CZU: 341.241

INTERNATIONAL CONTRACT LAW

DREPTUL CONTRACTULUI INTERNAȚIONAL

Olga TATAR[1],
Comrat State University

ABSTRACT. *International contract law is a constituent institute of the Special Part of the International Criminal Law. The term "international contractual law" is used in foreign literature. Any private transaction permitted by national law may be affiliated with a foreign legal order. Close connection with the legal systems of two or more states" acts as a qualifying feature of a transaction of an international nature. The essence of such contracts is that they concern the legal field of two or more states, when internal contracts concern the legal field of one state. Contracts of an international nature have a one-time, non-permanent nature, without affecting international trade. International commercial contracts are the foundation of international trade, the connecting link of world trade. Based on the above, it can be established that Private International Law is such an effective branch of law that regulates private law relations of a property and non-property nature related to them, regardless of their subject area, aimed at meeting the needs of modern society arising in the international space. Consequently, the subject of private international law is relations aimed at establishing the legal order of two or more states, as a result of the established property and personal non-property rights and interests between private persons (non-sovereign entities). Legal custom has been a constant companion of the formation of law for many centuries, carrying with it the motto: "this is how everyone treated us". For joint existence, establishing the limits of what is permissible, norms were drawn up - strict rules of behavior that allowed controlling the activities of various social groups. These norms - rules reflected the interests and values of people, which connected individuals with society and at the same time established the boundaries of proper behavior of an individual or a social group.*

Keywords: *international law, treaties, international trade, needs of modern society, subjects of law, state, legal custom, rules of conduct.*

REZUMAT. *Dreptul contractual internațional este o instituție constitutivă a părții speciale a dreptului penal internațional. Termenul „drept contractual internațional” este folosit în literatura străină. Orice tranzacție privată permisă de legislația națională poate fi afiliată unei ordini juridice străine. „Legătura strânsă cu sistemele juridice a două sau mai multe state” acționează ca o trăsătură calificativă a unei tranzacții cu caracter internațional. Esența unor astfel de contracte este că ele privesc domeniul juridic al a două sau mai multe state, când contractele interne privesc domeniul juridic al unui stat. Contractele internaționale au un caracter unic, nepermanent, fără a afecta comerțul internațional. Contractele comerciale internaționale reprezintă fundamentul comerțului internațional, veriga de legătură a comerțului mondial. Pe baza celor de mai sus, se poate stabili că Dreptul Internațional Privat este o ramură a dreptului atât de*

[1] Olga TATAR, PhD In Law, Associate Professor, Comrat State University, ID ORCID 0000-0003-2158-006X, e-mail: oleatatar@mail.ru

eficientă încât reglementează raporturile de drept privat de natura proprietății și neproprietăți aferente acestora, indiferent de domeniul lor, vizând satisfacerea nevoile societăţii moderne care au apărut în spaţiul internaţional, subiectul dreptului internaţional privat îl constituie raporturile care vizează stabilirea ordinii persoanelor juridice din două sau mai multe state, ca urmare a drepturilor și intereselor patrimoniale și personale neproprietare stabilite între persoane private (entități nesuverane). Obiceiul juridic a fost un însoțitor constant al formării dreptului timp de multe secole, purtând cu el motto-ul: „așa ne-a tratat toată lumea". Pentru existența comună, stabilindu-se limitele a ceea ce este permis, au fost elaborate norme - reguli stricte de comportament care au permis controlul activităților diferitelor grupuri sociale. Aceste norme – reguli reflectau interesele și valorile oamenilor, care legau indivizii de societate și în același timp, stabileau limitele comportamentului adecvat al unui individ sau al unui grup social.

Cuvinte-cheie: *drept internațional, tratate, comerț internațional, nevoi ale societății moderne, subiecte de drept, stat, obicei juridic, reguli de conduit.*

Introduction. The main element of an international commercial contract is recognized as "the location of the commercial enterprises of the parties." Foreign trade transactions include transactions where one of the parties is a foreign individual or legal entity. The main type of international commercial contract is the contract of international purchase and sale of goods. A separate group of foreign trade deals consists of contracts used as a means of financing the main obligation, for example, financial leasing. Since contractual obligations form the foundation of international economic relations, unified international regulation is very effective.

Special collision regulation is defined for transportation and insurance contracts in order to ensure a reliable level of guarantee and protection of passengers and policyholders. For example, the Law on Emergency Situations of Estonia [20]. includes a special section "Insurance contracts", where the following are established: the location of the insurance risk, the right of the parties to free choice, restrictions on the choice of applicable law for life insurance, compulsory insurance.

The autonomy of the will of the parties is the most flexible formula, the application corresponds to the general principle of freedom of contract. For example, US laws define "reasonable" limits of the autonomy of the will. In the theory of law, the term "self-sufficient contract" is known, i.e. a contract that fully resolves all contractual relations of the parties, i.e. when controversial issues arise, they can be settled by the contract itself without reference to the norms of any law. In practice, it is impossible to draw up a contract that is completely independent of national law due to the existence of imperative norms of national legislation that cannot be changed by contractual regulation [40].

The autonomy of the will of the parties concerns the obligation statute of contractual relations. The mandatory statute includes the following questions: interpretation of the contract; content of the contract; execution of the contract; the consequences of non-fulfillment or late fulfillment of the contract; termination of the contract; consequences of contract invalidity [14, p. 412].

Currently, the scope of the liability statute, establishing the statute of limitations, the procedure for calculating monetary liabilities, and determining liabilities from unjust enrichment is increasing. Claims for damages are excluded from the sphere of influence of the obligation statute). Subjects themselves choose the legal system that regulates their rights and obligations and through

which the dispute will be resolved. Disagreements from an invalid contract are resolved according to the law chosen by the parties and established in the contract. Modern collision regulation of contractual relations is based on the principle of the closest connection, which is enshrined in international agreements and national legislation, namely in Art. 1 of the Law on the International Criminal Court of Austria [2]: "The circumstances of the case, which are related to a foreign country, are considered in a private legal relationship according to the legal order with which (they) have the strongest connection. Separate rules on the applicable legal order are considered as an expression of this principle." The principle of the closest connection in the wording of the Austrian Law is the general basis for establishing the law applicable to the entire area of private law relations [15, p. 54-60]. Based on Art. 43-44 of the Law on the Small and Medium Enterprise of Ukraine [24]: "the party that must carry out the performance, which is of decisive importance for the content of the contract, is: the seller - under the sales contract; donor - according to the donation contract; the recipient of an annuity - according to an annuity contract, etc".

Special presumptions are provided for such contracts as: construction contract, contract of simple partnership, i.e. they are not subject to the doctrine of characteristic performance. In relation to contracts that are not provided for in the Civil Code of the Republic of Moldova (unnamed, unnamed), the issue must be resolved in person. The main feature of an unnamed contract (not named, not provided for by law) is that it has its own cause, which is not regulated by legislation [35, p. 65]. Unnamed contracts meet the general requirements of Obligatory Law [28, p. 18-28].

It should be pointed out that the refusal of general conflict binding to the place of residence or to the main place of activity of the party is real when the contract demonstrates a close connection with the law of another country. The choice of the law applicable to the contract, the subject of which is a natural person who uses, acquires or orders movable property, cannot entail the deprivation of such a natural person (consumer) of the protection of his rights. If there is no agreement between the parties on the applicable law to the contract on the creation of a legal entity and the contract that is connected with the fulfillment of the rights of the participant of the legal entity, then the law of the country where the legal entity is established or is subject to establishment shall apply.

Collision problems arise due to the fact that the form of the international commercial contract is not unified. Each state has its own requirements. For example, according to Article 31.1 of the Law on the International Civil Procedure of Ukraine [24]: "The form of the transaction must comply with the requirements of the law applicable to the content of the transaction, but it is sufficient to comply with the requirements of the law of the place of its execution, and if the parties to the transaction are located in different states - the law of the place of residence of the party that made the offer, if otherwise not established by the contract".

According to Art. 124.1 of the Law on International Civil Procedure of Switzerland [32]: "A contract is valid from the point of view of form if it meets the requirements of the law applicable to the contract or the law of the place of conclusion of the contract. When the law applicable to the contract provides for a strictly defined form in order to protect the interests of one of the parties, the form of the contract is subordinated exclusively to the law applicable to the contract, unless this law does not allow the application of the second law.

It should be remembered that there are special imperative conflict rules on the form and procedure of signing transactions, in case of violation of which the contract can be contested. The special form applies to foreign economic transactions, for example, Art. 31.3 of the Law on

Emergency Situations of Ukraine [24]: "A foreign economic agreement, if at least one party is a citizen of Ukraine or a legal entity of Ukraine, is concluded in writing regardless of the place of its conclusion, unless otherwise established by law or an international treaty of Ukraine".

An attempt to unify the form and procedure for concluding foreign trade contracts was made in 1980 by the Vienna Convention, which included the norm of the "rule of declaration" - the right of participating states to agree on this issue in accordance with their national legislation. The validity of the contract from the point of view of the form under the law of one state and its invalidity under the law of another is sometimes used as an independent criterion of conflict of law: from two or more conflicting legal orders, preference must be given to the one by virtue of which this transaction must be recognized as valid (the principle of "favoring the transaction » - *favor negotii)* [14, p. 476]. Questions of the formal validity of contracts are elaborated in detail in the Rome I Regulation. A contract concluded between subjects located in the same country is considered valid in a form that meets the conditions regarding the form provided by the law applicable to the contract, while a contract concluded between subjects located in different countries is considered valid in form, meeting the conditions stipulated by the law of the country where any of the subjects is located at the time of signing, or the law of the state where any of the subjects had their place of residence at that particular time.

Any contract, where the subject of the contract is a real right to immovable property or a lease of immovable property, is subject to the rules regarding the form prescribed by the law of the country where the immovable property is located, when: a) such rules must be observed regardless of the place of signing the contract and outside we depend on the right of the regulating ego; b) it is not permissible to deviate from the prescribed rules. In that case, when the law of the country of establishment of the legal entity includes special requirements regarding the form of the contract on the creation of a legal entity or transaction, then the form of the transaction is subject to the personal law of the legal entity, and if the transaction is subject to mandatory state registration in the Republic of Moldova, the form of this transaction is subject to Moldovan law. c) The form of the transaction with immovable property is subject to the law of the country where the property is located, and with immovable property entered in the state register in the Republic of Moldova, Moldovan law.

Contradictions contained in the norms of national legal systems, which apply to foreign trade transactions, greatly complicate the process of concluding and later executing international commercial contracts. The successful development of international trade directly depends on the elimination of such obstacles through the creation of a uniform legal regime. International organizations such as: UNCITRAL, UNIDROIT have made a huge contribution here. A number of projects developed by UNIDROU formed the basis of international conventions (for example, the Convention on the International Carriage of Goods by Road (CMR), the Convention on the International Carriage of Passengers and Baggage by Road. Within the framework of UNCITRAL, a draft of the Vienna Convention of 1980 was presented, which applies to the purchase and sale between entities whose enterprises are located in different states. This convention recognizes the contractual freedom of the parties. As for the international unification of conflict of laws rules, this issue was resolved by the Hague Conference on International Criminal Law.

In 2008, Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) was adopted, the purpose of which is to improve the content of contract law and expand the scope of application of conflict of law rules in it. If it is impossible to assign the contract to one

category, or if it is possible to assign it to several categories, then it is regulated by the law of the country with the usual place of residence of the subject, according to which the execution of the contract is decisive.

The Inter-American Convention on Law, extended to international contracts (1994), contains the definition of international contracts, and unified conflict-of-law norms are also established.

The existence of legal customs is due to their significant changes, namely, the transformation into a subsidiary form of both national and at the same time international law. For example, Ya. V. Trofimov and S. Yu. Krasnov state that "today we should talk about the promising development of scientific developments in legal custom and customary law in civil and other legal sciences [16, p. 15-25]. In Private International Law, such a category as international trade custom is very ambiguous, because in doctrine, in practice there is no unity when using the term trade custom. To begin with, it is necessary to understand the difference between custom and custom. For example, in English legal literature, trade custom is a rule of conduct that is part of a contract. In American law, trade usage refers to the practice relied on by the parties to numerous transactions in a certain area of trade [30, p. 8].

For example, according to the Uniform Commercial Code of the United States (The Uniform Commercial Code): "A trade custom is any practice or order of business relations/methods of conducting trade, the observance of which in certain places, professions or spheres of activity is of such a permanent nature that it justifies the expectation of their compliance is also in connection with this transaction" [37].

According to the commentary to the text of the Vienna Convention on Contracts for the International Sale of Goods, "in principle, the term "custom" can be understood not only as a rule that is a legal norm and applicable as such (legal custom), but also a rule that is not a legal norm , the applicability of which is based on the fact that it is considered to be part of the will of the parties under the contract (habit) [11]. In practice, it is difficult to draw a line between custom - a rule of law, and custom - not a rule of law, for this it is necessary to proceed from the specifics of the lex mercatoria. The main criterion for determining the legal force of a rule is the will of the state, i.e. recognition of custom depends on domestic law.

Thus, Article 1253 of the Civil Code of the Republic of Armenia reads: "the law applicable to relations complicated by a foreign element is determined, inter alia, on the basis of international customs recognized in the Republic of Armenia"[7]. This type of customs should not be confused with customs regulating civil-law relations.

Customs are primary institutional forms of law and fundamental principles of any society and its culture, a condition for its normal existence. Thanks to customs, the spatial-temporal connection between generations is ensured and the stability and stability of the social environment is formed [25].

Private International Law - in the sense that it establishes legal relations between persons belonging to different states, legal relations that go beyond the framework of a separate legal system and require clarification of what law applies to them [29, p. 54]. Relations governed by Private International Law are recognized as international, as they have a transnational nature, i.e. go beyond the borders of the legal system of the state. Thus, Private International Law provides for the regulation of private law relations that arise in the field of international communication. Then the subject of regulation of Private International Law includes private law relations complicated by a

foreign element, the manifestation of which is possible in three variants: 1) the subject of the legal relationship, to whom a foreign person acts; 2) object of legal relationship, which is directly located abroad; 3) a legal fact that binds the legal relationship.

As for the subject of private international law, there are following views in the doctrine of law.

1. Private International Law as a branch of law and a branch of law is the area of civil-law relations in the broadest sense of the word [26, p. 131].

2. The task of Private International Law is to determine the territory to which the effect of a legal norm extends, and thus Private International Law deals, first of all, with the application of the law in space [6, p. 67].

3. The most distinct feature that allows distinguishing public relations within the framework of private international law is their connection with the legal order of two or more states, as well as with the system of international law [1, p. 87].

Private International Law can be considered both in a broad and a narrow sense: in a narrow sense, it represents a set of norms that regulate civil-law relations with a foreign element. "According to the opinion of Professor F.F. Martens, Private International Law in the narrow sense could be called international civil law, along with which there would be international family law, international labor law, international arbitration and procedural law" [13, p. 43]. Private International Law in a broad sense is a set of norms that regulate international relations of a private law nature, be it civil, family, currency, labor, procedural). Primarily civil and commercial relations. Relations of a private law nature are marital, labor, land, currency, customs, i.e. any property and related personal non-property relations between private subjects of law [12, p. 117].

It should be noted that the subject of legal regulation of Private International Law includes not only civil-law relations, but also relations in the currency, financial, tax and customs spheres, and at this stage of the state's development, these issues are the most important [4, p. 54].

In accordance with Art. 1 of the Law of Romania No. 105 of 1992 "On Private International Law" [22] the relations of Private International Law include civil, commercial, labor, civil-procedural and other private law relations with a foreign element.

Law of Ukraine No. 2709- IV dated 23.06.2005 "On Private International Law" [23] applies to private law relationships that are connected to one or more legal systems other than the Ukrainian legal system at least through one of its elements. According to Art. 1 of this law, private relations are relations based on the principles of legal equality, free expression of will, property independence, the subjects of which are physical and legal entities.

The most real codifications of Private International Law determine the scope of its action by means of: the competence of local courts in the international sphere (Section 2, Article 2 of the Belgian Law of July 16, 2004 "On the Code of Private International Law" [36]), the law applicable to private law relations with an international element (h (2) of Article 1 of the Code of Private International Law of Bulgaria 42/17. 2005)[10], regarding the provision of foreign law relating to the subject of the case (chapter (2) of Article 2 of Law No. 5718 dated November 27, 2007 "On the Turkish Code of 2007 on Private International Law and International Civil Procedure" [19]), determination of the legal order in case of circumstances of the case that are related to the law of a foreign state , and, accordingly, the application of the rules of procedural law during proceedings in this case (Article 1 of the 1998 Law of Georgia "On Private International Law" [21]).

Thus, defining the subject of Private International Law, we come to the following conclusions:

1. The legislative base of a number of states fixes the concept of a broad understanding of the essence of Private International Law;

2. A characteristic and constitutive feature of private law relations is their subject composition, namely, relations arise between private individuals and are based on the principles of legal freedom, equality between the participants of relations, expression of will, as well as property independence);

3. Relationships between private individuals constitute the subject of Private International Law regardless of their scope;

4. The subject of Private International Law includes questions of applicable law, as well as questions of a procedural nature.

It should be noted that M. I. Brun was the first to introduce the concept of "foreign element" into legal circulation [5, p. 176], however, it is impossible to note the unambiguous definition of this concept, because it causes quite a few disputes.

1. We note that the foreign element is not an element of the legal relationship, it would be more correct to speak of foreign characteristics combined into two groups related to two structural elements of the relationship - participants and activity. Participant (subject), acting as an element of the legal relationship, and not his citizenship; the object of the legal relationship is not the location of the thing itself, but the thing, for a legal fact that took place on the territory of a certain state, there is no place in the legal structure [31, p. 89].

2. The very definition of a foreign element is used in Private International Law to establish in law those legal entities in respect of which both non-domestic and foreign law can be applied. The foreign element, expressing in the most abstract form the peculiarity of transnational private law relations, creates a connection between the relation and foreign law [27, p. 43-53].

The concept of "foreign element" can be fixed in different ways. Based on clause (2) h (1) of Art. 1 of the Law of Ukraine No. 2709- IV dated 23.06.2005 "On Private International Law" [23] states that: "Foreign element is a feature characterizing private law relations that are regulated by this Law and manifest in one or more of the following forms: at least one participant is legally related a foreigner, a stateless person or a foreign legal entity; the legal object is located on the territory of a foreign state; a legal fact that affects the emergence, modification or termination of a legal entity, had or is taking place on the territory of a foreign state".

According to the Civil Code of the Republic of Moldova No. 1107-XV of 06.06.2002[8], namely Book V of Section I "General Provisions on Private International Law" ch. (1) and part (2) of Art. 2576 provides: "The law applicable to private law relations complicated by a foreign element is determined on the basis of international treaties, one of the parties of which is the Republic of Moldova, this book, laws of the Republic of Moldova and international rules recognized by the Republic of Moldova. If it is impossible to determine in accordance with ch . (1) applicable law, the law of the state shall be applied, with which the private law relationship, complicated by a foreign element, is most closely connected".

Regarding the legislation of the Russian Federation, namely the Civil Code of the Russian Federation No. 14-FZ dated January 26, 1996 [9] according to clause (1) of Art. 1186 of the Civil Code of the Russian Federation" The law applicable to civil law relations with the participation of foreign citizens or foreign legal entities or civil law relations complicated by another foreign element, including in cases when the object of civil rights is located abroad, is determined on the basis of international contracts of the Russian Federation , this Code, other laws (p. 2 of ar. 3) and

customs recognized in the Russian Federation. However, the presence of a foreign element in the legal relationship can take many forms, because of this it is difficult to classify them.

Private International Law is designed to regulate the relations between private individuals who are subject to the laws of various states, in addition, to eliminate conflicts that have arisen and to create unique approaches to regulating private law relations. Hence the main specificity of Private International Law, which consists in the establishment and application within the framework of the law and without going beyond the national legal system of those legal norms that are valid and applied in other states. The possibility of subordinating the legal relationship to the law of two or more states is the basis for recognizing the international character of such a legal relationship [17, p. 65].

As a rule, the legal system is divided into public and private law, however, such a division is conditional. For example, in public law, elements of private law can be found, for example, the rules of land law, which regulate the rights of private individuals in the event of their acquisition of a land plot. A large number of public norms with private law effect are norms of administrative law [26, p. 137].

Commonly known branches of private law, which, as a rule, are: labor law, family law, represent a collection of both private and public law regulations. If we turn to labor law, then the termination of the employment contract, caused by the initiative of the administration, or the imposition of any disciplinary penalty are public-law in nature. Regarding the norms governing family relations, be it the marriage with a foreign citizen or the establishment of the place of residence of the spouses, they will also have a public legal character [33, p. 48-57]. Business law, banking law, etc. are not excluded. their peculiarity consists in the regulation of non-authoritative relations arising between private subjects of law, as a result of the resolution of both property and personal non-property interests.

The presence of a foreign element makes it possible to combine private law relations with other legal systems. The legal relationship of relations with the legal systems of two or more states is a consequence of the presence of a foreign element in private law relations [12, p. 121]. The presence of a foreign element in the legal relationship does not yet form a connection with foreign law. It is necessary to have some specific circumstance with which the norms of the law of several states connect the creation, modification or termination of legal relations [27, p. 43-53].

A legal fact is a circumstance that is inherent in the essence of this legal relationship. The significance of a legal fact in Private International Law is significant because it arises within the framework of the legal order of a foreign state [1, p. 89]. It is important to note that the relationship between the foreign element and the subject itself is special when the foreign element is not manifested from the personal status of the subject itself, but as a result of the presence of subjective law abroad. The very legal connection between the legal orders of several states is revealed in the analysis of a legal fact produced by a court with the purpose of establishing the applicable law.

In our opinion, an urgent modern problem is the problem of private law relations that can be traced on the Internet, where information communication of a private law nature arises, where on the one hand the user is the consumer of the information resource and the direct creator of the given information resource, where each of the listed elements may refer to a foreign state, because The Internet space network has both an international and a very global character.

Based on the above, it can be established that Private International Law is such an effective branch of law that regulates private law relations of a property and non-property nature related to

them, regardless of their subject area, aimed at meeting the needs of modern society arising in the international space. Consequently, the subject of private international law is relations aimed at establishing the legal order of two or more states, as a result of the established property and personal non-property rights and interests between private persons (non-sovereign entities). Legal custom has been a constant companion of the formation of law for many centuries, carrying with it the motto: "this is how everyone treated us". For joint existence, establishing the limits of what is permissible, norms were drawn up - strict rules of behavior that allowed controlling the activities of various social groups. These norms - rules reflected the interests and values of people, which connected individuals with society and at the same time established the boundaries of proper behavior of an individual or a social group [33, p. 48-57].

Trade terms (types of contracts) were formed for a long time until they finally acquired the quality of customs of international trade. In order to unify the practice of foreign trade turnover, the ICC has prepared unified international rules for the interpretation of terms (Incoterms). This is a kind of unofficial codification of international trade customs, which makes it possible to obtain a single meaning of trade terms that are very often used in foreign trade. A substantial revision of Incoterms took place in 1990, the purpose of which was the use of computer communication, various changes in cargo transportation, during which the following terms were excluded: FOR/FOT and FOB-airport. Already in the Incoterms edition in 2000, maximum efforts were made to achieve maximum uniformity of terms, for example, in Incoterms-2000, instead of the concept of "reasonable term", the expression "ordinary term" was used.

Incoterms-2010 is currently in force. Subjects of an international commercial contract have the right to use any edition of Incoterms, where international sales contracts and the distribution of their rights and obligations are disclosed in detail. The rules of interpretation apply to the sales contract. Incoterms strictly distributes the obligations of the parties: the seller's obligation to transfer the goods to the buyer's disposal, transfer it to the carrier or deliver it to the destination; distribution of risk between the parties. The rules regulate the obligations of the parties for customs clearance of the goods, their packaging, the buyer's obligation to accept the delivery and confirm the fulfillment of the seller 's obligations. Incoterms connects the transfer of risk with the transfer of the goods and does not connect it with other circumstances, such as the moment of concluding the contract. None of the conventions listed above regulates the transfer of property rights or other real rights related to goods. When the moment of the transfer of ownership rights is not initially established in the contract, each subject establishes it according to the norms of his national legislation. The main problem in international trade is the problem of safety of goods and courts. Considering that the majority of countries have increased requirements regarding security, Incoterms-2010 introduces the obligation of both subjects to provide, if necessary, information on customs clearance. In Incoterms-2010, special importance is given to the delivery of goods during transportation by various modes of transport, and all terms are divided into two groups: a) delivery conditions applicable to the transportation of goods by any mode of transport- EXW, FCA, CPT, CIP, DAP, DAT, DDP; b) terms of delivery applicable to cargo transportation only by sea or inland water transport - FAS, FOB, CFR, CIF. In Incoterms, some types of contracts are formulated regarding the conditions of transportation of goods, transfer of risks, customs burdens, i.e.: a) group "E" (shipping); b) group "F" (main transportation not paid); c) group "C"; d) group "D" (arrival) [14].

11 terms form 11 types of contracts, where all conditions are divided into four categories based on the degree of participation and responsibility of the seller for transport, customs and other

burdens: 1. Group "E" (shipment): EXW (ex-factory). These are the most burdensome conditions for the buyer and the least burdensome for the seller. The seller is obliged to deliver the goods to the buyer on time at or near the manufacturer, using any mode of transport. 2. Group "F" (main transportation not paid by the seller): a) FCA (freight forwarder) - free from the carrier; b) FAS (free along side) - free along the ship's side; c) FOB (free on board) - free on board. The seller is obliged to deliver the goods to the means of transport specified by the buyer, without organizing transportation. When: FCA - any type of transport is used; FAS and FOB - sea and inland water transport is used. 3. Group "C" (main transportation paid by the seller): a) CFR (cost and freight; b) CIF - cost, insurance and freight; c) SRT - freight paid to; d) CIP - freight charges and insurance paid to. The main obligation of the seller is to conclude a contract of carriage without bearing the risk of loss or damage to the cargo after loading the goods onto the chartered vessel. When: CRT and CIP - any transport is used; CFR and CIF - sea and domestic air transport is used. Contracts under the conditions of groups F and C represent shipment (shipment) contracts. Insurance issues are related only to CIF and CIP (the seller is obliged to provide insurance for the benefit of the buyer). 4) Group "D" (delivery): a) DAP (free delivery point) - delivery at the point. This condition is used instead of DAF, DES and DDU (Incoterms-2000); b) DAT (free terminal) - delivery at the terminal. This condition is used instead of DEQ (Incoterms-2000); c) DDP (free warehouse) - delivered with payment of duty. These are the most burdensome conditions for the seller - he bears all the costs. Group D conditions are arrival agreements. All of them are used for transportation by any type of transport. Incoterms do not require any formal adherence to them. According to the legislation of Spain, Iraq, Ukraine, this document is mandatory for all import operations. According to the legislation of Germany, Austria, and France, Incoterms acts as a legal custom, in case the parties do not agree otherwise.

If there is no reference to Incoterms in the contract, then the document is to be used as a normal course of business [39, p. 78]. Incoterms is applicable in international commercial transactions, when goods cross the border.

The term lex mercatoria is used to denote the entire array of both national and international, i.e. This is an autonomous legal order, an independent legal system created not by a state or a group of states, but directly by subjects of international trade [3, p. 94]. Lex mercatoria is an international commercial law that unites norms of direct action and eliminates a priori conflicts between the legal systems of different states [13, p. 65]. By its nature, "1ekh mercatoria" is a system of non-state regulation of international trade. In 1992, UNCITRAL developed the Legal Manual on International Countertrade Transactions, where the purpose of the Manual was to assist parties who concluded countertrade transactions. In 1994, UNCITRAL adopted the Model Law on Procurement of Goods (Work) and Services, which contains norms aimed at ensuring competitive conditions, transparency, honesty and objectivity in the procurement process.

In 1994, the Administrative Council of UNIDRUA approved the Principles of International Commercial Contracts (UNIDRUA Principles). Initially, 120 articles were compiled, then 185 articles, and subsequently 211 articles. A number of scholars consider this document to be the material of the lex mercatoria concept [3, p. 107]. The UNIDROIT principles are identical to the lex mercatoria and are formulated for global application to international contracts. Principles are nothing more than rules of a recommendatory nature used by subjects of international commercial contracts. For them, there are no state approvals, but only an expression of the will of the parties. The principles are designed for universal application in relation to any commercial transactions [18, p. 43].

The principles of UNIDRUA fix the freedom of the form of the contract, its good faith and obligation, formulate the specific conditions of international commercial contracts, resolve the contradiction between standard and unexpected conditions and the problem of pro forma conflict, establish the possibility of the existence of implied obligations [14, p. 513]. The Principles of European Contract Law were developed on the basis of the UNIDROIT Principles. This document is presented as part of the preparation of the European Code of Private Law. European principles cover international transactions and transactions of a "domestic" nature, i.e. European principles are general rules of contract law that can be applied to any transaction. European principles are part of the lex mercatoria system; containing general provisions of contract law and relating to general provisions of obligation law. European principles and principles of UNIDROIT are a kind of codes of universal and regional international treaty law.

The contract of international purchase and sale of goods is a type of international commercial contract. Movable material things act as the subject of the contract of international purchase and sale of goods. Vienna Convention of 1980 [38] acts as an international legal document that regulates international sales in trade. Those relations that are not regulated by the Convention are regulated by customs. For the application of the Convention, the nationality of the parties, their civil or commercial status is not so significant.

The Convention defines the procedure for concluding an international commercial contract. The moment of conclusion of the contract is determined by the doctrine of receipt of the offer, which comes into force from the moment of receipt by the addressee, and the contract is recognized as concluded at the moment of acceptance of the offer. The place of signing the contract is the place of acceptance. An offer is nothing more than an offer addressed to one or more persons. Acceptance - a statement of the addressee of the offer, representing agreement with the offer. Acceptance of the offer takes effect from the moment the offeror receives the consent. The Convention fixes the deadline for acceptance, namely received within the deadline set by the offeror; when the term is not specified, then within a reasonable time. According to the terms of the Convention, the quantity, quality, description and packaging of the goods must correspond to the terms of the contract. The Convention does not answer the question of the transfer of ownership from the seller to the buyer. Such questions are permissible through the autonomy of the will of the parties. Issues that are superficially covered in the Convention are resolved according to the general principles on which the Convention is based. The following are the general principles of the Vienna Convention: a) freedom of contract; b) the dispositive nature of the provisions of the Convention; c) good faith in international trade; d) presumption of validity of trade custom; i) the connection of the parties with a stable practice of their interrelatedness; f) cooperation in the fulfillment of obligations; g) criterion of "reasonableness"; k) the opportunity requires the actual performance of the obligation; l) the distinction between essential and non-essential is violated.

UNIDRUA principles regulate the situation use standard conditions when concluding a contract, namely - standard conditions are provisions presented in advance by one party for common and repeated use and applied without negotiations with the other party. When the parties have reached an agreement other than the standard conditions, the contract is considered concluded by means of the agreed conditions and other conditions that coincide with each other in essence.

The Vienna Convention represents the achievement of a compromise between the continental and Anglo-Saxon legal systems, it does not regulate issues of statute of limitations.

The contract can be terminated by agreement of the parties or in writing (if it is stipulated in the contract). Termination of the contract releases both parties from their obligations under the contract. The Vienna Convention of 1980 provides for the possibility of unilateral termination of the contract only in one case - failure of the other party to fulfill its obligations is a material breach of the contract or if the contract is not performed within an additional reasonable period [14, p. 538].

Conclusions

Based on the above, it can be established that Private International Law is such an effective branch of law that regulates private law relations of a property and non-property nature related to them, regardless of their subject area, aimed at meeting the needs of modern society arising in the international space. Consequently, the subject of private international law is relations aimed at establishing the legal order of two or more states, as a result of the established property and personal non-property rights and interests between private persons (non-sovereign entities). Legal custom has been a constant companion of the formation of law for many centuries, carrying with it the motto: "this is how everyone treated us". For joint existence, establishing the limits of what is permissible, norms were drawn up - strict rules of behavior that allowed controlling the activities of various social groups. These norms - rules reflected the interests and values of people, which connected individuals with society and at the same time established the boundaries of proper behavior of an individual or a social group.

References:

1. Anufrieva, L.P. Correlation of international public and Private International Law (comparative study of legal categories): dissertation. Moscow. 2004. 454 p.
2. Austria's Emergencies Act of 1978 Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/040101.
3. Bakhin S.V. Sublaw (international summaries of unified contract law). St. Petersburg. 2022. 328 p.
4. Bekyashev, K.A., Khodakov, A.G. Private International Law: a collection of documents. Moscow. 1997. 317 p.
5. Brun, M.I. Private International Law: A course taught at the Moscow Commercial Institute, Moscow. 1981. 276 p.
6. Cheshire, J., North, P. Private International Law. Moscow. 1982. 321 p.
7. Civil Code of the Republic of Armenia No. ZR-239 dated July 28, 1998. [citation 20.11.23]. Available: https://base.spinform.ru/show_doc.fwx?rgn=2998.
8. Civil Code of the Republic of Moldova No. 1107-XV dated 06.06.2002. In: *Monitorul Oficial al Republicii Moldova*, 2002, nr. 82-86. Republished in: *Monitorul Oficial al Republicii Moldova*, no. 66-75 (6989-6998) dated 01.03.2019.
9. Civil Code of the Russian Federation No. 14-FZ of January 26, 1996. [date of visit 20.11.2023]. Available: http :// www. consultant _ ru/ document / cons _ doc _ LAW _76306/.
10. Code of Private International Law of Bulgaria 42/17 of 2005 Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/041701.
11. Commentary on the text of the Vienna Convention on Contracts for the International Sale of Goods. [citat 20.11.23]. Available: https://www.cisg.info/komentariy-yurlit.php.
12. Dmitrieva, G.K. Private International Law: textbook. Moscow. 2012. 365 p.
13. Erpyleva N.Yu. Private International Law: textbook. Moscow. 2021. 274 p.

14. Hetman-Pavlova, I.V. Private International Law: textbook for masters. Moscow: Yurayt Publishing House. 2013. 987 p.
15. Ispaeva G.B. Peculiarities of conflict regulation of contractual obligations. A: *Consultant Plus*. 2020, p. 54-60.
16. Ivanov R.L. Types of legal customs. In: *Herald of Omsk University. "Law" series.* 2021. Volume 18, No. 2. p. 15-25.
17. Kalensky, P. Trends of private international law. Prague. 1991. 187 p.
18. Kukin A.V. Principles of UNIDRUA international commercial contracts: basic provisions, legal nature. Moscow. 2005. 433 p.
19. Law No. 5718 dated November 27, 2007 "On the Turkish Code of 2007 on Private International Law and International Civil Procedure". Date of visit [20.11.2023]. Available:https://pravo.hse.ru/data/2016/04/05/1126272656/%D0%A2%D1%83%D1%80%D1%86%D0%B8%D1%8F%202007.pdf .
20. Law of Estonia on Emergencies and Disasters of 2002. Date of visit [19.11.2023]. Available: https://pravo.hse.ru/intprilaw/NE.
21. Law of Georgia of 1998 "On Private International Law". Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/050301.
22. Law of Romania No. 105 of 1992 "Applicable to the Regulation of Private International Law Relations". Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/041301.
23. Law of Ukraine No. 2709- IV of June 23, 2005 "On Private International Law". Date of visit [20.11.2023]. Available: http://www.singlewindow.org/docs/61.
24. Law on Emergency Situations of Ukraine No. 2709- IX of June 23, 2005 Date of visit [20.11.2023]. Available at: http://www.singlewindow.org/docs/61.
25. Lomakina I.B. Customary law: institutional aspect. St. Petersburg, 2015. 298 p.
26. Lunts, L.A. Course of private international law. Moscow. 2002. 284 p.
27. Makovsky, A.L. The problem of the nature of private international law in Soviet law. In: *Problems of perfection of Soviet legislation. Proceedings of VNIISZ*. Moscow. 1984, No. 29, p. 43-53.
28. Nicolae M. Dreptul comun al contractelor nenumite, București: Universul Juridic, 2017 . p. 18-28.
29. Pereterskyi, I.S., Krylov, S.B. Private International Law. Moscow. 1990. 265 p.
30. Ramzaitsev D.F. About the importance of customs in international trade. In: *International trade customs*. Moscow. Vneshtorghizdat 1998. p. 8-16.
31. Rubanov, A.A. Theoretical foundations of international interaction of national legal systems. Moscow. 1996. 231 p.
32. Swiss Emergencies Act of 1987 Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/042901.
33. Tatar O. International trade usage and principles in private international law. In: *Law and life*. 2023, p. 48-57.
34. Tatar, O. Private International Law: Study guide: (course of lectures) / Tatar Olga. – Comrat: [S. n.], 2033 (A&V Poligraf). – 270 p. ISBN 978-9975-83-275-5.
35. Tatar, O. Unnamed Contracts as a Means of Updating the Contractual System of the Republic of Moldova. Monograph. Typ. "A&V Poligraf". Comrat. 2021. 287 p.
36. The Belgian law of July 16, 2004 "On the Code of Private International Law ". Date of visit [20.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/041801.

37. United States Uniform Commercial Code. (The Uniform Commercial Code). [citat 20.11.23]. Available: https :// pravo. hse _ ru / intprilaw / doc /0201.
38. Vienna Convention on Contracts for the International Sale of Goods, 1980. Date of visit [20.11.2023]. Available: https://www.cisg.info/tekst-venskoj-konvencii-polnostyu.php.
39. Vilkova N.G. International rules for the unification of trade terms. Moscow. 2018. 187 p.
40. Zelenin A. Incoterms: evolution of content and problems of application. Date of visit [19.11.2023]. Available: http://www:legas.ru/incoterms3.