Washington University Law Review

Volume 1967 | Issue 2

January 1967

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WASHINGTON UNIVERSITY
LAW QUARTERLY

Volume 1967 Spring, 1967 Number 2

THE LAW OF INTERNATIONAL TRADE OF SOME EUROPEAN SOCIALIST COUNTRIES AND EAST-WEST TRADE RELATIONS*

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The constant growth of the forces of production has led to a linking of the entire world and an unprecedented interdependence of the economies of various countries. Therefore the stabilization and further development of the world's economy cannot be envisaged without an ever-widening economic cooperation between all states belonging to different economic and social structures. International trade is the most important means of this cooperation because it constitutes an intermediary in the international circulation of goods. Hence the legal rules governing international trade transactions assume great importance. These rules are established by the laws of every country and also by international treaties and agreements.

The fundamental principle of the law of foreign trade of socialist countries consists in the state monopoly of foreign trade. It results further from the nature of the socio-economic system of the socialist states, that they direct and control by plan the entire trade of the respective country. The foreign trade plan constitutes an important part of the national economic plan of every socialist country. Upon these foundations, foreign trade is governed by a series of rules which appear to have the following characteristic features: 1) certain special characteristics, which distinguish them from the general provisions of civil and economic law (in the countries in which the latter was dissociated from the civil law); 2) important similarities with analogous provisions in force in Western countries, showing a tendency toward development of internationally uniform concepts and rules.

*This article is based on lectures delivered at the University of California (Berkeley), Harvard, and Washington University Law Schools.

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I. Special Legal Regulations of the Socialist Countries

To meet the requirements of international economic intercourse, the socialist countries have established special legal regulations which differ to a considerable extent from the provisions governing their internal economic relations.

The extreme solution in this respect was adopted in the Czechoslovak Socialist Republic, where a special International Trade Code[1] containing all rules governing relations arising in international trade was enacted. In other socialist countries some of the rules governing foreign trade relations are contained in special provisions (*lex specialis*), while others form part of the general provisions of civil law. Thus, for example, in Poland the general provisions of the Civil Code of April 27, 1962[2] are also applied to foreign trade transactions, though some special rules in this respect are also in force. (It is important to note that some provisions of the Commercial Code of June 27, 1934, which was repealed by the law containing the Introductory Provisions for the Civil Code, remain in force but exclusively in the area of foreign trade transactions.) Similarly, in the USSR, the Principles of Civil Legislation of the USSR and the Union Republics of December 8, 1961[3] and the provisions of the Civil Codes of the Union Republics[4] also apply to foreign trade transactions. These provisions are further supplemented by some special provisions. In Hungary, the Civil Code of 1959 (Act No. IV of 1959)[5] is also applied to foreign trade transactions, though some special provisions in this respect were enacted in different statutes.

Within the framework of the legal regime of foreign trade of socialist countries, a further distinction could be drawn between the provisions which regulate economic intercourse and cooperation between the socialist countries and those which govern foreign trade relations with other countries.

The legal regime of foreign trade between socialist countries is characterized by a great uniformity of rules. The process of unification of the rules

1. Act No. 101 of December 4, 1963, concerning Legal Relations in International Trade (International Trade Code). An English translation of the Code was published in 3-4 Bulletin of Czechoslovak Law (1964).

2. The French translation of the Code was published by Wydawnictwo Prawncz in Warsaw in 1967.

3. The English translation of the Principles is published in 11 Law in Eastern Europe (R. Leyden ed. 1966).

4. The English translation of the Civil Code of the Russian Soviet Federative Socialist Republic of June 11, 1964 is published in 11 Law in Eastern Europe, *supra* note 3.

5. For an English translation of the Code see: Civil Code of the Hungarian People's Republic, published by Corvina in Budapest in 1960.

regulating foreign trade relations between socialist countries started in the 1950's when it took the form of regulation of the General Conditions of Delivery under bilateral agreements concluded by the Ministries of Foreign Trade.

An important step towards the unification of the legal rules relating to foreign trade has been made by the adoption, in 1957, of the General Conditions of Delivery of Goods, applicable to the countries which are members of the Council for Mutual Economic Aid.[6] This multilateral agreement, which has been in force since January 1, 1958, has unified numerous rules of law and consequently, has directly regulated the civil law relations between the organizations of foreign trade of the member countries of the Council. The General Conditions of Delivery 1958, like those which preceded them, represent an inter-governmental agreement, as distinct from a formal international treaty. The interested states, by means of ministerial directives, have informed the state enterprises in the field of foreign trade under their control of the terms of agreement and indicated that all contracts of these enterprises are deemed to be made on the basis of the General Conditions whether they refer to them or not. (The parties are, however, free to regulate certain questions in a manner different from that prescribed by the General Conditions.)[7]

An analysis of the rules contained in the General Conditions proves that in their substance they show many similarities with contract terms used by Western exporters and importers.[8] They comprise uniform rules on the main questions relating to the conclusion of contract including F.O.B., C.I.F. and C.&F. clauses, provisions concerning the place, date and terms of delivery, the quality and quantity of goods, the packing, technical documentation, guarantees, claims and modes of payment, some rules dealing with liability for damage caused by nonperformance or inadequate performance of reciprocal obligations, and some procedural rules on arbitration for settlement of disputes arising from these transactions. Finally, they establish a uniform conflict of law rule, according to which the law of the

6. For an English translation of the General Conditions of Delivery of Goods see Berman, *Unification of Contract Clauses in Trade Between Member-Countries of the Council for Mutual Economic Aid*, 7 INT'L & COMP. L.Q. 659 (Supp. 1958).

7. The problem of the mandatory character of the General Conditions has been widely discussed. *See, e.g.*, T. SZASZY, PRIVATE INTERNATIONAL LAW IN THE EUROPEAN PEOPLE'S DEMOCRACIES 307 (1964); L. REGZEI, INTERNATIONALES PRIVATRECHT 245 (1958); Ionasco & Nestor, *The Limits of Party Autonomy, in* THE SOURCES OF THE LAW OF INTERNATIONAL TRADE, 167, 177-78 (C. Schmitthoff ed. 1964).

8. *See, e.g.*, Berman, *supra* note 6.

seller is applicable to solve all questions not regulated or partially regulated by the contracts or the General Conditions.

A further step towards unification of the rules of the law of foreign trade among the socialist countries which are members of the Council was achieved in 1962 by adopting two other General Conditions: the first dealing with technical work connected with the mutual delivery of machines and equipment, and the second concerning the maintenance and repair of machines and equipment delivered to each other by foreign trade enterprises of the countries which are members of the Council.

It is important to note that the Council has initiated works tending towards further improvement of the unified legal regime of foreign trade among its members which are expected to result in a revision of the existing General Conditions.

The General Conditions of Delivery of Goods and Services between European and Far-Eastern socialist countries are still regulated under bilateral agreements concluded by the Ministries of Foreign Trade.

In 1963 the member states of the Council adopted a Convention relating to the multilateral order of settling of accounts in transferable rouble and to the establishment of the Bank of International Cooperation. The Convention came into operation on January 1, 1964. According to the Convention all accounts between the High Contracting Parties are settled from that date in transferable rouble (0.987412 pure gold).

The main tasks of the Bank, which has its seat in Moscow, are:

1) settlement of multilateral accounts in transferable rouble,
2) granting of credits in connection with the foreign trade operations of the member states,
3) acquiring free means of payment, gold and foreign exchange currencies,
4) financing the establishment, reconstruction and operation of common industrial enterprises.

The capital stock of the Bank is 300 million transferable roubles, to which each of the member states contributes in a fixed proportion. The Bank has a reserve fund and can have other special funds too.

Therefore a distinction could be drawn between the legal regime of the international trade of socialist countries and other countries. The first is characterized by a great uniformity of rules based on a set of international agreements; the second remains on that level of uniformity which was achieved in universal international trade.

II. Similarity of Socialist and Non-Socialist Foreign Trade Law

The most remarkable fact which should be emphasized is the striking similarity of many rules of law of foreign trade of socialist countries and those of other countries. This phenomenon was emphasized during the meetings of the Colloquium on the New Sources of the Laws of International Trade, held at London by the International Association of Legal Science in September 1962,[9] in which the most eminent experts in international trade law from both socialist and Western countries were represented.

The starting point of discussion, indicated in the general report presented by Clive Schmitthoff from Great Britain, was the similarity of the law of international trade in different countries, which "transcends the division of the world into countries of planned and free market economy."[10] As expressly pointed out by Henryk Trammer from Poland, "the law of external trade of the countries of planned economy does not differ in its fundamental principles from the law of external trade of other countries, such as e.g. Austria or Switzerland."[11] Consequently—according to the author—international trade law specialists of all countries have found without difficulty that they speak a "common language."

This proposition could be easily proved by taking as an example the provisions of the Czechoslovak Foreign Trade Code, which concentrates all legal provisions governing international trade in a socialist country in a single Act.[12] The Code itself does not restrict in any way the capacity of physical or juristic persons to acquire rights and obligations or to perform legal acts, which would prevent some of these subjects from becoming parties to legal relationships arising out of international trade. The Code deals in detail with the problems of representation in its various forms, taking into account the fact that in international trade the parties to commercial transactions very often act through their representatives. It contains well established rules of international trade concerning the conclusion of

9. The Reports to the Colloquium as well as a record of discussions are published with the financial assistance of UNESCO in The Sources of the Law of International Trade (C. Schmitthoff ed. 1964).

10. Schmitthoff, *The Law of International Trade, Its Growth, Formulation and Operation*, in The Sources of the Law of International Trade 3 (C. Schmitthoff ed. 1964); *see also* Sarre, *A Note on the Discussions of the Colloquium, in* The Sources of the Law of International Trade 257, 258 (C. Schmitthoff ed. 1964).

11. Trammer, *The Law of Foreign Trade in the Legal Systems of the Countries of Planned Economy*, in The Sources of the Law of International Trade 41, 42 (C. Schmitthoff ed. 1964); *see* Rajski, *Le regime juridique du commerce extérieur*, 1964 Cahiers De Droit Compare 126.

12. *See* P. Kalensky & L. Kopac, *The New Czechoslovak Code of International Trade*, 3-4 Bulletin of Czechoslovak Law 155 (1964).

contracts. It allows for the use of commercial conditions of all kinds and of conventional contract forms; alternatively, it allows (Sections 116 and 117) for reference to the terms regulated in international interpretation rules. It is based on the principle of contractual freedom (Section 5) permitting the parties to establish their own rules different from those contained in the Code.

The rules of the Code which deal with international sales were influenced to a considerable extent by the Hague Draft Convention on a Uniform Law of International Sale. As it is emphasized by Pavel Kalensky and Ludvik Kopac, who took active part in the elaboration of the Code, that in the course of drafting its provisions some foreign regulations were also taken into account, such as the Uniform Commercial Code of the United States (as enacted in the State of Pennsylvania 1953) and the Principles of Civil Legislation of the Soviet Union of 1962, as well as other laws, for example, the Ghanaian Sales of Goods Act of 1961, and the Ethiopian Civil Code of 1960.[13]

This does not mean of course that the Czechoslovak Code is a mechanical compilation of the above mentioned regulations. It could be said, however, that they influenced the drafting of its provisions toward establishment of a set of rules similar to that in force in other countries. The same degree of similarity of the laws of international trade can be observed in other socialist countries, which do not accept the idea of making a special code for international trade relations.

III. The Principle of Party Autonomy

The outstanding characteristic of the law of both socialist and Western countries is the adoption of the principle of party autonomy. This principle is widely applied with regard to the question of the forum which is called on to decide disputes arising in connection with an external trade transaction carried out between an enterprise of a socialist country and a foreign contracting party. It is fully recognized in the field of private international law, as it allows the contracting parties freedom to choose the law which will govern the relations between them. It also forms the basis of the laws of contract, leaving the parties at liberty to arrange the terms of the contract as they see fit.

A. Jurisdiction of Domestic Courts and the Role of Arbitration Tribunals in International Trade

The systems of laws in socialist countries contain flexible rules concerning the jurisdiction of domestic courts in foreign trade relations. They admit

13. *Id.* at 155.

contractual stipulations that a foreign trade tribunal shall have jurisdiction of disputes, even though such stipulations oust the national courts of jurisdiction; they adopt the general rule that the parties can submit the case to a national court, which otherwise would not be competent to decide the dispute.[14] It is, however, important to note that, as a general rule, in the absence of an international convention, the decisions of foreign tribunals are not recognized in socialist countries.[15]

Nonetheless, it is well known that arbitration tribunals play a very important role in settling international trade disputes. Thus, the law of socialist countries meets the requirements of western trade corporations and businessmen who very often seek to escape from the local courts by submitting their disputes to arbitration tribunals.

The majority of European socialist countries adhered to the New York Convention of 1958 on the Recognition and Execution of Foreign Arbitral Awards and to the 1961 Geneva Convention in European International Commercial Arbitration.

Permanent arbitral tribunals specialized in settling international trade disputes were established in all these countries and attached to the central chambers of external commerce.[16] The persons enrolled on the panel of arbitrators are entirely independent in the execution of their arbitral function and are chosen from among distinguished members of the bar, professors of law and other lawyers familiar with international trade transactions.

These arbitral tribunals likewise have a permanent framework which guarantees a just and competent settlement of foreign trade disputes. The permanent arbitration tribunals of socialist countries enjoy the same independence as that enjoyed by other arbitral tribunals which function in Western countries.[17] Professor Trammer, who has presided for several years in Poland over such a tribunal, emphasized in his report presented to the above mentioned London Conference that the persons enrolled on the panel of arbitrators "have never been witness to the slightest attempt to

14. For a more detailed analysis see Rajski, *L'influence de la volonté des parties sur le compétence des tribunaux nationaux en matières civiles,* in CONTRIBUTIONS TO HONOR PROFESSOR CH. N. FRAGISTAS (1967).

15. Trammer, *supra* note 11, at 43.

16. FELHAUER, DER AUSSENHANDELS KAUFMAN UND DIE SCHIEDESGERICHTE (1959); D. RAMZAITSEV, FOREIGN TRADE ARBITRATION IN THE SOVIET UNION (1957); Jakubowski, *The Settlement of Foreign Trade Disputes in Poland,* 11 INT'L & COMP. L.Q. 806, 809 (1962); Trammer, *Aspects juridiques du commerce extérieur avec les pays d'économie plainfiée,* L'ASSOCIATION INTERNATIONAL DES SCIENCES JURIDIQUES (1961).

17. Schmitthoff, *supra* note 10, at 24.

influence our decision, nor even to an attempt to engage us in a conversation on the subject in dispute."[18]

It is important to note in this context that the decisions of these arbitral tribunals are published in various publications.[19] Therefore it is easy, even for a foreign lawyer to get a true image of their functioning.

Among the reasons for establishing these permanent arbitral tribunals should be mentioned the fact that ad hoc arbitrators chosen by the parties for particular disputes are very often inclined to decide in favor of the parties who have appointed them, whereas in the permanent institutions they become detached from their original appointing bodies, can develop more of a collegiate attitude to their function and, therefore, are more likely to give a decision on the true merits of the case. Generally speaking, one can observe a growing modern tendency to establish permanent commercial arbitration. The socialist countries appear to be in the forefront of this movement.

The establishment of permanent commercial arbitration institutions in socialist countries does not, of course, exclude the possibility of submission of a foreign-trade case involving a socialist foreign trade enterprise to permanent arbitration institutions which exist in other countries or to ad hoc arbitrators.

Ad hoc arbitrations appear to be of some importance in East-West commercial relations.[20] It also happens quite often that some permanent Western arbitration institutions (such as, for example, the Court of Arbitration of the International Chamber of Commerce or the arbitral tribunals of international trade associations) are called upon to decide cases involving Eastern and Western trade partners.

B. *Choice of Law*

The laws of socialist countries fully admit the principle of the parties' autonomy of will in the choice of law which should govern their contractual relations.

Thus, for example, Article 126 of the Principles of Civil Legislation of the USSR and the Union Republics says that the rights and duties of parties under foreign trade transactions are determined by the law of the

18. Trammer, *supra* note 11, at 45-46.

19. *E.g.*, PRAWO W. HANDLU ZAGZNICZYM (Law in Foreign Trade) (Poland). For English publications see, *e.g.*, Farago, *Decisions of the Hungarian Chamber of Commerce in Comecon Arbitrations*, 14 INT'L & COMP. L.Q. 1125 (1965); Jakubowski, *supra* note 16.

20. *See, e.g.*, Lagergren, *The Limits of Party Autonomy*, in THE SOURCES OF THE LAW OF INTERNATIONAL TRADE 222 (C. Schmitthoff ed. 1964).

place of their conclusion, unless otherwise established by the agreements of the parties.[21] This principle is adopted in the laws of other socialist countries (some of them, however, limit the freedom of the parties to the legal systems with which the contract has real or substantial connection). Thus, for example, according to Article 25 paragraph 1 of the Polish Private International Law Act of November 12, 1965, the parties to a contract are allowed to subject their relations to a law chosen by them if it has some connection with the obligation,[22] while the Czechoslovak Act on Private International Law and Procedure of December 4, 1963 does not impose in this respect any limits on parties' autonomy (see Article 9).[23]

The laws of all socialist countries are founded on a principle generally applied by conflict of laws rules that the courts of a country should not apply any foreign law, if and insofar as its application would lead to results contrary to the fundamental principles of legal order of the state concerned. However, it is admitted that the public order clause is regarded as an exception to the normal operation of conflict rules and therefore its application is very limited, particularly in the field of the foreign trade transactions.

C. *Freedom of Contract*

According to firmly established provisions of the laws of socialist countries, parties to international trade transactions are free to a large extent to arrange the terms of the contract according to their discretion. It should be emphasized that there exist relatively few rules governing foreign trade transactions in these countries which are of a mandatory character so that they could not be excluded by the parties. In this respect the rules governing foreign trade transactions differ to a great extent from those which govern analogous internal relations. As rightly pointed out by Professor Trammer,

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21. *See* Lunz, *Les régles des conflits dans les "Principes de droit civil" de l'Union Sovietique et des Républiques fédérées,* 4 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 635-41 (1964); Ramzaitsev, *The Law of International Trade in the New Soviet Legislation,* THE JOURNAL OF BUSINESS LAW 234-35 (1963). The Civil Codes of Union Republics contain identical provisions such as section 566 of the Civil Code of the Russian Soviet Federative Socialist Republic.

22 *See* Rajski, *The New Polish Private International Law,* 15 INT'L & COMP. L.Q. 457 (1966).

23. *See* Bystricky, *The New Czechoslovak Act Concerning Private International Law and the Rules of Procedure Relating Thereto,* 4 BULLETIN OF CZECHOSLOVAK LAW 218 (1963). For laws of other socialist countries *see* Ionasco & Nestor, *The Limits of Party Autonomy, supra* note 7, at 184 and Szaszy, *Private International Law in the European People's Democracies, supra* note 7, at 262.

> While internal transactions, i.e. those concluded by two enterprises of the same country of planned economy, are governed by numerous rules of jus cogens—rules which do not exist in the countries of free-market economy—the rights and obligations arising from external transactions, i.e. those concluded between an enterprise of a country of planned economy on the one hand and a foreign enterprise on the other hand, can be regulated, to a large extent, according to the will of the contracting parties, exactly as in the majority of the countries of free-market economy.[24]

Thus the scope of the autonomy of the parties' will is increasingly evidenced in the law of international trade of all countries, though it shows an opposing tendency everywhere in local laws. This phenomenon could be explained first of all by the fact that the parties' autonomy makes it possible to fill the gap left by the lack of organization in international trade relations, and avoiding the conflicts of national legal systems encourages the development of international commerce.

IV. Application of International Trade Customs

Another very important point of similarity between the law of foreign trade of socialist and Western countries is the application of international trade customs. The great role played by international custom in international trade forms an additional characteristic to the juridical regime of foreign trade in every state. The progressive diminution of the role played by custom in the civil laws of all contemporary states, a phenomenon which is especially evident in the socialist countries, is of considerable importance in international trade.

Trade customs are applied in particular as regards the interpretation of the will of the parties with respect to the mode of performance of the contract. The arbitration tribunals in the socialist countries pay special attention to commerical customs.

Thus, for example, in paragraph 31 of the rules determining the organization and the procedure of the Arbitration Commission of the Polish Chamber of Commerce, it is stated that the arbitration tribunal applies the law of that country which is most closely connected with the case in litigation, taking into account, first of all, the will of the parties and also the principles of equity, of good faith and of *custom,* inasmuch as it is permitted to do so by the law applicable in the case concerned.[25]

Similarly the rules of procedure of the Bulgarian Foreign Trade Arbitration Commission (in Article 47) provide that the award must be based on

24. Trammer, *supra* note 11, at 41.

25. *See* Jakubowski, *supra* note 16, at 814.

the law and trade customs which are to be applied in accordance with the rule of private international law.

Similar provisions are contained in the rules of procedure of arbitration tribunals in Hungary (Article 11) and the German Democratic Republic (Article 27).[26] Although no such reference to trade customs can be found in the rules of the Soviet Foreign Trade Arbitration Commission, the applicability of trade customs in proper cases is regarded as beyond dispute (Article 23 of these rules expressly provides that the Commission may request the opinion of experts to explain the nature of custom of the trade).[27]

An analysis of the decisions of the arbitral tribunals of the socialist countries reveals how often in practice they refer to trade customs. An important role as regards the internationalization of commercial custom is played by international organizations such as the International Chamber of Commerce in Paris, which sponsored two important documents in this domain: International Commerical Terms (Incoterms 1953) and the Uniform Customs and Practice for Commercial Documentary Credits (1962 Revision). Both these documents are widely accepted by international trade and very often used in East-West trade.

In Poland the interpretation of the clauses F.O.B., C.&F. and C.I.F. corresponds exactly with the interpretation given by Incoterms 1953 as recently stated by the Commission of Commercial Usages of the Polish Chamber of External Commerce.[28] Therefore many of the foreign trade contracts concluded by the Polish foreign trade enterprises invoke Incoterms 1953. A similar position was adopted in Soviet trade practice[29] and in other socialist countries.

Standard contract forms of trade associations should be mentioned along with the other formulations of international commercial custom widely used in many parts of the world and accepted also by socialist countries. Examples of such forms are those of the London Corn Trade Association, the Gencon Charter of the Documentary Council of the Baltic and White Sea Conference, and the C.I.F. contract known as "Russian 1952" which is adopted by the Timber Trade Federation of the United Kingdom and the Soviet foreign trade organization of exporters.

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26. *See* Ramzaitsev, *The Law Applied by Arbitration,* in THE SOURCES OF THE LAW OF INTERNATIONAL TRADE 138, 151 (C. Schmitthoff ed. 1964).

27. Ramzaitsev, *supra* note 26 at 151; *see also* D. Ramzaitsev, *F.O.B. and C.I.F. in the Practice of the Soviet Foreign Trade Organizations,* THE JOURNAL OF BUSINESS LAW 315 (1959).

28. *See* Trammer, *supra* note 11, at 48.

29. *See* Ramzaitsev, *supra* note 26, at 152.

V. The Corporation as a Party

Among other similarities of the law and practice of foreign trade in socialist and Western countries which should be emphasized is the use of the legal form of the corporation as a party to individual transactions. The principle of state monopoly which forms the basis of the juridical regime of foreign commerce in the socialist states does not imply that the state itself will be a party to individual foreign trade transactions. It means that the questions relating to the operation of foreign trade fall under the sovereign right of the state. The state determines persons who are authorized to engage in foreign trade activities.

There are in all socialist countries, first of all, special foreign trade enterprises constituted either directly by the Government or by the ministries of foreign trade.[30] These enterprises are juridical persons, that is independent entities which function and act under their statutory organs. They are allocated specific resources and are held legally accountable for liabilities arising out of the transactions in which they are engaged. The state is not responsible for the obligations of these enterprises, nor the enterprises for those of the state.[31] As a result of this they have their own capacity to sue and to be sued and are not entitled to the immunities and prerogatives granted to sovereign states and their property by international law.

The types and forms of the foreign trade corporations are different in various socialist countries. Thus, in Poland, although the form of state enterprise is predominant, some foreign trade corporations are established as joint stock companies[32] (e.g., Dal Company) or limited liability companies[33] (e.g., Ciech, Elektrim, Polimex, Varimex).[34] In addition some cooperative enterprises established and acting under the rules of the Law of Cooperative Societies of 1961 also carry on foreign trade transactions, (e.g., Coopexim, Hortex).

In the German Democratic Republic the foreign trade enterprises are organized either in the form of national enterprises (Volkseigene Betriefe Deutscher Innen-und Aussenhandel; abbreviated: VEB DIA) or in the form of foreign trade limited companies (Aussenhandels G.M.B.H.).

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30. For a detailed analysis see Knapp, *The Function, Organization and Activities of Foreign Trade Corporations in European Socialist Countries,* in The Sources of the Law of International Trade 52-69 (C. Schmitthoff ed. 1964).

31. *See, e.g.,* Articles 8-11 of the Czechoslovak Foreign Trade Code; Articles 28-32 of the Hungarian Civil Code; Articles 33-40 of the Polish Civil Code; Sections 11-13 of the Principles of Civil Legislation of the USSR and the Union Republics.

32. Under Articles 307-497 of the Commercial Code.

33. Under Articles 158-306 of the Commercial Code.

34. For a more detailed account see Trammer, *supra* note 16.

In the Czechoslovak Socialist Republic the legal form of state foreign enterprise is dominant, though other forms such as joint stock companies and cooperative enterprises are also used,[35] whereas in the Soviet Union the state foreign trade corporations (the *obyedinyeinya*) are normally parties to the foreign trade transactions.

Therefore it can be said that it is a characteristic of the law of international trade of socialist countries, again to a large measure common to the countries of different socio-economic structures, that special corporations, legally separate and independent of the state, which is their incorporator, are parties to individual foreign trade transactions.

Conclusions

The result of what has been said above is that the laws of foreign trade of the socialist countries show important similarities with the appropriate legal orders of Western countries. I consider it necessary to emphasize this point because in American legal writings the main interest seems to be concentrated (understandably) on the differences which certainly exist in this domain, and because one still meets the opinion that commercial circles of this country might be suspicious of the law and arbitration tribunals of socialist countries.

The striking similarity evidenced in all national legal systems in this respect explains itself through the essence of the subject-matter of their regulation: international commerce. The international character of the regulated subject-matter imposes a certain necessary degree of similarity in the given national legal solutions. The goal of these provisions is to safeguard international economic intercourse, which can be achieved by establishing a stable legal protection of the interests of those involved in foreign commerical transactions. Because in those cases a foreign element is always present, they can come under the laws and jurisdictions of different states. As a consequence of this, the existence of fundamental differences in the various municipal laws would constitute a danger of insecurity and uncertainty with regard to the extent of legal protection. This would result in making the law more an obstacle than an element of encouragement for the development of international economic intercourse.

Therefore it appears to be necessary to observe a minimum standard of uniformity in the laws of foreign trade of all countries. This task seems to be facilitated by the similarity of requirements proceeding from economic needs and technique of international trade everywhere—standardized forms and general conditions of contracts.

35. *See* Knapp, *supra* note 30, at 59.

The universal character of trade in the contemporary world, which is characterized by close reciprocal economic ties between all states, renders indispensible further development of the laws of different countries towards a universal, international conception of the law of international trade. The sole activity of individual international centers is not enough in this respect. It appears therefore desirable (let me again put the proposal I made several years ago)[36] to establish, under the auspices of the United Nations, an international center which could more effectively help to bring about a step by step progressive unification of the basic rules governing the law of international trade.[37] As long as such a center is not established we should encourage a widening of reciprocal ties and enlarging of cooperation among all existing national and international centers dealing with problems of the laws of international trade.

Let me conclude by expressing the hope that the similarities which exist between the laws of the Eastern and Western countries and the legal mechanism of international trading will develop and in consequence will remove all artificial legal restrictions impeding the free flow of trade among nations. The development of international trade founded on the principle of peaceful coexistence and peaceful international competition is the only alternative to the mutual destruction of nations by warlike venture.

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36. *See* Rajski, *supra* note 11, at 736-37.

37. The U.N. General Assembly passed unanimously on December 17, 1966, a resolution (A/RES/2205 (XXI)) establishing a 29 state U.N. International Trade Law Commission which ". . . shall further the progressive harmonization and unification of the law of international trade by:

(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;
(b) Promoting wider participation in extsting international conventions and wider acceptance of existing model and uniform laws;
(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;
(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of international trade;
(e) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;
(f) Maintaining liaison with other United Nations organs and special agencies concerned with international trade;
(g) Taking any other action it may deem useful to fulfill its functions."