions of normative regulation of the uneasy customs relations between representatives of local authorities and merchants from Slavic lands. Here we are talking about the previously mentioned 'Didenhofen capitulary' of Charlemagne of 805, 'Rafelstetten Customs Statute' of 903–906 (Inquisitio de theloneis Raffelstettensis (903–906), 1890) of Louis IV and other acts, having survived to this day.

Some researchers consider medieval capitularies and statutes to be the first blueprints of interstate customs treaties (Kolesnykov, Morozov, Vynohradov, et al., 2006), contributing to the provisions of Kyiv Rus (Filatov, 2013), and in the case of the Rafelstetten Customs Statute – the recognition of the status of a treaty (Polonska-Vasylenko, 1995), one of the oldest international trade treaties of Kyiv Rus and a source of international customs law (Chorny, 2000). However, we find such views debatable because the characteristics of many international treaties of that time were not peculiar in their content or implementation. For example, during the development of the Rafelstetten Customs Statute no new rules were created, its drafters relied on customs orders that existed during the reigns of King Louis German (840–876) and Charlemagne (876–880) within a clearly defined territory – Eastern Bavaria – and was published in accordance with the decree of the East Frankish King Louis IV Child (899–911) (Nazarenko, 2001).

As a source of legal regulation of international relations, international treaties were indeed widely recognised, particularly in the epoch of medieval feudal Europe. That was directly reflected both in the significant increase in their number and in the appearance of new types of such treaties. At the same time,

along with the established practice of resolving customs issues in foreign trade relations based on peace treaties, the first examples of independent trade treaties emerged, regulating customs relations in the content of, for example, river navigation agreements.

An important role in developing legal regulation of international customs relations based on contractual international legal norms also related to armed conflicts. It especially concerned those that arose on the basis of long customs conflicts, such as the Byzantine-Iranian wars of the end of the sixth – beginning of the seventh centuries, the Bulgarian-Byzantine wars of the end of the ninth – beginning of the tenth centuries, and possibly the Rus-Byzantine wars of the tenth century (Kolesnykov, Morozov, Vynohradov, et al., 2006), which ended with the signing of peace treaties. The most famous peace treaties of that time, the content of which paid much attention to resolving customs issues, certainly included treaties between Kyiv Rus and Byzantium in 911 and 944 (in certain sources – 907 and 941).

In general, the growth of international trade significantly influenced both the development of customs policy and customs affairs at the national level; and the evolution of international customs law norms, in particular, contributed to the further development of institution of international treaties that regulated of international customs relations. The gradual establishment in the system of international trade relations of the equality of parties and the interest of states to achieve stable development, contributed to the final normative fixing in the content of trade and political treaties of the concept of most favoured treatment. This concept formed the basis for contracting parties to provide customs benefits to foreign traders, that should not be greater than the duty paid by their own subjects or by other foreigners who were subject to such least duty charge.

However, the positions of scientists regarding the establishment of the time of inclusion in international treaties of the above concept diff. For example, the French scientists Karro and Zhiuiar, referring to the Treaty of Peace and Trade between the Venetian Republic and Tunisia signed on 5 October 1231 claimed that its use was known in the thirteenth century (Karro & Zhiuiar, 2001). Another position on the emergence of the concept of most favoured treatment in international treaties was expressed by Soviet lawyers who were specialists on international law. Thus, Levin (1962) noted that the concept of most favoured treatment began to be included in trade agreements from the fifteenth century, and Lisovskii (1979) pointed to its presence in the content of trade agreements of France with Turkey in 1535, the Netherlands with Spain in 1609, England with Sweden in 1661, England with Turkey in 1675 and Holland with Turkey in 1680, namely in the treaties of the sixteenth–eighteenth centuries.

It was in the seventeenth century that the European states, in the interests of developing international trade, in the context of the continuing struggle for the recognition of the universal principle of the high seas and the proclamation of freedom of navigation on rivers, made resort to the regulation in trade treaties of both national border customs duties and internal customs duties of individual provinces and cities. For example, the Anglo-French Treaty ‘On Security and Freedom of Trade’ of 1606 provided for mutual notification of customs tariffs and a certain restriction on internal customs duties (Levin, 1962, p. 45).

However, the states’ use of international trade treaties to resolve problems by applying domestic customs duties was short-lived. That was facilitated by changes in domestic customs policy aimed at forming centralised customs systems within unified national customs borders. For example, in France internal customs duties on goods were abolished in 1662, and steps towards creating a single customs border, without its extension to provinces within its own customs jurisdiction – Alsace-Lorraine – began to be take effect in 1664 (Morozov, 2011, p. 46).

It should be noted that by the end of the seventeenth century the practice of regulating international customs relations based on trade treaties had become widely recognised by states. In international relations there was a definitive separation of commercial articles of political treaties into independent

trade treaties (Talalayev, 1980), there was a distinction between treaties (treaties) and conventions, having been: a) short (for example, from the second century); b) minor; and c) additional (to a treaty already concluded) (Aleksandrenko, 1906).

Both the content and the structure of international agreements have since been updated. As early as the eighteenth century the Ukrainian researcher of customs history Morozov pointed to the trade treaty as an interstate political and economic agreement, necessarily including a section on regulating customs tariff procedures. In the second half of the nineteenth century if that treaty did not include such tariff application, the name 'Trade treaty' would even be rejected. Gradually new variants of such treaties appeared: conventional treaties or tariff treaties (Morozov, 2011, pp.141–142).

The appearance of special international agreements on customs tariffs did not immediately change the attitude of states to trade treaties and treaties on peace, as the main sources of legal regulation of international customs relations. As a rule, during the eighteenth and nineteenth centuries, these types of international agreements continued to be used to harmonise customs duty rates for specific types of goods and to set out: lists of goods exempted from customs duties on importation into the customs territory of a contracting state, types of goods that came under restrictions or were prohibited for importation, conditions for waiving customs duties and fees in the context of implementing coastal law by coastal states, conditions for applying national regimes, granting the principle of the most favoured treatment, and anti-smuggling provisions, etc.

Among the most famous international agreements of the eighteenth century with content devoted to the above-mentioned issues are the treaty of 1740 between Turkey and France (the last one of which retained the title of capitulation); the treaty of 1742 between France and Denmark; the treaty of 1766 on friendship, trade and navigation between England and Russian Empire; the treaty of 1776 on union and trade between the United States of America and France and others. For example, the conditions of equality with other nations in paying customs duties were defined in article 11 of the Peace Treaty of Kuchuk-Kainarji of 1774 and article 6 of the Ainalikavak Convention of 1779 (Aleksandrenko, 1906, pp. 58, 72), devoted to 'interpretation' of the main points of the Treaty of Kuchuk-Kainarji.

It is important to note that orientation of states to customs unification changed significantly during the nineteenth century through a stable system of relations of international customs cooperation and their legal regulation. Along with the continuous improvement of the structure and content of international customs agreements and the conclusion of the first multilateral international customs conventions, the number of convocations and the legal impact of the results of activities of international conferences increased, and the first international organisations operating on a permanent basis appeared.

It is also worth noting that the policy of the states in asserting their own customs interests for domination in foreign trade and development of their own industry, through a continuing increase in customs tariff rates and the introduction of new types of non-tariff restrictions, was mostly apparent at the end of the nineteenth century. During the period from 1891 to 1896 customs wars continued in Europe between Spain and France, Spain and Germany, France and Switzerland, Italy and France, and Germany and the Russian Empire. The example of the USA–Spain trade disputes over the Cuban market in 1898 also showed how a customs conflict could turn into a military conflict between two countries (Kolesnykov, Morozov, Vynohradov, et al., 2006, pp. 338, 341).

Even the first common international customs organisation – the International Union for the Publication of Customs Tariffs – was unable to prevent the intensifying international relations on customs regulation and numerous emerging numerous customs wars between states on different continents. In accordance with the provisions of the International Convention for the Establishment of the International Union for the Publication of Customs Tariffs of 5 July 1890 the organisation was established and started its activity on 1 April 1891 as an information and technical organisation that classified, published and distributed materials on the customs tariffs and customs legislation

of different countries of the world. Similar activities took place at the regional level as well. Thus, according to the results of the First International Conference of the American States, which took place in 1889–1890 in Washington (USA), it was decided to establish the International Union of American Republics and to create a permanent Commercial Bureau for collecting, systematising and publishing materials and legislation of the member-states on trade and customs activities, etc. Its formation became a logical consequence of multiyear efforts of states to reach mutual understanding on customs tariff regulation of foreign trade, confirm their readiness to develop international customs cooperation on a multilateral basis, contribute to the further development of legal regulation forms of international customs relations and summarise the set of significant changes that the scope of international customs law underwent during the nineteenth century (Perepolkin, 2015, p. 48).

Among the broad spectrum of innovations, the most significant have been:

- the first multilateral international customs convention was concluded on 5 July 1890 (Convention Concerning the Formation of an International Union for the Publication of Customs Tariffs (Brussels, 5 July 1890) )
- new types of subjects of international customs law – customs unions and international organisations appeared
- international treaties completely abolished certain types of customs duties (for example, *droit de pavillon* – a duty on the flag).

New areas of international customs cooperation were also developed such as information sharing, combating customs offences (in particular smuggling and forging of customs documentation), and developing rules of origin. Also, with the commencement of industrial exhibitions, provisions for duty-free importation of samples and models of products were introduced, subject to obligatory exportation within a year. The return export was ensured by paying a customs duty in security, which was then returned to the owner (Morozov, 2011, p. 143).

In the second half of the 20th century those areas of international customs cooperation received their final doctrinal consolidation in the system of international customs law in the form of independent institutions, namely: customs tariff and non-tariff regulation of trade, combatting offences against customs law, rules of origin and temporary importation (exportation) accordingly.

### **3. Epoch of universal international customs law**

The creation of the International Union for the Publication of Customs Tariffs significantly influenced the progressive development of international customs law. In particular, its foundation initiated international cooperation of states at the institutional level, that is, within the framework of international organisations. This also saw a transition from a local international customs law to the formation of universal international customs law.

However, the turbulent events of the late nineteenth – early 21st centuries, in particular related to the beginning of the First World War and its course, did not contribute to active development of relations of international customs cooperation, and with them the further development of international customs law. Therefore, it was only following the war that states reverted to joint activities towards the universalisation of norms of international customs law. They sought to reach agreement on many pressing issues in customs regulation, including minimising foreign trade prohibitions and restrictions, enhancing the ability to combat smuggling, simplifying customs and other border formalities, etc., during multilateral international conferences convened under the aegis of the League of Nations. However, states generally failed to achieve their goal of convening such conferences.

When the states finally succeeded to reach general agreement, implementation of the planned measures was further hindered by the unilateral actions of individual states or the absence of the general consent of member-states to sign the final act of an international conference, or an elaborated draft of an international convention. For example, at the Customs conference opened in Beijing in August 1925, subject to the abolition of all domestic customs duties by China, it was generally agreed to recognise China's customs autonomy from 1 January 1929. However, the conference was unable to implement the autonomy because it failed to decide on the immediate introduction of a surcharge to the existing low customs tariff (Voitinskii, Galperin, Guber, et al., 1956, p. 399).

Examples of ineffective activities of international conferences in the first third of the twentieth century can also be found in works of other authors, in particular, Lisovskii. For example, to overcome the negative effects of the world economic crisis of 1929–1933, by concluding a customs truce the United States of America initiated an international economic conference between the member-states of the League of Nations in May – June 1933. However, after signing the minutes of the final meeting of the conference with the representatives of 30 other countries, including the Soviet Union, England, France, Germany and Italy, in July of that year they refused to implement the proposed measures (Lisovskii, 1984, pp. 21-22). Further, none of the states signed the draft of a proposed nomenclature of the customs tariff developed in 1924, which contained about 200 items of goods (Lisovskii, 1979, p. 33). That is why among the many international conferences held under the auspices of the League of Nations, the Geneva customs conference of 1923 deserves special attention.

The main achievement of the first conference is considered to be the signing of the International Convention on Simplification of Customs Formalities by 36 member-states on 3 November 1923. The Convention entered into force on 27 November 1924 and consisted of a preamble, 30 articles of the main text and a minute recognised as its integral part. Both the Convention and its Customs Law, the International Convention on Simplification of Customs Formalities of 1923, with the participation of most European Union member-states, remained in force at the beginning of the third millennium: '... it was not affected by concluding the Treaty on founding the European Union (Article 307 of the Treaty establishing the European Union)' (Lux, 2002).

The results of some of the international conferences of the League of Nations have been used by states to coordinate their actions to reduce customs tariff and non-tariff trade barriers to the maximum at the regional level. In this regard, in Oslo on 22 December 1930 Denmark, Norway, Sweden, the Netherlands, Belgium and Luxembourg signed the Convention on economic convergence with the main provisions borrowed from the draft of the economic conference of the League of Nations of 1930 by 'the Oslo Group' countries (Grabar, Durdenevskii, Kozhevnikov, et al., 1947).

The contribution of the League of Nations to developing international customs law also includes replenishing its source base by several examples of international judicial practice on customs regulation. That became possible owing to the activity within its structure of the Permanent Court of International Justice, which in one of its conclusions summarised and identified the features of a customs union, namely: the uniformity of customs laws and tariffs; the unity of customs borders and customs territory regarding third countries; the exemption from import and export customs duties on exchanging goods between partner states; the distribution of customs duties levied due to the established quota.

Another conclusion of 5 September 1931, relating to the obligations of Austria<sup>1</sup>, prohibited a union with Germany even if it took the form of an economic union. Intervention by the League of Nations in relations between Austria and Germany led to the provisions of the draft signed between them on 14 March 1931 about the 'likeness of customs and political and trade conditions', in other words, the project of a true customs union, under which countries kept their customs services, but had to unify tariffs and customs legislation and remove all obstacles at common borders (Duroselle, 1999).



After the formal liquidation of the League of Nations, the development of international customs law towards its universalisation continued on a multilateral basis, taking into account the provisions of the General Agreement on Tariffs and Trade (hereinafter referred to as the GATT) of 30 October 1947 and a number of international customs conventions and legal acts, prepared by the Customs Cooperation Council (later known as the WCO), the United Nations Economic Commission for Europe, and subsequently the World Trade Organization (hereinafter referred to as the WTO).

The GATT, as the French researchers of international economic law Carro and Jujar rightly stated, 'is a true code of applying customs duties' (Karro & Zhiuiar, 2001).

Many of its prescriptions, which significantly influenced the progressive development of international customs law and its codification during the second half of the 20th century, continued to be relevant at the beginning of the third millennium.

On the one hand, it became possible (due to the statutory consolidation in the GATT articles, such as *lex generalis*, in other words, the 'common law') to introduce several new fundamental, guiding ideas and time-tested rules of conduct, having been pursued by states entirely at the bilateral level over a long period of development of the legal regulation of international customs relations. For example, in relation to methods of protecting national markets, there only the imposition of tariffs was legalised, with all non-tariff trade barriers, including all quantitative restrictions, being prohibited. Moreover, the ultimate goal of the GATT was to strive for the complete elimination of customs duties, by gradually reducing them. Along with the states there was recognised a right to participate in international customs (trade) relations by both customs unions and other 'separate autonomous customs territories'. Based on these provisions, Hong Kong, Macao, the separate customs territories of Taiwan, Penghu, Kinmen and Maizu (Chinese Taipei), as well as the European Union, are now recognised as equal participants in foreign trade relations. In addition, the following were defined: the principle of transit freedom; the need to completely abolish all customs formalities of a protectionist nature; conditions for levying anti-dumping and countervailing customs duties; and for imported goods, uniform requirements were established for applying rules of origin and valuation methods for customs purposes.

On the other hand, maintaining the relevance of the GATT provisions and significantly expanding the scope of material relations being discussed at the periodic meetings of its contracting parties were considerably helped by the process of gradual institutionalisation of this agreement to the level of an international organisation possessing international personality. The GATT-1947 transformed from a series of periodic negotiations (see, in particular, Articles 25 and 28 bis) to the GATT-1994, being a permanent centre for trade negotiations and an organiser of global rounds of international trade negotiations (Karro & Zhiuiar, 2001). With its transformation, the GATT-1994 became the main source of influence for today's WTO, the implementation of certain provisions of this agreement being made possible in cooperation with other international intergovernmental organisations.

In the field of customs activity, such international organisations are, first of all, the International Union for the Publication of Customs Tariffs and established in 1950 under the name of the 'Customs Cooperation Council' (now known as the WCO). It is now the WCO that jointly administers and implements the provisions of the Agreement on applying Article 7 of the GATT (the Customs Valuation Code) and the Agreement on rules of origin signed as a result of the negotiations of the Uruguay Round on 15 April 1994. As a result, the WCO institutional structure has the following two joint bodies: the Technical Committee on Customs Valuation and the Technical Committee on Rules of Origin.

It should be noted that having started its activity in only 17 European states, the Customs Cooperation Council quickly became the world centre for systematising and improving norms of international customs law. Already in 1984, considering the necessity for more detailed information on the needs

of all member-states and their broad geographical representation, the organisation decided to adopt a regional representation system. In this regard, basing on a range of factors, such as a working language, geographical proximity, and the existing regional structures of other international organisations, six working regions were established within the Customs Cooperation Council, namely: East and South Africa; West and Central Africa; North Africa, Mideast; Far East, South and Southeast Asia, Australia and the Pacific Islands; North, South, Central America and the Caribbean; and Europe. Subsequently, in 1994 the universal international legal status of the Customs Cooperation Council was recognised by all its member-states by introducing a second informal name, 'the World Customs Organization'.

Currently, there are 183 WCO member states, including Hong Kong, Macao and the European Union. The WCO prepares drafts of codification acts and amendments to existing international conventions, and develops numerous recommendations, declarations and resolutions on various issues of customs regulation. Well-known examples of such acts are the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, the International Convention on the Harmonized Commodity Description and Coding System of 14 June 1983, the International Convention on Temporary Importation of 26 June 1990, the Arusha Declaration of Professional Ethics of 7 July 1993 (revised in June 2003), the Resolution on the Framework of Standards to Secure and Facilitate Global Trade of 23 June 2005 and many others.

The WCO's successful rulemaking activity on international legal regulation of international customs relations depends to a large extent on activities of other international organisations in this field and maintaining ongoing cooperation with them. The main organisations are the WTO and the United Nations, represented by one of the oldest known authorities – the Economic Commission for Europe. At sessions of its special authority, –the Working Group on Customs Matters relating to Transport (hereinafter – WP.30), operating in Geneva as a subsidiary authority of the UN Economic and Social Council, recommendations and resolutions were developed on customs facilitation and standardisation of documents used in international trade, as adopted by the WCO in its work on codification and progressive development of international customs law. In addition, WP.30 has made a significant contribution to developing international customs law through adopting several international conventions, for example, the Customs Convention on Containers of 2 December 1972; the Customs Convention on International Transportation of Goods Using TIR Carnet of 14 November 1975; the International Convention on the Harmonization of Frontier Control of Goods of 21 October 1982; the Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes of 9 February 2006; and others (Perepolkin, 2015, p. 31).

Resuming the history of the origin of international customs law, it is also important to note that multilateral international cooperation within the framework of the GATT/WTO, the WCO, the UN and other international organisations, contributed not only to forming a universal international customs law, but also to its progressive development at a regional level. The most prominent example is the emergence of the European customs law or the EU customs law, impacting also customs affairs of third countries.

## 4. Conclusion

The history of international customs law has not emerged as a subject of comprehensive scientific research in either the Ukraine or elsewhere. Its further scientific discussion is useful both for describing the history of development of domestic customs law and for an in-depth study of the history of international law.

Regarding the periodisation of the history of international customs law, it is proposed to divide it into two global epochs: the epoch of local international customs law and the epoch of universal international customs law. Each of these epochs has its own periods.

## **1. Epoch of local international customs law**

### **1.1. Prehistory of international customs law (from ancient times to 1648).**

The modern understanding of international customs law as a coherent system of legal norms was preceded by a long practice of local regulation of international customs relations based on a distinct set of customary and contractual norms of law. The rules of conduct were mainly bilateral and concerned the granting of customs privileges in foreign trade and the recognition of certain categories of honorary foreigners for the purpose of customs privileges and immunities.

### **1.2. From the Peace of Westphalia of 1648 to the foundation in 1891 of the first international customs organisation – the International Union for the Publication of Customs Tariffs.**

Following the Peace Congress of Westphalia, the scope of norms of international customs law gradually underwent significant changes, in particular in relation to:

- the expanded scope of customs tariff and non-tariff regulation of foreign trade
- cooperation on combating customs offences, introduction of definitions of rules of origin and temporary import (export)
- the evolution of norms of international customs law from bilateral norms of international courtesy, international traditions, separate articles of bilateral peace and union international agreements, trade treatises and special agreements on customs tariffs to the signing on 5 July 1890 of the first multilateral international customs convention – the International Convention on creating the International Union for the Publication of Customs Tariffs
- inclusion of customs regulation issues on the agenda of international conferences
- the emergence of new kinds of participants in international customs relations – customs unions and international organisations, etc.

Creation of the International Union for the Publication of Customs Tariffs which started its activity on 1 April 1891, became a natural consequence of the centuries-old efforts of states to reach mutual understanding on customs tariff regulation of foreign trade. This was testimony to their willingness to develop international customs cooperation on a multilateral basis and promote the necessary preconditions for further progressive development and codification of norms of international customs law.

## **2. Epoch of universal international customs law.**

### **2.1. Institutionalisation of forms of legal regulation of international customs relations and the formation of the principles of universal international customs law (since 1891 to the formal elimination of the League of Nations in 1946).**

The starting point for changing international customs law from the regulation of local international customs relations to the development of norms of a universal nature, can be considered to be the establishment of the International Union for the Publication of Customs Tariffs. The purpose of its establishment was to translate and publish customs tariffs of different states of the globe, as well as legislative or administrative resolutions, and amendments. The reason for its development was the constant aggravation of international customs relations between countries from different continents, having caused customs wars from time to time.

In laying the groundwork of universal international customs law, multilateral international conferences became of great importance and were systematically convened under the aegis of the League of Nations. The agenda of such international conferences generally included issues of legal regulation of most relevance to international customs relations, in particular, minimising prohibitions and restrictions in foreign trade, strengthening combating smuggling, simplifying customs and other formalities at the borders, etc.

### **2.2. Establishment of universal international customs law, its codification and progressive development (since 1947 until now).**

After World War II the establishment of a universal international customs law was completed, based on the provisions of the GATT of 30 October 1947 and several international conventions and international legal acts in the field of customs, prepared by the WCO, the UN Economic Commission for Europe, and subsequently the WTO and other international organisations.

During the second half of the twentieth – beginning of the twenty-first centuries the relevant principles, norms and standards were recognised not only by most states of the world, but also by many interstate integration unions, and were further developed in numerous international legal acts.

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## Notes

- 1 Stemming from the provisions of the Treaty of Saint-Germain of 10 September 1919 and the Geneva Protocol of 4 October 1922.

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