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Łukasz Dawid Dąbrowski*

The Architecture of International Trade Law: Towards a Cohesive Global Trade Law Framework

[Architektonika źródeł międzynarodowego prawa handlowego – w drodze do spójnych globalnych ram regulacyjnych]

Abstract
International trade serves as a cornerstone of the global economy, necessitating comprehensive legal frameworks to regulate cross-border commercial and economic cooperation. The objective of this research is to analyze the structural and functional relationship between *hard law* and *soft law* sources in international trade, with the aim of proposing a cohesive global framework capable of reducing legal fragmentation and enhancing the coherence, predictability, and resilience of international trade law.

Thereby, this article, categorizes the sources of international trade law into universal (global), regional, and bilateral treaties, while highlighting the growing significance of non-binding *soft law* instruments. It argues that although formal treaties form the foundational legal structure, the adaptability and effectiveness of international trade law increasingly depend on *soft law*—flexible norms widely adopted by practitioners that facilitate normative convergence without formal harmonization.

The article underscores the role of institutions such as the ICC and UNCITRAL in developing model contracts and trade customs, emphasizing the evolving *lex mercatoria's* influence on dispute resolution and contract interpretation. It also examines the practical consequences of fragmentation among international, regional, and national trade regimes —such as overlapping and sometimes conflicting obligations, which in turn produce legal uncertainty, forum shopping, and inconsistent dispute resolution outcomes, increased transaction costs, and diminished enforceability of rights—and argues that a cohesive framework built on coordinated treaty law and harmonized *soft law* instruments can effectively mitigate these challenges.

Through formal-dogmatic and historical-comparative analyses, the article explores how multilateral treaties, international commercial custom, and informal norms collectively shape a transparent, stable, and equitable global trade order. It further clarifies that the strategic aim of this inquiry is to identify pathways toward reducing fragmenta-

* **Łukasz Dawid Dąbrowski** – PhD in Law; Assistant Professor, Collegium of World Economy at the SGH Warsaw School of Economics, PL (affiliation); https://orcid.org/0000-0003-2251-7791; ldabro@sgh.waw.pl / dr nauk prawnych, adiunkt, Kolegium Gospodarki Światowej w Szkole Głównej Handlowej (SGH) w Warszawie (afiliacja).

tion and promoting coherence through a layered approach that integrates both hard and *soft law* mechanisms. In particular, *soft law* performs a harmonizing function, bridging gaps between diverse legal systems by fostering voluntary convergence and mutual trust among economic actors.

The study concludes that while full unification of international commercial law remains unrealized, ongoing expansion of unified legal instruments and *soft law* frameworks are crucial not only for reducing fragmentation and legal uncertainty but also for strengthening the stability, inclusiveness, and predictability of the global trade law system.

JEL Classification: K33.

Keywords: international trade law, sources of international law, *lex mercatoria*, hard law, soft law, model contracts, international commercial customs, legal fragmentation, harmonization.

Introduction

The global economic system relies on international trade law to regulate the foreign exchange of goods, services, and capital. As trade evolved—from national and cross-border trade to fully international exchanges—the need for common, legally binding frameworks to regulate interstate economic cooperation became essential. While initially shaped by customary practices, international trade law has increasingly been formalized through treaty-based mechanisms, enhancing legal certainty and predictability. These agreements differ in scope and participation, allowing classification into three main types: universal, regional, and bilateral treaties. Analyzing these categories reveals key legal and institutional structures and highlights the progress of international trade law in specific areas. Moreover, the evolving concept of *lex mercatoria* and the diversification of recognized sources emphasize the growing relevance of flexible, functional norms that meet the practical demands of global commerce.

In recent decades, however, the accelerating diversification of trade instruments and the overlapping nature of international, regional, and bilateral regimes have created a fragmented legal environment. This fragmentation undermines legal certainty and coherence, as states and entrepreneurs must navigate inconsistent obligations and interpretive frameworks. Consequently, the development of a cohesive global trade law framework has become a strategic necessity. Such a framework should not replace existing legal systems but rather integrate them through coordination and mutual reinforcement of norms.

In the view of the foregoing this article advances three central theses through an analysis of international legal sources governing trade cooperation at global, regional, and bilateral levels, alongside an assessment of *soft law* and its regulatory influence. First, while formal sources—namely treaties—form the foundation of international trade law, the system's adaptability increasingly depends on *soft law* instruments, whose flexibility better suits the dynamic nature of cross-border transactions. Second, the article argues that *soft law* plays an increasingly important role in fostering greater coherence among different legal systems and mitigating fragmentation by encouraging normative alignment without necessitating complete legal unification. The strategic objective is to examine how this potential for harmonization can be further developed into a more cohesive framework that strengthens predictability, reduces transaction costs, and promotes fairness in international trade Third, within the EU, consumer protection rights place substantive limits on the free formation of contractual terms and constrain the use of *soft law* by economic entities.

The research employs the formal-dogmatic method to examine legal norms within international and European law. A historical approach is used to trace the development of these norms within the broader historical and institutional context of the EU. Additionally, a comparative analysis assesses the effectiveness of various legal instruments in practice. This methodological triangulation allows the author to connect doctrinal findings with strategic implications for the future architecture of global trade law.

The Origins of International Trade Law

A concise overview of the origins of international trade law serves to highlight the distinctive nature of legal regulations governing international trade cooperation, which are deeply rooted in the historical evolution of trade among diverse communities and states. As early as antiquity, advanced civilizations such as Mesopotamia, Egypt, and Greece developed rudimentary legal frameworks to regulate trade between city-states and across regions. These early laws aimed to facilitate transactions, protect merchants' interests, and ensure fair dispute resolution—illustrated, for example, by the Code of Hammurabi, which included provisions on trade contracts, credit, and penalties for fraud.[1] During the Middle Ages, international trade law was shaped by *lex mercatoria*, a body of merchant customs functioning independently of local

[1] See E. A. Santos, International Law in the Ancient World: Origins, Practices, and Influence on Modern Systems, https://www.diplomacyandlaw.com/post/international-law-in-the-ancient-world-origins-practices-and-influence-on-modern-systems [accessed: 31.05.2025].

laws. It operated as a *de facto* international commercial code, regulating contracts, carriage of goods, security instruments, and dispute resolution via specialized merchant tribunals, thereby facilitating long-distance trade.[2] From the 16th to 18th centuries, colonial expansion and growing global commerce accelerated the development of trade law, marked by the first interstate trade agreements and the rise of institutions such as exchanges and banks, which aimed to promote free trade, protect investors, and formalize competition rules.[3]

In the 19th and 20th centuries, international trade law evolved in response to industrialization, technological innovation, and increasing emphasis on consumer rights.[4] The Industrial Revolution significantly expanded global trade, creating a need for more uniform legal frameworks. Treaties of Friendship, Commerce, and Navigation—primarily concluded by the United States during this period—aimed to regulate trade, legal, and diplomatic relations with other nations.[5] The 20th century witnessed intensified efforts at legal unification through international institutions, culminating in the post–World War II establishment of the General Agreement on Tariffs and Trade (GATT), later succeeded by the World Trade Organization (WTO), alongside the proliferation of Free Trade Agreements.

The present author finds that the historical trajectory of international trade law reveals a consistent movement from decentralized merchant practices to increasingly institutionalized frameworks. This evolution underscores the enduring tension between spontaneous commercial order and state-driven codification—a dynamic that continues to shape modern harmonization efforts.

In the 21st century, trade law continues to adapt to emerging challenges such as digitalization, e-commerce,[6] sustainable trade,[7] and evolving dispute resolution mechanisms.[8] According to the present author, this adaptability highlights the discipline's hybrid nature, balancing tradition with innovation and reflecting the continuous negotiation between economic globalization and legal sovereignty. Overall, international trade law has developed from

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[2] See B. Fuchs, *Lex mercatoria – od średniowiecza po XXI wiek* [in:] J. Ciągwa *et al.* (eds.), O prawie i jego dziejach księgi dwie, Białystok–Katowice 2010, p. 1085.

[3] N. Srivastava, *History of Contemporary International Trade Law*, 'International Journal of Law Management & Humanities' 2018, 1, 4, p. 6.

[4] See M. Hesselink, *Europejskie prawo umów: kwestia ochrony konsumenta, obywatelstwa czy sprawiedliwości?*, 'Nowa Europa. Przegląd Natoliński' 2008, 2, 7, p. 221.

[5] J. K. Vandevelde, The First Bilateral Investment Treaties: U.S. Postwar Friendship, Commerce, and Navigation Treaties, Oxford University Press 2017, p. 57.

[6] The rise of electronic trade has led to specialized regulatory instruments like the UNCITRAL Model Law on Electronic Commerce, promoting secure, legally recognized digital transactions.

[7] There is growing integration of environmental and social standards into trade agreements, aligning with sustainable development goals.

[8] International commercial arbitration has gained prominence, with bodies such as the ICC International Court of Arbitration playing crucial roles in resolving cross-border disputes efficiently and impartially.

informal merchant customs into a complex, institutionalized system that reflects broader socio-economic and political transformations.

Unification of Law and Commercial Practices in International Trade

The contemporary global trade system is marked by diverse national legal regimes, creating legal and practical challenges for cross-border transactions. Legal unification addresses these issues by harmonizing private-law rules through supranational instruments—primarily international conventions—that establish uniform standards overriding conflicting domestic laws. These instruments regulate specific private-law relationships directly, reducing reliance on conflict-of-law rules and minimizing discrepancies across jurisdictions.[9] Their effectiveness depends on clearly defined substantive scope and territorial applicability. Despite notable progress, comprehensive unification remains limited due to factors such as uneven state participation, varying economic interests, and the sector-specific nature of many instruments. In the opinion of the present author, as a result, legal dualism persists: unified rules apply to international transactions among contracting states, while domestic law continues to govern internal matters. This unevenness demonstrates that unification alone cannot ensure coherence; it must be complemented by flexible interpretative mechanisms such as *soft law* to achieve legal integration.

International organizations play a crucial role in the unification of commercial law.[10] The United Nations Commission on International Trade Law (UNCITRAL)[11] leads efforts to harmonize trade law through conventions and model laws. The International Institute for the Unification of Private Law (UNIDROIT)[12] similarly promotes legal standardization, particularly in areas like franchising and commercial contracts. The International Chamber of Commerce (ICC)[13] contributes by issuing widely adopted instruments such as Incoterms and model contracts. The Hague Conference on Private International Law (HCCH)[14] focuses on unifying rules related to jurisdiction, applicable law, and the recognition and enforcement of foreign judgments.

[9] See A. Całus, *Umowa międzynarodowa jako instrument ujednolicania porządków prawnych w dziedzinie prawa prywatnego* [in:] Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana, L. Ogiegło, W. Popiołek, M. Szpunar (eds.), Kraków 2005, p. 375.

[10] See J. Poczobut, *Organizacje promujące rozwój międzynarodowego prawa handlowego. Charakter prawny, cele, struktura, osiągnięcia. Na przykładzie UNCITRAL i MIH* [in:] Rozprawy prawnicze. Księga..., *ibid.*, p. 462.

[11] United Nations Commission on International Trade Law, https://uncitral.un.org/ [accessed: 31.05.2025].

[12] The International Institute for the Unification of Private Law, https://www.unidroit.org/ [accessed: 31.05.2025].

[13] International Chamber of Commerce, https://iccwbo.org/ [accessed: 31.05.2025].

[14] Hague Conference on Private International Law, https://www.hcch.net/en/home [accessed: 31.05.2025].

Regionally, the Council of Europe promotes legal convergence through conventions and recommendations, while the European Union has established a common commercial market with specific rules and policies that significantly influence the development of international trade law. The present author argues that these institutions collectively represent the structural backbone of modern trade governance, yet their fragmented competences and overlapping mandates illustrate the persistent challenge of achieving a cohesive legal order.

Universal Instruments as Sources of International Trade Law

The unification and harmonization of legal frameworks are fundamental to modern international trade. Universal legal instruments play a central role by establishing standardized rules for cross-border commerce, enhancing legal certainty, lowering transaction costs, and promoting regulatory consistency.

The harmonization of international trade law began with early conventions on industrial property and trademark protection, laying the foundation for deeper legal integration. A major starting point in the unification of intellectual property law was the Paris Convention for the Protection of Industrial Property (1883), which, through successive revisions, established a global framework for patents, trademarks, and industrial designs. The Patent Cooperation Treaty (1970) further streamlined patent applications, reduced costs, and expanded access to technological information, particularly for developing countries. Trademark protection was strengthened by the Madrid Agreement (1891) and its 1989 Protocol, while the Agreement on False or Deceptive Indications of Source enhanced anti-counterfeiting measures. In copyright, the Berne Convention (1886) and the WIPO Copyright Treaty (1996) set uniform standards, notably in response to digital technologies. In the opinion of the present author, these early conventions mark the beginning of an institutional logic in international trade law—one that prioritizes predictability and economic efficiency over localized discretion.

A key pillar of this process is the unification of frameworks for commercial dispute resolution. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)[15] remains one of the most widely ratified instruments, binding in nearly all major trading nations, including Poland. It is complemented by the European Convention on International

[15] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), https://www.newyorkconvention.org/english [accessed: 31.05.2025].

Commercial Arbitration (Geneva, 1961),[16] which has shaped arbitration practices in Europe and enhanced legal certainty for international commerce.

Another cornerstone is the United Nations Convention on Contracts for the International Sale of Goods (CISG),[17] adopted by 97 countries,[18] which provides a uniform framework for the formation, performance, and enforcement of international sales contracts, reducing legal uncertainty and facilitating cross-border transactions.[19]

Further harmonization efforts have focused on specific contractual relationships such as agency, leasing, factoring, and secured transactions. UNIDROIT has played a leading role through instruments like the Conventions on International Factoring and Financial Leasing (1988),[20] and the Model Law on Secured Transactions, aimed at removing legal barriers (2016)[21] and fostering cross-border investment.

In the practical sphere of goods exchange, conventions such as the Convention on the Contract for the International Carriage of Goods by Road (CMR, 1956)[22] and the Geneva Conventions on Bills of Exchange and Promissory Notes (1930–1931)[23] have unified key aspects of transport and payment, ensuring legal predictability and operational efficiency in international trade.

A major milestone in institutional trade governance was the Marrakesh Agreement Establishing the WTO (1994)[24] and its Annexed Agreements (GATT 1994, GATS, TRIPS, and others) forming the backbone of the multilateral trading system, which promotes trade liberalization, addresses discriminatory practices, and enhances the position of developing countries. These treaties derive legitimacy from state consent and evolve through negotiation, amend-

[16] European Convention on International Commercial Arbitration United Nations, Treaty Series, vol. 484, p. 349

[17] Convention on Contracts for the International Sale of Goods, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf [accessed: 29.05.2025] – date of adoption: 11.04.1980, entry into force: 01.01.1988.

[18] Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status [accessed: 29.05.2025].

[19] See H. M. Flechtner, *The CISG's Impact on International Unification Efforts* [in:] The 1980 Uniform Sales Law: Old Issues Revisited, ed. F. Ferrari, Verona 2003, pp. 170–174, O. Lando, *CISG and Its Followers: A Proposal to Adopt Some International Principles of Contract Law*, 'The American Journal of Comparative Law' 2005, 53, 2, p. 379.; J. Felemegas, An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge 2007, p. 12.

[20] Conventions on International Factoring and Financial Leasing, https://www.unidroit.org/instruments/leasing/convention/ [accessed: 31.05.2025].

[21] Model Law on Secured Transactions, aimed at removing legal barriers, https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions [accessed: 31.05.2025].

[22] Convention on the Contract for the International Carriage of Goods by Road, https://treaties.un.org/doc/Treaties/1961/07/19610702%2001-56%20AM/Ch_XI_B_11.pdf [accessed: 29.05.2025].

[23] Convention providing a Uniform Law for Bills of Exchange and Promissory Notes Geneva, 7 June 1930, https://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=559&chapter=30&clang=_en [accessed: 29.05.2025].

[24] Marrakesh Agreement Establishing the World Trade Organization, https://www.wto.org/english/docs_e/legal_e/marag_e.htm [accessed: 29.05.2025].

ment, and interpretation. Its dispute settlement mechanism reinforces the rule of law by providing a binding forum for resolving state-to-state trade disputes. Evolutionary approaches to the development of trade law rely on the continuous interpretative practice of WTO bodies and the customary principles of treaty interpretation codified in the Vienna Convention on the Law of Treaties (1969). For instance, the Appellate Body's jurisprudence has clarified and progressively developed norms concerning non-discrimination (Articles I and III of GATT), security exceptions (Article XXI).[25] Similarly, waivers and ministerial declarations—such as the 2001 Doha Declaration on TRIPS and Public Health or the 2022 TRIPS Waiver Decision—illustrate how states adapt treaty law to emerging challenges without renegotiating the entire framework.

In the opinion of the present author, such instruments exemplify functional harmonization, addressing pragmatic business needs rather than pursuing doctrinal uniformity. This reflects a shift from formal to outcome-oriented international lawmaking. Universal legal instruments form the foundational sources of international trade law, aiming to harmonize national regulations, facilitate economic exchange, protect intellectual property, and ensure effective dispute resolution. However, not all of these instruments have entered into force or achieved broad international acceptance. Notably, the CISG Convention—despite being one of the most widely ratified trade conventions—permits contractual parties (business entities) to exclude its application. This opt-out clause is frequently invoked, which weakens the Convention's universal applicability. The present author finds that the CISG's opt-out flexibility, while criticized for undermining universality, in fact preserves party autonomy—a principle central to both classical contract theory and the *lex mercatoria* tradition. Nonetheless, the broader adoption of such instruments could foster a stable and predictable legal environment essential to the growth of global commerce. By reducing legal fragmentation and promoting regulatory coherence, they help build mutual trust among international commercial actors. The CISG's real unifying function lies not in its universal ratification, but in its capacity to influence domestic legal reasoning and promote convergence in judicial interpretation across jurisdictions.[26] This observation confirms that the effectiveness of universal trade instruments extends beyond formal adherence, encompassing their interpretive and harmonizing impact on national law.

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[25] Since December 2019, the Appellate Body has been unable to function due to the United States' continued blockage of appointments to fill vacant positions. As a result, no new appeals can be heard, leaving the WTO dispute settlement system effectively paralyzed at the appellate stage, see e.g. K. Pan, *Breaking the Impasse of Appointing Members of the WTO Appellate Body: A Perspective from International Institutional Law*, 'World Trade Review' 2025, 24, 3, pp. 404–422.

[26] See F. Ferrari, The CISG and its Impact on National Legal Systems, Walter de Gruyter GmbH, 2009, pp. 345––481.

Regional Instruments as Sources of International Trade Law

Within the framework of international trade law, regional legal instruments complement universal agreements by regulating commerce within specific geographical areas. Though they involve a narrower scope of participation, such instruments enhance legal coherence, support cross-border economic integration, and adapt international legal principles to regional political, economic, and cultural contexts. The present author observes that regional frameworks serve as laboratories for legal experimentation, where integration mechanisms can be tested and refined before potential global application. Regions including Europe, the Americas, Africa, and Asia have developed such frameworks.

Europe has been a leader in regional legal integration. The Council of Europe have promoted legal harmonization through instruments such as the European Convention on International Commercial Arbitration (1961), which established a legal framework for resolving commercial disputes through arbitration within the region, the European Convention on Information on Foreign Law (1968), facilitated judicial cooperation by enabling the exchange of information on civil, commercial, and procedural laws between national courts, and the European Patent Convention (1973) created a unified procedure for granting patents in multiple European countries, establishing consistent standards for the protection of industrial property. While territorially limited, these agreements have significantly shaped international trade law. In the opinion of the present author, the European model illustrates how regional integration can reconcile national sovereignty with collective governance, offering a pragmatic template for balancing legal diversity and economic unity.

In the Americas, regional trade integration has progressed through agreements such as the United States-Mexico-Canada Agreement (USMCA),[27] which replaced North American Free Trade Agreement (NAFTA), and the Southern Common Market (MERCOSUR),[28] a South American customs union facilitating the free movement of goods, services, capital, and people.

In Africa, regional integration accelerated in the late 1990s with the rise of economic organizations such as the Economic Community of West African States (ECOWAS), which promotes economic and monetary integration,[29] and

[27] The United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between [accessed: 29.05.2025].

[28] MERCOSUR in brief, https://www.mercosur.int/en/about-mercosur/mercosur-in-brief/ [accessed: 29.05.2025].

[29] Economic Community of West African States (ECOWAS), https://www.ecowas.int/wp-content/uploads/2022/06/THE-1975-TREATY-OF-ECOWAS.pdf [accessed: 29.05.2025].

the Central African Economic and Customs Union (UDEAC),[30] later replaced by the Central African Economic and Monetary Community (CEMAC) in 1994 to advance trade and customs harmonization.[31]

In Asia and the Pacific, various economic frameworks—differing in legal formality and enforceability—have contributed to the harmonization of commercial practices. Key examples include the Asia-Pacific Economic Cooperation (APEC) – a non-binding economic forum based on voluntary commitments and political declarations, Association of Southeast Asian Nations (ASEAN) – has progressively created a free trade area and enhanced regional economic cooperation, Central European Free Trade Agreement (CEFTA) – initially formed by Visegrád countries to prepare for EU accession, now includes non-EU Balkan states, European Free Trade Association (EFTA) an alternative to the EU, aimed at eliminating trade barriers among member states, Caribbean Community (CARICOM) – supports economic integration among Caribbean states. These organizations employ diverse legal and institutional tools to harmonize regulations, attract investment, and facilitate regional trade.

The region encompassing the Caucasus, Central Asia, and Russia is marked by significant diversity in legal traditions and levels of economic integration. Following the dissolution of the Soviet Union, states in this area have pursued distinct paths of legal and institutional development, resulting in a fragmented regulatory landscape. While some countries have sought alignment with global trade frameworks such as the WTO and the CISG, others maintain bilateral or informal trade arrangements shaped by historical, political, and economic factors. Regional organizations, including the Eurasian Economic Union, play a central role in promoting limited legal harmonization, yet disparities in implementation, institutional capacity, and judicial practice persist. As a result, international trade in the region operates within a hybrid system combining elements of treaty law, administrative coordination, and customary commercial practices.[32]

Regional trade agreements often complement global frameworks like the General Agreement on Tariffs and Trade (GATT)[33] and the WTO,[34] with GATT serving as a legal foundation for regional liberalization and dispute resolution mechanisms.

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[30] Treaty establishing a central African economic and customs union, https://repository.uneca.org/bitstream/handle/10855/10234/Bib-50915.pdf?sequence=1&isAllowed=y [accessed: 29.5.2025].

[31] Central African Economic and Monetary Community (CEMAC), https://cemac.int/ [accessed: 29.05.2025].

[32] See A. Trunk, A. Aliyev, M. Trunk-Fedorova (eds.), Law of International Trade in the Region of Caucasus, Central Asia and Russia, Brill, 2022, pp. 19–108.

[33] General Agreement on Tariffs and Trade (GATT), https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm [accessed: 29.05.2025].

[34] Agreement establishing the World Trade Organization, https://www.wto.org/english/docs_e/legal_e/04-wto.pdf [accessed: 29.05.2025].

Although these initiatives differ in institutional structure and levels of integration, they share common goals: reducing trade barriers, coordinating economic policies, and promoting regional development. Regional legal instruments and organizations serve as a crucial intermediary layer within international trade law. By adapting global legal principles to regional realities, they enhance legal predictability, facilitate economic cooperation, and streamline cross-border transactions. Functioning as a bridge between domestic and international legal regimes, regional frameworks are essential for the effective governance of global commerce. As globalization progresses, their role in addressing legal and economic disparities and advancing sustainable, inclusive trade remains critical.

Sources of Trade Law in the European Union

The EU commercial law is based on a complex, multilayered legal system regulating economic activity and trade within the EU internal market. Its primary objectives are to ensure regulatory harmonization among member states, remove trade barriers, promote competition, and enhance economic integration. The present author argues that the EU's legal architecture provides a unique hybrid of supranational authority and national implementation, making it a paradigmatic example of how multilevel governance can institutionalize harmonization.

Historically, international conventions significantly contributed to harmonizing private and commercial law in the EU.[35] However, their influence has declined, as binding EU regulations now prevail and apply directly across all member states.

The Treaty on the Functioning of the European Union[36] serves as the foundational legal basis for the EU's competences in trade policy, competition law, intellectual property, and consumer protection. It establishes the framework for adopting legislation that facilitates the free movement of goods, services, capital, and business activities within the internal market.

At the level of secondary legislation, EU commercial law is primarily shaped by two categories of legal acts: regulations and directives. In the opinion of the present author, this two-tiered structure allows the EU to combine flexibility and legal certainty—attributes essential to the evolution of a coher-

[35] Notable examples include: the Rome Convention (1980) on the law applicable to contractual obligations; and the Brussels Convention (1968) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[36] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47––390.

ent internal market. Regulations offer the most direct and effective means of legal unification within the EU. Key examples include the Rome I Regulation on contractual obligations,[37] Rome II Regulation on non-contractual obligations,[38] Brussels I bis Regulation on jurisdiction and enforcement of judgments,[39] as well as regulations on the European Union trademark,[40] the European Economic Interest Grouping (EEIG),[41] and the Statute for a European Company.[42] These instruments are essential for harmonizing conflict-of-law rules, facilitating dispute resolution, and establishing uniform standards for intellectual property protection and business operations throughout the internal market.

Directives constitute another essential category of EU legal instruments, primarily aimed at harmonization rather than full unification. Notable examples include Directive 2005/56/EC on cross-border mergers of limited liability companies,[43] later repealed by Directive (EU) 2017/1132 on certain aspects of company law,[44] and Directive 86/653/EEC on the coordination of laws relating to self-employed commercial agents.[45] These directives promote the free movement of services and provide legal protection for agents, enhancing business mobility and fostering fair commercial practices across the EU.

Consumer protection directives also play a crucial role by safeguarding weaker parties in commercial transactions, while imposing diverse obligations on professionals (business entities).[46] Compliance with these regulations

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[37] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 04.07.2008, pp. 6–16.

[38] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.07.2007, pp. 40–49.

[39] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, pp. 1–32.

[40] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification), OJ L 154, 16.06.2017, pp. 1–99.

[41] Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) OJ L 199, 31.07.1985, pp. 1–9

[42] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), OJ L 294, 10.11.2001, pp. 1–21.

[43] Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, OJ L 310, 25.11.2005, pp. 1–9.

[44] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), OJ L 169, 30.06.2017, pp. 46–127.

[45] Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, OJ L 382, 31.12.1986, pp. 17–21.

[46] E.g. Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, OJ L 136, 22.05.2019, pp. 28–50; Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, OJ L 304, 22.11.2011, pp. 64–88; Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of

is essential in commercial and trade relations within the Union. Also, the Rome I Regulation mandates the application of consumer protection rules in cross-border relations, which must be observed by any business conducting or directing its activities within the EU.

The sources of EU commercial law form a coherent and dynamic legal system, where the foundational treaties, binding regulations, and harmonizing directives interact to support the effective functioning of the internal market. This comprehensive body of law not only provides a level playing field for businesses operating within the EU but also protects the rights of all participants in commercial transactions. As such, EU commercial law serves as a critical driver of economic integration, legal convergence, and competitiveness on both the European and international stage.

Documents of a Bilateral Nature

Bilateral international agreements constitute a significant source of international trade law, shaping the conditions of economic exchange between states. The present author notes that bilateralism persists not as a relic of pre-globalization, but as a pragmatic complement to multilateral governance, offering agility and targeted cooperation – regulate cross-border commercial activities, enhance predictability in economic relations, and mitigate risks arising from divergent legal and regulatory frameworks. Their primary aim is the liberalization of trade in goods and services through measures such as tariff reduction or elimination, streamlined customs procedures, removal of non-tariff barriers, and harmonization of technical standards, thereby improving market efficiency and competitiveness.

Contemporary bilateral agreements increasingly transcend traditional trade disciplines, extending to investment, technology transfer, intellectual property, and human rights—domains that exert a direct influence on sustainable development and environmental governance. In the view of the present author, this expansion reflects the functional diversification of trade law and its growing intersection with economic and environmental governance. Instruments such as Bilateral Investment Treaties (also Treaties of Friendship, Commerce, and Navigation), and Free Trade Agreements—e.g. between

the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, pp. 7–28; Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC, OJ L, 2023/2673, 28.11.2023, ELI: http://data.europa.eu/eli/dir/2023/2673/oj.

the Republic of China and the Republic of Peru (2009)[47] or Mauritius (2019)[48] —serve distinct purposes but collectively shape the broader regulatory framework of international trade. These agreements complement each other and contribute to a coherent regulatory system. A key feature of many bilateral treaties is the inclusion of dispute resolution mechanisms, which enhance legal certainty, ensure effective implementation, and facilitate the peaceful resolution of conflicts, thus supporting stable trade relations.

However, from the European Union's perspective, bilateral treaties have a limited role. In areas covered by the EU's Common Commercial Policy, the Union holds exclusive competence to negotiate and conclude trade agreements, effectively replacing individual Member States in this capacity.

Harmonization of Private Law Through Model Law Instruments (Soft Law)

The numerous harmonization efforts have emerged within private law, prominently through *soft law* instruments. Although lacking the formal enforceability of statutes or treaties, these instruments are pivotal in standardizing legal norms, particularly in obligations and contract law. The present author finds that their normative flexibility allows for harmonization through persuasion rather than coercion, promoting convergence while preserving national autonomy. In the broader strategic context, *soft law* represents not merely a supplementary tool but a central harmonizing force within international trade law. Its ability to operate across diverse jurisdictions allows it to bridge the gaps left by incomplete treaty coverage and fragmented national regimes. Through consensus-based and adaptable standards, *soft law* fosters gradual convergence that can eventually form the basis of a more cohesive global framework.

Among the most influential *soft law* frameworks are:

- the UNIDROIT Principles of International Commercial Contracts (UPICC)[49] serve as a transnational framework for regulating contractual relations in international commerce.[50] Their defining features are universality and the ab-

[47] Free Trade Agreements between the Republic of China and the Republic of Peru https://fta.mofcom.gov.cn/topic/enperu.shtml [accessed: 31.05.2025].

[48] Free Trade Agreement between the People's Republic of China and the Republic of Mauritius https://fta.mofcom.gov.cn/topic/enmauritius.shtml [accessed: 31.05.2025].

[49] UNIDROIT Principles of International Commercial Contracts 2016, https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf [accessed: 29.05.2025].

[50] See J. Basedow, *Uniform Law Conventions and the UNIDROIT Principles of International Commercial Contracts*, 'Uniform Law Review' 2000, 5, p. 130.; M. J. Bonell, *UNIDROIT Principles 2004: The New Edition of the Principles of International Commercial Contracts*, 'Uniform Law Review' 2004, 9, pp. 9–11.

sence of limitations regarding the "international" or "commercial" nature of contracts, allowing parties considerable freedom in choosing to apply them.[51] The UPICC can function as the governing law of a contract when expressly selected by the parties, as a source of general principles of law (*lex mercatoria*), or as a tool for filling gaps in domestic legal systems. Their systemic neutrality fosters legal trust between parties from diverse legal traditions. Additionally, the UPICC provide valuable interpretative support for international instruments such as the CISG Convention, reinforcing their importance in global legal integration;[52]

- the Principles of European Contract Law (PECL)[53] were conceived as a model code aimed at creating a common core of European contract law. Inspired by the CISG Convention, the PECL go further by facilitating harmonization of private law within the EU.[54] Their flexible structure enables them to function as a self-contained normative framework (if chosen by the parties) or as a supplementary and interpretative instrument. In practice, the PECL have found widespread application in international arbitration, where their status as expressions of general legal principles supports dispute resolution while respecting party autonomy and the transnational nature of commercial relations;[55]
- the Draft Common Frame of Reference (DCFR)[56] represents the most comprehensive and ambitious harmonization project in European private law. Building upon the PECL, it extends its scope beyond contract law to include areas such as torts, unjust enrichment, the transfer of movable property, and fiduciary arrangements. A fundamental innovation of the DCFR is its shift in focus from "contract" to "obligation" as the overarching legal category. The DCFR also introduces a dual structure of principles: one legal-technical (freedom of contract, legal certainty, efficiency) and the other normative-political (solidarity, protection of human rights, support for the internal market).[57]

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[51] A. Hartkamp, *The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law*, 'European Review of Private Law' 1994, 2, p. 343.

[52] M. J. Bonell, R. Peleggi, *UNIDROIT Principles of International Commercial Contracts and Principles of European Contract Law: A Synoptical Table*, 'Uniform Law Review' 2004, 9, p. 438.

[53] Principles of European Contract Law (PECL), https://www.trans-lex.org/400200/_/pecl/ [accessed: 29.05.2025].

[54] M. A. Zachariasiewicz, *Konwencja wiedeńska o międzynarodowej sprzedaży towarów a inne akty ujednoliconego prawa umów ze szczególnym uwzględnieniem odpowiedzialności kontraktowej dłużnika*, „Problemy Prawa Prywatnego Międzynarodowego" 2007, 2, p. 40.

[55] See M. W. Hesselink, G. J. P. de Vries, Principles of European Contract Law, Deventer 2001, pp. 24 and 25.

[56] Draft Common Frame of Reference (DCFR), https://www.trans-lex.org/400725/_/outline-edition-/ [accessed: 29.05.2025].

[57] See O. Lando, *The Structure and the Legal Values of the Common Frame of Reference (CFR)*, 'European Review of Contract Law' 2007, 3, 3, p. 245; K. Lilleholt, *The Draft Common Frame of Reference and "Cancellation" of Contracts*, 'Iuridica International' 2008, XIV, 1, p. 117; H. Beale, *The Nature and Purposes of the Common Frame of Reference*, 'Juridica International' 2008, XIV, 1, pp. 12 and 16.

While not legally binding, the DCFR plays a significant role in shaping a shared legal culture across Europe;[58]

- the TRANS-LEX Principles[59] constitute a dynamic, open-access codification project based on informal consensus among legal scholars and practitioners. Their distinguishing characteristics are their evolving nature and online accessibility, supported by a comprehensive source database. These principles are particularly useful when parties invoke *lex mercatoria* or general principles of law without specifying a governing legal system. TRANS-LEX serves not only normative functions but also educational and interpretive roles, acting as a medium for transnational legal dialogue. Their flexibility and global orientation make them especially relevant in international commercial arbitration;
- the *Acquis Communautaire* Principles of Contract Law (ACQP)[60] are distinctive among *soft law* instruments due to their exclusive basis in the existing *acquis communautaire*. Their primary function is organizational and implementational rather than traditional harmonization. The ACQP facilitate the transposition of EU directives into national legislation by offering clear legislative and interpretative templates.

Soft law play a crucial role in harmonizing private law at both regional and global levels. Despite their non-binding nature, they serve as indispensable tools for contract drafting,[61] legal interpretation, and academic teaching. The normative authority of non-state rules lies not in their formal enactment, but in their voluntary acceptance by the global commercial community, which transforms private standards into de facto law.[62] These instruments contribute to the development of a shared legal infrastructure, foster trust in cross-border economic relations, and enable the creation of flexible legal frameworks tailored to the needs of contracting parties. In the field of international trade finance, *soft law* has proved to be the most efficient harmonizing force, operating as a functional equivalent of treaty law through voluntary adoption by global commercial actors.[63] In this way, *soft law* functions as both a corrective and an integrative mechanism—reducing legal fragmentation by promoting

[58] E. M. Rott-Pietrzyk, *Czy DCFR ma znaczenie przy wykładni prounijnej przepisów o umowie agencyjnej* [in:] Wpływ europeizacji prawa na instytucje prawa handlowego, J. Kruczalak-Jankowska (ed.), Warszawa 2013, pp. 374–389.

[59] TRANS-LEX Principles, https://www.trans-lex.org/principles/of-transnational-law-(lex-mercatoria) [accessed: 29.05.2025].

[60] *Acquis Communautaire* Principles of Contract Law, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0398 [accessed: 29.05.2025].

[61] See B. Fuchs, *Kształtowanie treści umowy zawieranej w międzynarodowym obrocie handlowym* [in:] Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga jubileuszowa Profesora Józefa Okolskiego, M. Modrzejewska (ed.), Warszawa 2010, p. 312.

[62] J. Hoekstra, Non-State Rules in International Commercial Law — Contracts, Legal Authority and Application, Routledge, 2021, pp. 45–47 and 224–226.

[63] See A. Brandao de Oliveira, L. Gama, G. Saumier (eds.), Soft Law in International Trade Finance, Ius Comparatum Series, vol. 1, Brill, 2025, pp. 3–52.

functional alignment among divergent systems, and laying the groundwork for a cohesive global trade law framework capable of balancing flexibility with certainty. Additionally, when widely adopted and applied, model laws and *soft law* standards may constitute subsequent practice under Article 31(3)(b) of the Vienna Convention, thereby guiding the uniform interpretation of treaty obligations.[64]

Lex Mercatoria and New *Lex Mercatoria* as a Part of International Trade Law

Lex mercatoria, or 'the law of merchants,' is a foundational component of contemporary international commercial law.[65] It comprises customary, non-legislative norms governing cross-border civil-law relations.[66] In the opinion of the present author, its enduring relevance lies in its capacity to adapt to economic transformation without formal amendment, making it an archetype of dynamic and evolving transnational law. Although lacking formal legislative authority, these norms—derived from trade customs—are widely recognized and applied in global commerce. Functioning independently of national laws, *lex mercatoria* provides a neutral, transnational framework that complements formal international legislation.

In response to the incomplete harmonization of international commercial law, the concept of the *new lex mercatoria* has emerged. It incorporates codified trade usages, contract templates, and practice guides developed by institutions such as the ICC, offering consistent standards for contract formation, performance, and dispute resolution. The evolving *new lex mercatoria* character encompasses standardized terms (e.g., INCOTERMS), arbitral jurisprudence, and instruments such as the UNIDROIT Principles and the Principles of European Contract Law. Increasing codification of these norms reflects a broader trend toward institutionalization.[67] Transnational commercial law has emerged as the connective tissue between domestic legal orders and international treaty law, achieving a practical form of unification through the cumulative effect of *soft law* instruments and arbitral interpretation.[68]

[64] Compare I. Bantekas, *Uniformity in Model Laws as Subsequent Practice under Article 31 of the Vienna Convention on the Law of Treaties*, 'Austrian Review of International and European Law Online' 2018, 20, 1, pp. 145––163.

[65] See J. H. Dalhuisen, *Legal Orders and their Manifestation: The Operation of the International Commercial and Financial Legal Order and Its Lex Mercatoria*, 'Berkeley Journal of International Law' 2006, 24, p. 180.

[66] B. Fuchs, *Lex mercatoria* w międzynarodowym obrocie handlowym, Kraków 2000, p. 22.

[67] See M. Pryles, *Application of the* Lex Mercatoria *in International Commercial Arbitration*, 'Mealey's International Arbitration Report' 2003, 18, 2, p. 27.

[68] B. Zeller, C. Baasch Andersen (eds.), Routledge Handbook on Transnational Commercial Law, Routledge, 2025, p. 103.

Model contracts, or contract templates, play a crucial role in standardizing and facilitating international commercial transactions. Typically developed by chambers of commerce, trade associations, governments, and international bodies such as the United Nations Economic Commission for Europe (UNECE)[69] and the ICC, these templates may include general terms with customizable fields or fully standardized clauses. Though non-binding, model contracts carry significant persuasive authority, especially when issued by reputable organizations. UNECE templates often address industry-specific needs, while ICC models provide detailed, adaptable provisions, including force majeure and hardship clauses. These instruments enhance legal clarity and predictability when incorporated into tailored agreements. Many ICC models also include arbitration clauses following attempts at amicable settlement. While adoption remains voluntary, their widespread use advances harmonization in international commercial practice.

Complementing these are standardized trade interpretation rules, notably the ICC's Incoterms, which define delivery terms allocating costs, risks, and responsibilities between buyers and sellers for transport and insurance. Since their first edition in 1936, Incoterms have evolved to reflect logistics developments; the 2020 edition distinguishes terms for all transport modes (e.g., EXW, DDP, CIP) and maritime-specific terms (e.g., FOB, CIF, FAS), simplifying contract drafting by clearly defining risk transfer and delivery obligations.[70]

For specialized logistics, particularly containerized and multimodal transport, Combiterms provide detailed rules on duties and risk transfer, often at freight forwarder terminals.[71] In the Americas, the Revised American Foreign Trade Definitions (RAFTD 1941) serve a similar role but differ in interpretation, requiring explicit contractual reference. RAFTD remains prevalent in the U.S., Mexico, and parts of Central America.[72]

Beyond formal codifications, commercial practice recognizes numerous customary trade terms and usages—such as discounts for damaged goods or weight loss, and product quality standards like FAQ (Fair Average Quality), TQ (Top Quality), or RT (Running Time)—which clarify seller and buyer obligations during transport.[73]

The concept of the *new lex mercatoria* marks a significant advancement in international commercial law, addressing the challenges posed by fragmented national regulations and incomplete harmonization. This modern framework enhances consistency and predictability in contract formation,

[69] United Nations Economic Commission for Europe, Trade, https://unece.org/trade [accessed: 31.05.2025].
[70] Incoterms® 2020, https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020/ [accessed: 31.05.2025].
[71] *Combine Trade Terms with a Comprehensive System for Cost Distribution Between Seller and Buyer* [in:] Międzynarodowe prawo handlowe. System prawa handlowego, vol. 9, W. Popiołek (ed.), p. 53.
[72] *Ibid.*
[73] *Combine…*, p. 54.

performance, and dispute resolution, effectively bridging divergences among diverse legal systems. The present author argues that this modern form represents not a break but a continuity with historical mercantile practice—elevating custom into a self-sustaining normative order parallel to state law. Consequently, the *new lex mercatoria* preserves the original 'law of merchants' flexibility and neutrality while reinforcing its role as a coherent and widely accepted legal foundation that both supports and complements formal international trade law.

Conclusions

The legal framework of international trade is complex, encompassing public international law, domestic regulations, and private law governing contractual relations. A key element of this framework is non-binding instruments—such as model contracts, customs, and *soft law*—which, despite lacking formal legal force, play a crucial role due to parties' broad autonomy. The framework also highlights the importance of international commercial customs—trade usages and standards developed by intergovernmental and non-governmental organizations. These customs can be incorporated into contracts or invoked in interpretation, provided they do not conflict with mandatory norms. Classified as sectoral, local, or universal, such customs are valued for their clarity, acceptance in commercial practice, and flexibility.

This informal body of norms is known as the *new lex mercatoria*. Unlike the historical *lex mercatoria* based on customary law, the modern form consists of non-binding rules, commercial practices, and arbitral jurisprudence that, while not legally binding, significantly influence contract behavior and dispute resolution. Some commercial customs may evolve into binding norms, especially when recognized in international arbitration.

At the core of international trade law are multilateral treaties adopted by international organizations, which serve as the most authoritative regulatory sources and require ratification to bind states. However, *soft law* instruments often exert greater practical influence by harmonizing trade rules and reducing legal uncertainty, despite their non-binding nature.

In the context of the EU, consumer protection rights place substantive constraints on the free formation of contractual terms and limit the extent to which economic actors can rely on *soft law*. This highlights the distinctive regulatory environment within the EU, where consumer protection norms serve as significant limitations on the application and influence of *soft law* in commercial relations.

Beyond treaties, customary international law plays a supplementary role, particularly in defining principles of good faith, proportionality, and due process in dispute settlement. Institutional practice—for example, the functioning of the WTO General Council, committees, and plurilateral initiatives like the Joint Statement Initiatives (JSIs)—contributes to the ongoing elaboration of norms. Furthermore, soft law instruments, including the OECD Guidelines for Multinational Enterprises or UNCTAD's Investment Policy Framework for Sustainable Development, influence state behavior and treaty design, bridging the gap between legal obligations and policy guidance.

The analysis demonstrates that the persistence of fragmentation within the global trade law system poses serious challenges for legal certainty, equality of treatment, and the efficiency of dispute resolution. Fragmentation leads to overlaps and inconsistencies that undermine trust in the rule-based order of international commerce. Consequently, reducing such fragmentation emerges as both a practical and normative imperative.

The analysis confirms the theses set out in the Introduction: first, that treaty law provides the structural foundation of international trade regulation; second, that *soft law* performs an indispensable harmonizing function, bridging gaps between divergent legal systems; and, that developing a cohesive global trade law framework requires the strategic integration of both. By addressing fragmentation and reinforcing predictability, such a framework can significantly enhance the functionality and legitimacy of the global trade system. Third, within the EU, consumer protection rights place substantive limits on the free formation of contractual terms and constrain the use of *soft law* by economic entities.

Moreover, the study demonstrates that fragmentation remains a critical obstacle to coherence and equality within international trade law. This fragmentation manifests in overlapping treaty obligations, conflicting standards, and inconsistent dispute resolution practices. Mitigating these effects demands a multilayered harmonization process, in which soft law and *lex mercatoria* provide the connective tissue that unites diverse regulatory regimes. A cohesive global trade law framework can be achieved not through the imposition of a single universal code but through a coordinated, multi-level structure in which *soft law* complements and harmonizes treaty-based mechanisms. By promoting convergence across jurisdictions, facilitating interpretation, and filling regulatory gaps, *soft law* helps unify the legal architecture of global trade.

Future research should further explore practical models for institutionalizing this coordination, including the interaction between WTO mechanisms and *soft law* frameworks such as the UNIDROIT Principles or ICC model clauses. Comparative studies examining how regional systems (e.g., the EU, ASEAN, and MERCOSUR) employ *soft law* to harmonize private commercial

relations could also yield valuable insights. In particular, interdisciplinary research linking legal harmonization with economic governance and sustainable development would deepen understanding of how a cohesive global trade law framework might evolve in practice.

By outlining these avenues for further inquiry, the paper aims to demonstrate that reducing fragmentation through more harmonized legal and institutional interaction is both a theoretical necessity and a pragmatic path toward a stable, equitable, and sustainable international trade order. Ultimately, the ongoing development of harmonized instruments—whether binding or non-binding—represents a strategic pathway toward greater coherence, predictability, and inclusiveness in the international trading system. The creation of such a cohesive framework is therefore essential for ensuring that global trade law evolves as an integrated, transparent, and equitable system capable of addressing the complexities of modern economic interdependence.

Abstrakt

Handel międzynarodowy – jako fundament współczesnej gospodarki światowej – wymaga istnienia spójnych i kompleksowych ram prawnych regulujących współpracę gospodarczą o charakterze międzynarodowym. Celem niniejszego opracowania jest analiza strukturalnych i funkcjonalnych relacji między źródłami twardego (*hard law*) i miękkiego prawa (*soft law*) w handlu międzynarodowym – w celu zaproponowania zwartych globalnych ram, które mogłyby ograniczyć fragmentację prawną oraz zwiększyć spójność, przewidywalność i odporność międzynarodowego prawa handlowego.

W artykule podjęto analizę źródeł międzynarodowego prawa handlowego, opierając się na powszechnie przyjętej klasyfikacji, obejmującej umowy uniwersalne (globalne), regionalne oraz bilateralne. Uwzględniono również rosnące znaczenie niewiążących instrumentów o charakterze *soft law*. Podkreślono, że choć formalne traktaty stanowią fundament systemu prawnego, to coraz większą rolę w zapewnianiu skuteczności i elastyczności międzynarodowego prawa handlowego odgrywają normy *soft law* – elastyczne, powszechnie stosowane w praktyce reguły, które sprzyjają konwergencji normatywnej bez konieczności formalnej harmonizacji.

Artykuł akcentuje rolę instytucji takich jak Międzynarodowa Izba Handlowa (ICC) oraz Komisja Narodów Zjednoczonych ds. Międzynarodowego Prawa Handlowego (UNCITRAL) w opracowywaniu wzorcowych umów i zwyczajów handlowych, zwracając uwagę na rosnący wpływ ewoluującej *lex mercatoria* na rozstrzyganie sporów i wykładnię umów. Opracowanie analizuje również praktyczne konsekwencje fragmentacji pomiędzy reżimami handlu międzynarodowego, regionalnego i krajowego — takie jak nakładanie się i kolizja zobowiązań, które z kolei prowadzą do niepewności prawnej, zjawiska „forum shopping", niespójnych rozstrzygnięć sporów, wzrostu kosztów transakcyjnych oraz ograniczonej egzekwowalności praw. Autor argumentuje, że spójne ramy

oparte na skoordynowanym prawie traktatowym oraz zharmonizowanych instrumentach *soft law* mogą skutecznie złagodzić te problemy.

Z wykorzystaniem analiz formalnodogmatycznej i historycznoporównawczej wykazano, w jaki sposób umowy międzynarodowe, normy *soft law* oraz zwyczaj wspólnie kształtują przejrzysty i stabilny mechanizm międzynarodowego prawa handlowego. Wskazano również, że strategicznym celem badań jest identyfikacja sposobów redukcji fragmentacji i wzmacniania spójności poprzez podejście warstwowe, integrujące zarówno instrumenty twardego, jak i miękkiego prawa. W szczególności *soft law* pełni funkcję harmonizującą, wypełniając luki między zróżnicowanymi systemami prawnymi poprzez wspieranie dobrowolnej konwergencji i wzajemnego zaufania między uczestnikami obrotu gospodarczego.

W konkluzji stwierdzono, że choć pełna unifikacja międzynarodowego prawa handlowego pozostaje niezrealizowana, to dalszy rozwój zharmonizowanych instrumentów prawnych i ram *soft law* ma kluczowe znaczenie nie tylko dla ograniczenia fragmentacji i niepewności prawnej, lecz także dla wzmocnienia odporności, inkluzywności i przewidywalności globalnego systemu prawa handlowego.

Klasyfikacja JEL: K33.

Słowa kluczowe: międzynarodowe prawo handlowe, źródła prawa międzynarodowego, *lex mercatoria*, *hard law*, *soft law*, wzorcowe kontrakty, międzynarodowe zwyczaje handlowe.

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