

## THE EVOLUTION OF THE GLOBAL TRADE OVER THE LAST THIRTY YEARS

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### I. INTRODUCTION

There are three major trends related to commercial law that have intensified over the course of the last three decades. The first pertains to trade, specifically trade among nations, and not only those bordering each other. The second trend has to do with domestic, regional, and international finance, which has supported the goals of commercial enterprises, as well as countries. The third trend that has taken place during this time is, perhaps, the most important or at least is the most transcendental: the harmonization of commercial law. By harmonizing domestic laws, regulations, and policies with international ones, one can promote the economic development and social wellbeing of countries. For these reasons, legal research regarding commercial activities is of such importance, as are relationships derived from domestic and international commercial activities.

Identifying how to improve and harmonize the legal norms regarding each one of these three trends has facilitated commercial exchanges by allowing people to speak the same ‘language’ that is contained in the laws that regulate us. This has not tended to be an easy process, nor has it taken place with the required speed. Despite this, a variety of laws and organizations have been created, which has facilitated economic development on a global and individual level.

It is worth noting and acknowledging that commercial, or mercantile, law is found in a wide variety of sources. These include international agreements and treaties, national statutes, and regulations. This aspect gives us a point of reference for appreciating and valuing the efforts made by working groups, commissions, countries, and national, regional, and international organizations that worked to harmonize commercial legal norms among different states while taking into account the international, regional, and national levels.

Of course, the fact that international commerce has grown impressively and that international institutions have increased their geopolitical importance are also notable successes. That is the reason why this article seeks to analyze the development of these three trends throughout the years and how they have solidified themselves thanks to the effectiveness of the legal rules that maintain them as fixed axes in our world.

Since ancient times, the commercial activity of peoples has been characterized by the interchange of goods and services, which has also involved transporting them. At the same time, these three main aspects (goods, services, and transportation or exchanges) gave rise to the practices that led to rules that were integrated into various statutes and regulations. These included the Code of Hammurabi, the Laws of Wisby; the Laws of Burgos, Seville, and Bilbao; the 'Rooles' of Olerón; the *Ordinamenta et Consuetudo Maris* or Ordinances and Custom of the Sea; the *Capitula et Ordenamenta et Curiae maritimae nobilis civitatis Amalfae* or Amalfian Laws; among others, which originally regulated the activities of merchants. Subsequently, they became the commercial norms that applied to and regulated businesses and businesspersons, the objects of trade, and the relationships that stemmed from the mobilization of wealth that, in turn, has become reflected in an infinite variety of atypical contracts used in the multiple financial, security, insurance, bond, and certificate of title transactions in a globalized world.

All those regulations that stem from the force of the customs and activities of merchants, then became the contents of statutes and ordinances, and subsequently formed the basis of various laws that seek to regulate commercial activities to the rhythm of commerce reflected in an infinite variety of contracts. Nowadays, the evolution of new technologies, especially in the field of computer science, has been taken advantage of in order to support this great evolution in the operations of the immense markets that satisfy the global needs of consumers.

As technology perfected means of communication, commerce continued expanding, evolving from the primitive trade between ancient communities into the commerce of today. This evolution has meant an expansion

of activity in two ways: the volume of trade and the extent of the geographic area of influence of this trade. This is the moment in which we can say that trade has surpassed national borders such that international commerce has become an inherent necessity. Today we can affirm that “in matters of commerce, there are no borders”.

At the same time, legally speaking, there has arisen a methodological need to categorize the immense collection of domestic, regional, and global laws and regulations so that one can establish the methodology to integrate three major fields of study that, in turn, indicate the existence of a fourth field. These fields are 1) the one that includes the comparative study of persons or organizations involved in commerce, 2) the one that refers to the determination of objects of commerce, either goods or services, 3) the one that studies the legal activities and exchanges derived from the commercial relations that arise from the interaction of the first two fields of study, and finally 4) the legal exchange of the first three fields, which gives rise to the fourth field. This last field pertains to the procedures that can be jurisdictional or administrative, such as cordial agreements, mediation, and commercial arbitration, and that can present themselves at three levels: domestic, regional, and global.

The combination of these four fields is the science of commercial law, which forms the foundation of a positive harmonization of legal, economic, social, and political norms that, thanks to the creativity of jurists who become involved in the process of harmonization, promote the legal, social, and political development of commerce in order to reach the ultimate objective of law: the wellbeing of the members of society.

The principles that have been put forward allow one to establish that commercial law, which is deeply dynamic and social, applies to commercial relations, be they among natural persons or companies, which will always be taken into account by the law since they are undoubtedly necessary to maintain that legal-commercial order that must be harmonized. In this way, commercial law, while continuing to observe human relationships of a legal-economic character that exist among merchants and which are a result of the routine practices of commercial activities, takes these relationships into account in order to regulate them in a harmonious manner. This gives rise to the unifying trend in commercial law via model laws and international agreements or treaties that the UN (United Nations) has developed through UNCITRAL (United Nations Commission on International Trade Law) in an effort to facilitate commercial transactions at a global level.

The preceding considerations put forward the idea of researching the evolution of commercial institutions in the area of the first three fields men-

tioned above, in addition to the fourth field that involves solving economic, commercial, and financial problems or conflicts, be they national, regional, or international, during the last three decades. This era has coincided with the birth and evolution of the International Academy of Commercial and Consumer Law, which was founded on July 15, 1983 in the National Autonomous University of Mexico.

As such, this article seeks to analyze the three major trends that, over the course of the last 30 years, have become axes of economic and commercial development, and harmonization of law.

## II. ECONOMIC-LEGAL-COMMERCIAL INSTITUTIONS

Regarding commercial matters, there have been fundamentally different theories such as the theory of the law of supply and demand, the theory of value, the conceptualization of the spontaneity of the economic institutions and international commerce of Adam Smith, the general theory of employment, interest, and money of John Maynard Keynes, as well as Schumpeter's theories regarding economic development relative to a dynamic economy. All of these theories, to an extent, remain valid.

Economically speaking, the theories in this field have seen themselves framed in scientific studies that have favorable ground, both in the world of producing goods and services as well as in the world of their consumption. That is, in the large consumer markets that are the socio-commercial institution, or institutional arrangement of society, through which mechanisms for buyers and sellers of a good or service are established and allow themselves to come into contact to interchange them. In developing this analysis, it must be kept in mind that the act of commerce has an economic character, which is why it is insufficient to begin a legal analysis of commercial activity without considering how commerce is both a legal and economic phenomenon.

Commercial activity throughout time, and especially in the last few decades, has created not only legal, economic, commercial, and political instruments that have been necessary for the development of this activity, but also regional and global institutions that are indispensable for coordinating and regulating the production and distribution of goods and services that, in turn, are indispensable for consumers and are the foundation for the peace and protection of societies in each country.

The twentieth century was characterized by accelerated and transcendental steps that evolved distinct paths of human knowledge, which gave rise to commercial law, which consists of the elements necessary to consider it

foremost in legal commercial knowledge. For this reason, like in all branches of human knowledge, commercial law is subject to the great inventions and discoveries of man in the course of history. In this way, we can highlight and observe how, toward the end of that century, new forms of commercial contracts respond to the technological evolution at the service of a market economy. One of its goals is the incorporated business and the growing demand for goods and services due to the profound social, political, and economic transformations around the world.

Nowadays, factors such as globalization, greater interdependence among nations, and advances in technology and communications have been able to keep commercial markets in a constant stage of development in its field of action, going beyond the limits of national borders. As such, the classic conceptualization of commercial law is in a constant state of evolution. This is why “in matters of commerce, there are no borders”.

The process of globalization began in the sixties, it continued during the seventies, and came of age in the eighties. This activity began with the role of commercial banks via a globalization of the actual transactions in foreign exchange and deposit markets. Subsequently, asset markets and international bank lending were added in a major way. Various countries find themselves immersed in a form of commerce in which the law is in a constant state of evolution, encouraging the progressive decline of trade barriers and borders, and increasingly limiting the possibility of isolating a global market where the primary factors and exchange (money, goods and services, technology, and even people) pass between different nations more easily. Those countries are facing new trade rules that cannot, and should not, be unique to each nation. This activity began with the role of commercial banks by a globalization of transactions in foreign exchange markets and deposit markets, after which asset markets and international bank lending were added in a major way.

### III. TRADE INTEGRATION

The process of trade integration also involves the economic, socio-political, and legal integration that has evolved determinately during these last three decades, linking together all the aspects of each field and creating an interdependence among countries or global economic sectors, regional or subregional, a product of the fusion of markets and the harmonization of national law formalized in institutions created to coordinate development policies and instruments that offer the possibility of improving their members' living conditions.

In that process, various stages of integration are carried out, which have been externalized in three major aspects. First are free trade zones, such as the following: LAIA (Latin American Integration Association), NAFTA (North American Free Trade Agreement), ASEAN (Association of Southeast Asian Nations), APEC (Asia-Pacific Economic Cooperation) Forum, European Union (EU), MERCOSUR (Southern Common Market), CARICOM (Caribbean Community), CAN (Andean Community), GCC (Cooperation Council for the Arab States of the Gulf), EAC (East African Community), CEMAC (Economic and Monetary Community of Central Africa), and WAEMU (West African Economic and Monetary Union).

Second are common markets. This stage of integration involves not just a customs union, but also represents a greater political will on the part of the member states of the region in favor of liberalization of all factors of production. That is, it involves a new universe of goods that circulate freely within a customs union. Third is an economic union, of which its greatest example is the European Union, and which involves a greater degree of harmonization of fiscal and monetary policies. In this stage, there is a greater surrender of sovereignty as there is a single monetary system. Each country submits itself to a monetary discipline in order to maintain exchange rates within the authorized margins.

Finally, it is necessary to state that trade integration imposes the need to develop international mechanisms needed to regulate trade relationships and to resolve the problems that may arise in this new world order of global traffic. This requires taking into account not only borders since, at least as they pertain to trade, they are disappearing and forming a single commercial world, but also disciplines such as law, economics, and politics that must have a global vision capable of regulating the relations between nation-states that arise in the context of globalization.

Currently, one can speak of a tripartite system of financial, economic, and commercial organizations. The International Monetary Fund (IMF) seeks to ensure the order and stability of international financial transactions, the World Bank seeks to promote investment, and the World Trade Organization (WTO) aims to accomplish the following objectives:

- Raise standards of living by ensuring full employment and constantly raise real income and effective demand.
- Increase the production and trade of goods and services, while also allowing for the optimal use of global resources in accordance with the objective of sustainable development, seeking to both protect and preserve the environment, increasing the means of doing so,

consistent with their respective needs and interests, and based on different levels of economic development.

- Ensure that developing countries, especially the least developed ones, obtain a share of the increase in international trade commensurate with the needs of their economic development.
- Preserve the fundamental principles and support the achievement of the objectives that form the multilateral trading system.

In this author's opinion, commercial and economic integration should be understood as a constant process that intertwines legal, economic, social, and political aspects, generating an interdependence among countries or regional economic sectors. This integration is a product of the merger of markets and the harmonization of national law, formalized in institutions and legal instruments.

#### IV. POLITICAL-COMMERCIAL STRUCTURES AT THE GLOBAL LEVEL: WORLD TRADE ORGANIZATION (WTO), INTERNATIONAL MONETARY FUND (IMF), WORLD BANK

One must consider how the World Trade Organization, with its 159 members as of March 2, 2013, boosts trade within a legal framework that purports to be both harmonious and equitable “with the primary objective of preventing countries from adopting unilateral actions against another member, seeking to raise living standards, expanding the production and trade of goods and services so that the least developed countries obtain a share of the increased international trade, and preserve the basic principles and promote the achievement of the previous objectives that make up the multilateral trading system”.

It should be noted that the World Trade Organization was created to guarantee the right of trade relations among its members and to manage, as well as monitor compliance with, the new obligations assumed by member states. The most important agreements administered by the WTO are divided according to the council that administers them, and are listed as follows:

a) Council for Trade in Goods (GATT). The object of GATT includes fundamental principles such as establishing multilateral economic relations aimed at achieving high living standards, full employment, growth in the production and exchange of products, full and rational use of global re-

sources, and the creation of agreements meant to obtain, based on reciprocity and mutual benefit, the reduction of tariffs and other trade barriers.

b) Council of Services (GATS). The GATS (General Agreement on Trade in Services) covers all services that are traded internationally with two exceptions, services provided to the public through the exercise of governmental functions and, in the area of aerial transportation, traffic rights and all services related to the exercise of those traffic rights. This agreement arose in response to the enormous growth of the services sector over the last thirty years and the increase in exchange of services promoted by the communications revolution.

c) Council for Trade-Related Aspects of Intellectual Property Rights. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) envisions the protection of copyrights, trademarks, designs, models and industrial parts, layout designs of closed circuits, designations of origin, and trade secrets.

## UNITED NATIONS (UNCITRAL, ECOSOC, UNCTAD)

### *United Nations*

The main objective of this international organization is to preserve peace, promote friendly relations among nations, help improve the lives of the poor, conquer hunger, disease, and illiteracy, promote respect for the rights and freedoms of others, and serve as a center for harmonizing the nations' efforts to achieve these common goals.

### UNCITRAL (*United Nations Commission on International Trade Law*)

Through this United Nations commission in the subject of international trade law, the trend toward harmonizing trade regulations seeks to accelerate growth, improve living standards, and create new opportunities in countries based on the general and special principles of this committee.<sup>1</sup>

### ECOSOC (*Economic and Social Council*)

Another agency that works on economic matters in the United Nations is the Economic and Social Council (ECOSOC), which has broad

<sup>1</sup> Source: [http://www.uncitral.org/uncitral/es/about\\_us.html](http://www.uncitral.org/uncitral/es/about_us.html).



responsibilities regarding approximately 70% of human resources and specialized resources, and has nine functional commissions and five regional commissions. These commissions' latest forums have considered several issues, among which the most important is that by 2015 it is necessary for all agents of international cooperation for development to join forces in order to improve the quality and results of development cooperation with a view toward achieving the Millennium Development Goals.<sup>2</sup>

UNCTAD (United Nations Conference on Trade and Development)

As the principal organ of the General Assembly in the field of trade and development, UNCTAD coordinates the integrated treatment of development and related issues in the areas of trade, finance, technology, investment, and sustainable development.

The creation of UNCTAD aims to achieve a change in relations between developed countries and periphery countries, even though this has not yet translated into important results within poor countries.

At the same time, there has not been a lack of conflict and friction among different groups of member states. However, common sense and dispute resolution formulas have allowed the organization to not only survive the criticism directed toward it, but also become one of the most vigorous and promising organs of all those that make up the United Nations.

The attitudes of most developed countries are more positive. The financial trade institutions, IBRD (International Bank for Reconstruction and Development), IMF, and GATT, which were established in the postwar period, are making serious efforts aimed at tailoring their policies and practices to the needs of the least developed countries.

## V. EVOLUTION OF THE FINANCIAL SYSTEM

Given the internationalization of financial services, there have been efforts to promote the implementation of systems in financial matters that are more stable and efficient as they introduce international standards and practices that emphasize the quality, efficiency, and scope of these services, providing more sustainable sources of funding, beginning with the elimination of discriminatory treatment that exists between foreign and domestic suppliers as well as the removal of barriers to cross-border supply of services of this type, permitting such actions to open doors for the entrance of foreign suppliers in a domestic market. Under the preceding order of ideas,

<sup>2</sup> Source: <http://www.un.org/es/ecosoc/newfunct/2012dcf.shtml>.

it can be argued that the increased competition caused by the opening of the financial sector stimulates the economic growth of any country, since the number of foreign suppliers in the market has a positive effect on the functioning of national banking markets.

The General Agreement on Trade in Services (GATS) is considered one of the most important agreements that entered into force in January 1995. It is the only instrument of multilateral rules that govern the international trade of services. It represents the first and only set of multilateral rules governing the international trade in services within the WTO. Within the GATS, which is an important part of the international movement of capital, there is a great importance placed on foreign investment that involves the international flow of capital in which the capital of one a company from one country creates or enlarges a subsidiary in another country, in which its distinctive note is not only the transfer of resources but also the acquisition of control in decision-making.

Access to global services helps, such that both exporters and producers in developing countries can exploit their productive capacities regardless of the goods and services that they are offering in the market. As such, the liberalization of services has become a key element of a number of development strategies. Given this framework, countries that have liberalized their service markets have shown greater dynamism in the movement of products and their respective processes, which stimulates foreign direct investment.

By regulating the services sector at a global level, specifically through the GATS, it has been sought to achieve a rapid growth of the international economy. In many countries, this generates a large number of jobs, given that the potential benefits that result from liberalizing the services sector are as vast as in the goods sector. The importance of having an agreement on services, like the GATS, stems from the fact that services play a leading role in the international economy, as they help promote productivity based on information technology and the vast knowledge that it generates.

It is imminent that at the dawn of the twenty-first century, together with the development of the phenomenon of globalization and aided by innovative electronic media, international markets conduct countless commercial and financial transactions, which necessitates their monitoring and regulation. The rules designed to fulfill this function should be clear, simple, and should not have gaps that may create confusion in their application. Furthermore, the authors of these rules should offer justifications for these rules. Only then will they create confidence in the integrity of the market, in the transactions carried out, and in dispute resolutions, thereby achieving a global trade with legal mechanisms that provide safety and confidence for

conducting any type of commercial activity through any electronic means and regardless of how close or far they are from one's business partners.

For students of commercial, or mercantile, law, this century poses a paradigm that will force one to rethink, analyze, and evaluate market institutions that are currently accepted in order to determine whether they will continue being practical and useful in the immediate future. That is, if they are capable of regulating commercial transactions, as well as the persons who conduct those transactions, the things or goods involved in such acts of commerce, and judicial or administrative proceedings. The study of commercial law allows one to preview these new legal challenges and will thus allow institutions to retain their evolutionary character of transformation and conceptual improvement, in keeping with new ideas, technological advances, new media, and new styles of standard form contracts for these consumer markets.

At the dawn of a new millennium, where national sovereignty has seen itself diminished by the globalization of businesses, international financial institutions and policies, as well as by multilateral economic and commercial rules, the theory of the state is undergoing a process of renewal and transformation that leads one to reflect on and make way for the transition from the modern state to the contemporary state. The process of globalization, not only economic, legal, and financial but also technological, has created radical changes regarding production, business organization, and new strategies to support the incorporation and development of multinational businesses in domestic markets.

## VI. HARMONIZATION OF LAW

Trade and commercial relations, from their origins to the present century, have evolved from a simple gathering of merchants and transit of goods in a limited geographic space to the creation of regional, multinational, and global companies, giving rise to guiding principles of free trade, regional and global integration processes, free trade agreements, and globalization of the market in a global exchange. This has led to the need for international commercial law that harmonizes the commercial standards of different national legal systems. Currently, the strong tendencies toward market integration due to the mechanics of globalization, trade agreements, and international trade practices, demand a solution to conflicts from a supranational perspective that is embodied in international treaties or agreements to provide a solution to

those problems. Organizations like the United Nations Commission on International Trade Law (UNCITRAL) promote the creation of harmonized law that dilutes the normative hierarchical concepts established by the traditional doctrine in order to prevent disputes that arise in commercial traffic from remaining unresolved, ensuring the implementation of specific rules of application.

In the course of harmonizing commercial law, as it now exists, a very important role has been played by political entities like the United Nations, with its unifying effects through model laws or international treaties and agreements regarding commercial law. These laws and agreements have been very helpful to those that have adopted them and have fostered a harmonized legal language, especially in the areas of financial services, commercial contracts, e-commerce, the international sale of goods, shipping, insurance, intellectual property, copyrights, secured transactions, commercial arbitration, and cross-border insolvency proceedings, among others.

The harmonization of commercial law at the international level should exist not only in aspects regarding contracts, but also in the area of commercial dispute resolution. The important thing to remember about this trend toward harmonization is that it has enabled several countries to analyze the content of proposals, incorporate them into their national laws, combine the different idiosyncrasies and internal phenomena of each country, and allowed countries to adopt or adapt them to their internal legislation without violating their rights. In order to illustrate the idea set forth above, the UNCITRAL Model Laws are as follows: the Model Law on International Commercial Arbitration of 1985, the Model Law on Electronic Commerce of 1996, the Model Law on Cross-Border Insolvency of 1997, the Model Law on Electronic Signatures of 2001, and the Model Law on International Commercial Conciliation of 2002.

## VII. DIGITAL COMMERCIAL AGE

Through the rapid development of computer and communication systems, commercial activities have become facilitated, shortening distances and times between orders and deliveries by parties, which has allowed greater efficiency for competing on a global scale and thus generated benefits for the world economy. The development of technology and the undeniable globalization of trade and financial services have generated a significant increase in investment options in the last years of the twentieth century, which is also due to the increasingly frequent use of the international stock

market as a funding mechanism comparable to the banking system. One of the major developments in commercial law in the late twentieth century was electronic commerce, which came to revolutionize the formal concept with which business had been conducted and to form a new perception of legal actions without ceasing consideration of the ancient concepts of supply and offer under the Code of Commerce.

In the case of financial services, let us first set forth from the idea that they help the development of business in a very important manner, and thus encourage a country's economic growth. For this reason, it is necessary for them to be accessible to those interested in using them, such as small businesses. Currently, financial instruments have been developed that enable individuals to enter into contracts and conduct business transactions related to financial services, banking, and securities. Specifically, the use of technology allows transactions to be made in fractions of a minute, particularly when done through the Internet, as they connect the service provider directly with the end user who only requires a computer or mobile device to carry out such transactions in only minutes Alpha.

In this regard, the integration of national and international standards in economic and legal areas in a manner that allows the complete identification of a contracting party has truly been a global challenge. Yet, such integration has ensured not only the authenticity of contracts, investments, or payments made via the Internet, but also protect personal data that is often required to perform certain business activities through the aforementioned electronic media. In fact, intellectual property rights have become vulnerable in the face of technological advances.

Moreover, regarding international trade, it should be noted that there are other efforts afoot at the global level and that contribute to the cultural approximation that constitute the databases that contain rulings by judicial courts and arbitration tribunals from remote points of the world. To assist in the uniform interpretation of its texts, UNCITRAL has established a reporting system of rulings based on those texts, which has been abbreviated with the acronym, CLOUT (Case Law on UNCITRAL Texts), which can be accessed in print or online. Something similar exists with UNIDROIT and the database known as UNILEX. Also worthy of mention are those other databases with valuable information, like the one of Pace University in the United States, which pertains to the Vienna Convention and contains a number of judicial rulings, arbitration awards, legal doctrines, and other documents relating to the Convention. There is also the University of Cologne in Germany, with its Center for Transnational Law (CENTRAL) and its method of "creeping codification" of new transnational commercial law.

To this end, a list of principles regarding the *lex mercatoria* has been developed, which remains easily accessible via the Internet, thus allowing one to continually update this database, giving flexibility to this method of coding and avoiding stagnation in the development of the same. Every principle and every rule also references its sources, thus making the full text affordable.

Finally, it is important to consider how technological advances, as elements in a globalized culture, have impacted the field of law in a transcendental manner, which necessitates a constant adaptation of legal institutions to the new digital age.

## VIII. CONCLUSION

In sum, globalization and technological advances require regulating new aspects of commercial relationships. Cross-border insolvency, international contracts, e-commerce, transnational corporations, wire transfers, and international dispute resolution are just some of the new subjects, which are added to those already regulated. It is important to continue reviewing, adjusting, and updating the legal, institutional, multilateral, and international bases for trade, with the goal of strengthening the structure of the World Trade Organization for the benefit of trade in goods, services, and intellectual property, not only to facilitate such exchanges but also to harmonize the domestic laws of nation states and bring about the benefits resulting from such harmonization.