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RETROSPECTIVE REVIEW OF SOME RECIPROCAL AGREEMENTS AND CUSTOMS IN PRIVATE INTERNATIONAL LAW

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...the evolution of private international law is a story about the shifting historical context in which courts, the sovereign, and private actors play out their relations in market and personal transactions...

Joel Paul [Paul, J., 2008: 19]

Abstract: The author reviews some of the international treaties and customs from Antiquity to the mid-19th century from the point of view of the implementation of the principle of reciprocity in Private International Law. Some of the main factors that turned reciprocity into a preferred instrument for protection of foreign subjects and merchants are analytically derived. In the past reciprocity was a convenient instrument for negotiations known from the relations based on exchange and could function in a relatively unregulated international environment. It gave opportunity to each of the contracting parties to instantly react in case that the reciprocal agreement was breached by the other party to it. Reciprocity also guaranteed equality between the citizens and merchants of the contracting states. It secured adequate protection for the local citizens and traders when abroad. And last, but not least, it created conditions for markets opening and development of trade and economic relations.

Key words: mutuality, reciprocity, Private International Law, customs, treaties, retrospection, history.

Reciprocity is a topic, which has been widely researched in different scientific contexts – from anthropology and social exchange theory to political psychology. It is also the basis of a paradigm used to analyze international relations.[1] Reciprocity has a key importance in international law related to the conclusion of international treaties and the establishment of international customs.[2]

[1] On this issue see [**Keohane, 1986**: 1-27].
[2] On this issue see [**Parisi, Ghey, 1993**: 93-123].

Introduction

The following article will make a retrospection of some international sources of reciprocity in the field of private international law.[3] The aim is to illustrate its existing forms and to clearly demonstrate its role in the regulation of private international relations in the different development periods of human civilization.

Travelling back in time is almost always accompanied by uncertainties and relativity stemming from the lack of sufficient undisputable data and artifacts. This is also valid for the present research.

Reciprocity in private international law exists when a state extends rights and privileges to the private subjects of another state in the same way and degree as the second state does this for the private subjects of the first one. There are three main characteristics arising from this definition – equality between the states applying reciprocity[4]; identity and symmetry of the exchanged prestations (rights and privileges for the private subjects of the opposite state)[5]; and mutual dependence of the execution of the undertaken duties. [6]

Since ancient law is characterized by the lack of universally accepted rules for the conclusion and suspension of international treaties, which we have today[7], reciprocity has been the most accessible, logical and easy to use technique well known from economic relations based on exchange and the so called tit-for-tat principle.

One could quite rightfully state that political events and economic situation in every historical period greatly influenced the development of private international law. Wars, alliances, trade and marine navigation were some of the factors that led to massive rearrangements of territories and people. When moving to the possessions of another ruler, an individual crossed the

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[3] For the classification of sources of Private International Law see [**Natov, 2013**: 139-175].

[4] Reciprocity in ancient international treaties was a sign of equality between the parties. If one of the parties did not undertake the same amount of obligations as the other, the treaty was with a vassal territory. In the other cases the undertaken obligations by the two parties were the same. Equal treaties had two symmetric moments: one, in which the parties undertook reciprocal or almost reciprocal obligations, and the other - in which they bonded themselves with these obligations by pronouncing an oath. See [**Bederman, 2001**: 140].

[5] Identity of prestations in terms of reciprocity in private international law distinguishes international treaties in this field from ordinary civil contracts, where prestations are equivalent but different in character. In international treaties related to private relations, reciprocity exists only when the opposite obligations have both equal value and content. This issue is discussed in detail by [**Niboyet, 1935**: 259-333].

[6] When a treaty has reciprocal clauses each party to it executes its obligations to the extent and until the opposite party does the same. So, if one of the states does not comply with the clauses of the reciprocal treaty, the other can immediately reply with exactly the same. In multilateral treaties all other parties can cease the execution of their obligations towards the country, which has breached the treaty, while at the same time to keep its validity among themselves. Thus in reciprocity, the breach of a treaty by a party to it gives full legal right to all other contracting parties to act in the same way. This issue is discussed in detail by [**Kutikov, 1967**: 43-44].

[7] The Vienna Convention on the Law of Treaties 1969 stipulates what the legal consequences from a substantial breach of an international treaty are.

frontiers of communities with different languages, beliefs and traditions. He was an outer subject to them and his acceptance in the local society was related to limitations and specific rules that guaranteed its own security, on the one hand, and on the other – gave opportunity to the alien to perform activities, which were needed and maybe even vital for this local community. *The far prototype of the modern international treaty as a source of private international law has rightfully been searched and found back in Antiquity, when the first symptoms of change towards the foreigners began to appear and private relations with them were established* [**Zidarova, 2013**: 22].

First Reciprocal Agreements in the Ancient World

The more specific rules for the aliens were an object of negotiation in the hoary antiquity. Despite the fact that we have very fragmentary data about the oldest international treaties known to modern science, it is still evident that reciprocity had its place and importance in the relations of the states from their very birth. To a larger extent these were agreements dedicated to public issues, but they contained elements regulating the status of the aliens, fugitives and foreign traders. In these areas ancient rulers reached reciprocal clauses meaning that they undertook equal duties towards the individuals from the opposite state, who came on their territory.

The first international treaties were far from extending rights and privileges to the aliens in their private sphere, but they paved the way for the further development of international co-operation in this aspect.[8] Some examples will be presented below.

Ancient Egypt concluded trade agreements with Eastern Mediterranean countries in 14th-12th century B.C. These treaties had been solving issues such as the extension of extraterritorial privileges to certain categories of foreigners and the protection of the possessions of deceased foreign merchants [**Bederman, 2001**: 145-147].

The Egyptian Pharaoh Ramesses II and the King of Hittites Hattusili III concluded a treaty in 1280 B.C., the content of which is very well explored by the historians. This was a peace treaty that put an end to a two-hundred-year-old conflict between two equal and independent states. For this reason the clauses of the agreement were almost fully symmetrical[9]. It is a curious and eloquent fact

[8] The most ancient artifacts for reciprocity in international treaties date back to 18th-16th century B.C in Ancient Mesopotamia. For example in Babylon at the time of Hammurabi treaties with other rulers were concluded on reciprocal basis. They stipulated for the return of fugitives or persons who had been illegally captured from the territory of the other contracting state. The issue on the reciprocal extradition of fugitives was included in a treaty from 1250 between the Hittites and Amuru, which also agreed for a mutual military support in case of need and for an imposition of an embargo to the Assyrians. These treaties were not between equal subjects and had vassal character, but still certain elements of reciprocity can be observed in them [**Bederman, D. J., 2001**: 139-141].

[9] The full text of this treaty in Bulgarian is available from: http://ald-bg.narod.ru/biblioteka/Dogovor_Ramzes_hatusil.htm [Accessed: 6th March 2015]

that ritual oaths symmetrically pronounced by the parties took place after each provision of the treaty. This shows both elements of reciprocity in the clauses of the agreement as well as in the procedure for its conclusion and entering into force. Similar agreements Ramesses II negotiated with other rulers at that time.[10]

Some ancient international treaties stipulated penal measures, which were undertaken if a subject of a given state was attacked, robbed or killed on the territory of the other contracting state. The direct goal of these acts was to impose justice, but the significant size of the compensations provided in the treaties had also preventive functions aiming to protect the life and security of the foreigners, when they were not in their homeland. Moreover, compensations were due even if the perpetrators of the crime could not be captured, which is a proof for the responsibility of the state for the foreign individuals. An example of such an agreement is found in a document dating back to 14th century B.C. between Carchemish and Ugarit.[11]

The biblical story about the erection of the Solomon Temple witnesses of another ancient peace treaty between equal rulers – King Solomon of Israel and King Hiram I of Tyre. This treaty regulated also the trade between the neighbouring countries. It was certainly a parity agreement and had reciprocal character [**Bederman, 2001**: 153].[12]

Reciprocal Treaties in Ancient Greece

The most significant ancient treaties for the researchers of coarse are those from Ancient Greece. They date back to the period after 5th century B.C. and represent the classic mutual exchange of rights and privileges to foreigners by the contracting parties in the field of private law.

The first group of treaties related to private relations with international element, were those for *asylia*. Asylia was a special form of protection which one city-state extended to a foreign person, group of foreigners, ships or sanctuaries. Getting this type of protection, the alien could not be subjected to the so called *androlepsia*[13] and could not be deprived of his possessions. Thus the asylia represented a form of immunity excluding the responsibility of a foreigner under certain circumstances. A significant number of artifacts show that the extension of asylia was a common practice and had the character of a unilateral act. [**Bederman, 2001**: 92, 125].

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[10] For example a treaty between Ramesses II and the Great Prince of Cbeta [**Zidarova, 2013**: 23].

[11] The text is available from: http://ius-vt.hit.bg/lit/vv.html [Accessed: 6th March 2015].

[12] See also [**Sweeney, 2007**: 102].

[13] Androlepsia was the right to capture and detain an alien until he paid a ransom or a compensation for a crime perpetrated by his fellow-citizen. The detention was performed by relatives of the victim and if the ransom was not paid, the alien could be killed. In case that the alien was protected by asylia such actions were not permitted against him.

Still, there also existed asylia treaties. They represented a network of agreements among the poleis which guaranteed the security of all those who acted in favour of their own city-state, but were out of its territory and jurisdiction. Such people were the envoys, artists, actors, craftsmen working on public projects, athletes and others. These treaties were reciprocal [**Bederman, 2001**: 125], and the protection was given according to the law and custom of the polis, in which it was sought [**Zidarova, 2013**: 23].

An interesting type of treaties in the field of private international law were the *symbolai*, often defined as far predecessors of the modern legal assistance treaties. They contained clauses for the competent forum or the applicable law, material norms concerning certain cases or conflict norms used to determine the applicable law. When these treaties contained provisions securing protection of the foreigners, elements of reciprocity could be sought in them. In order to illustrate this, an example can be pointed out. In the 1st century B.C. a dispute between Sardis and Ephesus had to be solved with the mediation of the Roman governor of Asia. He managed to persuade the two states to go for negotiations and to solve the issue by using arbitrage. The representatives of the two poleis chose an arbiter and as a result of finding a way out of their conflict they concluded a treaty on the basis of *mutual protection for the personality and possessions of their citizens* [**Zidarova, 2013**: 26][14] – issues belonging to the field of private international law.

The third group of ancient Greek treaties directly related to the development of private international law, were the *isopoliteia* ones. They were used for reciprocal extension of rights to foreigners between the Greek poleis and fully complied with the notion of reciprocity as we define it in modern times. Isopoliteia treaties had various contents – from the simplest form by the means of which two city-states mutually freed their citizens from the risk of androlepsia[15], to much more complex agreements extending national treatment to foreigners on reciprocal basis.[16] The curious text of the well preserved treaty for isopoliteia between the cities of Hyerapinta and Priansos says that their citizens were entitled the right to contract a marriage with persons from the other polis; to obtain possessions on the territories of the two cities; to sell and buy; to lend and borrow money with interest; as well as to conclude contracts of any kind when being on the territory of the other city-state. These rights were executed according to the local laws of the contracting poleis [**Zidarova, 2013**: 27].

Obviously the pool of rights to which foreigners were entitled on reciprocal basis, tended to enlarge its scope and this is quite understandable bearing in mind the increasing connections between the ancient states and the deepening economic and political contacts among them. The fact that an alien could move

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[14] See also [**Terpstra, 2013**: 179-180].

[15] Such a treaty from 5th century BC was concluded between the poleis Chaleion and Oiantheia according to [**Bederman, 2001**:127].

[16] Professor Zidarova gives an example of two such treaties: between Lato and Olont; and between Hyerapinta and Priansos from 2nd century BC [**Zidarova, 2013**: 26-28]. They are commented by other researchers as well.

to reside in another polis, to own property, to contract a marriage, to trade and to receive justice there, clearly demonstrates a shifting attitude towards him, which the treaties reflect. Moreover, in certain areas the foreigner could be a subject of national treatment, that is to have the same rights and obligations as the local citizens – something unthinkable centuries before. This is a very important change that affected the development of the norms of private international law.

Hospitium, Connubium and Commercium in Ancient Rome

Alike Ancient Greece, in the early period of its existence Ancient Rome was also not very hospitable towards foreigners. Aliens had no rights at all on its territory and all wrongdoings towards them were not pursued and punished by law. At the time of Emperor Sila the issue about the status of foreigners gained some significance and first attempts for its regulation were made. Thus the citizens of other cities were given the right to reside on Rome's territory only if they were under the patronage of a Roman citizen. This type of protection was sacred and known as *hospitium*. It had been an object of bilateral reciprocal agreements [**Zidarova, 2013**: 30].

Gradually, with the rise of relations between Rome and other Mediterranean cities, the hospitium treaties turned out to be insufficient. So, other reciprocal agreements had to be concluded and they gave more rights to foreigners. The so called *conubium* and *commercium* treaties were among them. Connubium awarded the citizens of two different city-states the right to contract a legal marriage. Commercium provided for other rights: the citizens subject to it, could on mutual basis "buy and sell" on the territory of the opposite contracting party. This included a range of opportunities: sale-trade by a specific procedure in which the buyer paid the price in valuable metals (*mantipatio*) [**Mousourakis, 2012**: 129]; sale-trade by payment in cash; option to become a debtor or a creditor (by means of a contract called *nexum*); and the possibility to pretend for acquisitive prescription (*ususcapion*). Later on this complex of rights also included the right to leave a will (*factio testamenti*). Certain treaties also provided for the right to buy real estate (*commercium agrorum*). The execution of these rights was guaranteed by the opportunity to refer to a recuperator's court. This opportunity was given to foreigners by means of treaties between the people of Rome and foreign rulers, nations or cities. The competence of this special-type forum included the return of possessions captured in war time as well as the trial of civil claims. The circle of rights, included in the commercium, gradually expanded and coincided with *jus gentium*. Granting connubium and commercium could be proclaimed in a single act or in different treaties but never included political rights [**Declareuil, Parker, 1926**: 55-57].[17]

One of the oldest historic treaties was the one between Ancient Rome and Carthage from 509 B.C. which provided for the regulation of civil and trade

[17] On this issue see also [**Zidarova, 2013**: 30-33].

relations. It contained certain elements showing the domination that Carthage had at that time.[18] Later on in 348 B.C. when Roman power was much greater, the two city-states concluded another treaty aiming at the regulation of their trade relations. It provided for freedom of trade and economic activity equal for the Roman merchants in Carthage and the Carthaginian merchants in Rome [**Louis, Wareing, 1927**: 75]. This was a classic reciprocal treaty for commercium, which also included a clause for the release of persons captured by the allies of the two states. [**Bederman, 2001**: 135].[19]

The aspiration to regulate private relations with international element by bilateral agreements, on the one hand, suggests how varied and significant they were. On the other hand, that is a sign for the growing role of international negotiations in that field. This demonstrates that the polis not only did have certain attitude towards the foreigners on its territory, but also wished to secure rights for its own citizens on foreign territory. The mechanism of reciprocal agreements extended that very opportunity.

Role of the Medieval Trade Custom

While the centre of private international law provisions in Antiquity was the foreigner, in the Middle Ages the primary object of international co-operation in that domain became the merchant. And that is quite understandable. The development of transport gave powerful impetus to international trade activity, which was rising more and more. Together with that the rules defining the parameters of this activity – called *Lex mercatoria* – gradually expanded their scope. They provided for the relations between people trading out of their country or trading with people coming from abroad. The sources of these rules were the states and the trading practices themselves. They were *uniform, universal and entirely customary* [**Kadens, 2004**].

Along with the relations among merchants, it is interesting for us to explore the role of the feudal rulers from that time period. "Long-distance commerce required a merchant to do business where he was a foreigner outside the protection of local law. To make their territory more attractive to astute merchants who might wisely have hesitated to trade in places in which the law might not

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[18] For example Carthage did not accept any limitations concerning navigation in the Mediterranean while Rome did agree on such limitations. Moreover, Rome did not receive access to certain ports in the Tyrrhenian Sea. For this reason the treaty was not a parity one though it had some reciprocal clauses. It was accepted by Rome in order to obtain security for its ships [**Louis, Wareing, 1927**: 74].

[19] There is certain disagreement about the dating of these two treaties. Bederman gives a hint on this issue in a supranote 358 [**Bederman, 2001**: 192]. Prof. Zidarova considers that it is actually one treaty, misdated in the different sources. The analysis of Louis and Wareing shows that these are indeed two treaties with different content. They compare them in order to demonstrate the evolution of the relations between Rome and Carthage. In 509 B.C. the ancient cities were almost equal but Carthage still preserved certain domination and managed to achieve better clauses for its ships, whilst in 348 B.C. the clauses were totally reciprocal [**Louis, Wareing, 1927**: 74].

protect their dealings, lords early on granted merchants certain privileges that made commerce in their lands less precarious and more remunerative. These privileges included safe-conducts, trading rights and protections, and extraordinary remissions of local law" [**Kadens, 2004**]. These were more or less the same in the different lands. For example there existed a procedural rule according to which the oath of a merchant was sufficient enough for the local court as a proof for his statement. Principally, court would not accept such a proof, but obviously that rule existed in order to secure a fast trial, adapted to dynamics of trade.[20]

A sign for the universal character of commerce privileges was also the fact that they were limited neither by territory, nor by religion. In 11th-12th century they were not isolated and typical only for the Christian or the Islamic world. These privileges were an institute, common for the whole Mediterranean [**Khadduri, Liebesny, 1955**: 311].

Some preliminary conclusions

By pointing out these facts and looking for their connection with reciprocity, certain deductions could be drawn.

The first one is about the role of the reciprocal behaviour for the birth and the establishment of custom. Typically it appears from the bottom up, that is from the actions of the legal subjects and not from some legislative power. That is why its basic elements are repetition of certain behaviour and the conscience that it has binding force for the parties to it. Quite rightfully some authors define it as a private legislature since it does not derive from a centralized authority [**Kontorovich, 2007**]. Repeating actions, which imply exchange of the participants' roles, are a characteristic feature of reciprocity. For this reason it could be well stated that *customary law is wholly grounded upon and constructed around the principle of reciprocity* [**Druzin, 2010**: 574]. This is even more valid in the field of commerce since *reciprocity is an intrinsic feature of trade* [Ibid, 575].

This thesis is still valid in the domain of international commerce. The repeating behaviour that nations had in the field of trade added to the repeating actions of merchants. States aspired for the creation of conditions that advanced trade and accomplished this by using one and the same means. Initially this practice was entirely customary and later on it found its place in treaties and national legislations.

The second logical deduction is that the application of equal protection towards medieval merchants in the different territorial domains not only derived from reciprocity, but also created one. States of course, followed this unwritten code of conduct led by the idea to obtain benefits from the presence and enterprise of the foreign merchants. At the same time they were interested in the activity of their own traders who exported local goods abroad. We could suppose that the privileges were granted to foreign merchants with the expectation that such advantages would be extended to local merchants when they go to the respective foreign states or feudal lands. There was probably a counter reaction

[20] For more details on this issue see [**Kadens, 2004**: 39-65].

if for certain reasons traders did not receive proper treatment on foreign territory. All these elements suggest that the existence of reciprocity among medieval rulers, related to the protection of merchants, was based on reciprocity, and this resembled a network of bilateral customs that had turned into regional and why not – universal law.

Medieval Treaties as a Source of Reciprocity

Customary advantages, granted to foreign traders for their activity, were gradually included in the statutes and later on when states started adopting codes in this field, they did not imply much creativity and only expanded the already established customary practice.[21] It became the basis for legal agreements in which reciprocity was a substantial element. Such treaties were concluded by the Byzantine Empire with Kievan Russ in the 10th century and later on with the Italian republics [**Zidarova, 2013**: 49-50].

In Germany, some better economically developed northern cities managed to preserve their autonomy in 12th-13th century and turned themselves into something like local capitals of the surrounding provinces. They formed alliances based on common political and trade relations the main goal of which was to guarantee the freedom of regional markets and to achieve just unified rules for legal protection.

Hansa League and Its Treaties

In 1230 Hamburg and Lübeck reached an agreement to form a monetary union and to use one and the same currency – the pfennig – as well as a common network of diplomatic relations. Later on, this union of relatively autonomous economic centres was joined by many other cities along the Baltic coast. That way the Hansa League was established and it finally formalized its structure in 1356 [**Favier, Higgit, 1998**: 282].

The framework of the Hansa was based on reciprocal agreements for advantageous conditions for trade development among the participants[22] while at the same time political coalitions were formed and even military assistance was extended to each other. Though these relations were not amongst independent subjects, the aspiration for mutual removal of the impediments for trade among them was a negation of the protectionist idea and the imposition of duties to foreign goods – practice that was applied by the southern German cities, the economy of which was based on agriculture and not on navigation. As this union became very powerful, many states unilaterally granted its merchants significant privileges.[23]

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[21] For more details see [**Kadens, 2004**: 39-65].

[22] See [**Thompson, 1931**:196].

[23] For example Denmark extended privileges to Lübeck's merchants in 1229.

One of the oldest Hansa treaties dates back to 1189-1199. It was an agreement between the German cities and Novgorod.[24] The text clearly demonstrates the reciprocal character of this medieval document. Such a treaty was also concluded between Gotland and Smolensk in 1229.[25] One of its provisions states that the German and Russian merchants are mutually freed from taxation in certain territories.

It is curious that the Hansa cities had a system of common legal norms, which were reciprocally applied among them. In 1264 and 1265 decrees were issued and they consisted of unified material norms applicable in the cities, belonging to the League.[26] Such uniform norms were contained in the already commented treaty between Hamburg and Lübeck from 1230.[27].

In 1308 Haakon, King of Norway, concluded a treaty with Robert of Flandria. The two states negotiated reciprocal freedom of trade and navigation, valid for five years' course. [**Thompson, 1931**: 453].

Parity Tretaies of the Bulgarian State

Discussing the medieval world we should not miss the role of the Bulgarian state in it. Despite the fact that there are not many legal monuments preserved from that epoch, there still exist enough texts witnessing that according to its place Bulgaria also concluded parity treaties, including such concerning the status of foreigners and traders. Privileges to foreign subjects were granted on reciprocal basis.

Prof. Zidarova points out that a treaty between the Byzantine Emperor Theodossius III and the Bulgarian Khan Tervel from 716 provided for strictly reciprocal obligations – merchants had to possess credentials and stamps. This requirement of Byzantine law became applicable in Bulgaria by means of that treaty.[28] Reciprocal clauses were also contained in the treaty with the

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[24] The text is available in English from: http://www.furthark.com/hanseaticleague/src_pri_1190novgorodgotland.shtml [Accessed: 6th March 2015].

The following is a part of it *"First: The envoys of Novgorod shall go in peace to the German land and to Gotland; likewise the Germans and the people of Gotland shall go to Novgorod without harm, without suffering injury from anyone. If the prince of Novgorod should try [a German merchant] in Novgorod, or a German [prince should try a Novgorodian] in the German land, by this agreement the merchant shall return home without harm. And this agreement shall be confirmed with whomever God ordains as prince, or else the land shall be without peace…"*

[25] The text is available from: http://www.furthark.com/hanseaticleague/src_pri_ 1229smolensktreaty.shtml [Accessed: 6th March 2015].

[26] The text is available from: http://www.furthark.com/hanseaticleague/src_primary.shtml [Accessed: 6th March 2015].

[27] The text is available from: http://www.furthark.com/hanseaticleague/src_pri_1230 lubhamlaws.shtml [Accessed: 6th March 2015]

[28] See [**Zidarova, 2013**: 56], as well as footnote 113 on the same page, which says that the source for the content of this treaty is Theofanes the Confessor's Chronicle (752-818). In Bulgaria the treaty was researched in detail by numerous historians as well as by the jurist prof. Vladfimir Kutikov.

city of Dubrovnik from 1253, which granted the freedom to Bulgarian and Dubrovnik merchants to trade without the need to pay duties and taxes on the territory of the opposite contracting party. Moreover, it was agreed that national treatment would be applied to them together with access to justice according to the law of the receiving state. This treaty for the first time regulated mutual obligations concerning the preservation, inventory and handing over of the legacy of a deceased merchant from one of the two states, who passed away on the territory of the opposite contracting party [**Zidarova, 2013**: 57, 59-60, 66].

While Bulgaria and Dubrovnik had solved the issue on the right to inheritance of the foreigners in a just way, at the same time in France and Italy still existed the so called *droit d'aubain* – legal incapability of the foreigner to transfer or to receive any property by inheritance. The regulation gradually liberalized and encompassed only the incapability of inheriting. The limitation and the suspension of this institute were achieved both by internal acts and a range of bilateral reciprocal treaties, the conclusion of which began in the 15th century. Till 1789 France had sixty-six agreements of that kind. A year later the institute was legally suspended [**Zidarova, 2013**: 47-48].

The Ottoman Empire

It is also interesting to take a look at the treaties of the Ottoman Empire in more modern times. There existed a widely expanded practice of unilateral grant of privileges to foreign merchants known as capitulations' regime. Together with that, bilateral reciprocal agreements had also been concluded. In 1746 the Ottoman Empire concluded a treaty with Denmark. Its Art. 17 provided for privileges for the Danish merchants on reciprocal basis. Such an agreement was also included in the treaty with Prussia from 1761.

Art. 5 of the treaty between the Ottoman Empire and the Kingdom of the Two Sicilies from 1740 stipulated that the disputes between merchants and subjects of the two contracting parties would be solved by their consuls on the territory of the receiving state. Such clauses existed in Art. 5 and Art. 7 of the trade agreement between the Ottoman Empire and Spain from 1872 as well as in Art. 8 of the treaty between the Ottoman Empire and England from 1809. These agreements were the means by which the Ottoman consuls received as many rights as the foreign consuls on the territory of the Ottoman Empire.

In 1830 the USA and the Ottoman Empire concluded a treaty on trade and navigation through which they exchanged consular representations and extended each other the most- favoured-nation regime on reciprocal basis.[29]

[29] For all above-mentioned treaties of the Ottoman Empire see [**Khadduri, Liebesny, 1955**: 322-324].

Birth of the Consular Institute

As for the consular institute, it also passed through different development stages and legal regimes. The first defenders of the rights of the aliens were the *proxeni* in Ancient Grece whose status very much resembled modern honorary consuls. Nevertheless, the pattern of the modern consular institute began to take shape in the Middle Ages again under the pressure of the necessity to guarantee the freedom of trade. Initially consuls were not sent to the foreign state as representatives of the sovereign. They were merely representing the persons, whose interests had to be defended, on the basis of the principles of free association of merchants and reciprocity.

In the period 1423-1500 Florence possessed a large network of consuls, whose salaries were formed from taxes on the incoming and outgoing goods in the ports where they were sent to. This consular status was in conformity with the decentralized system of government and the high degree of autonomy of the medieval cities. With the rise of absolutism the consuls representing their cities disappeared and a new consular institute, entirely deriving from the power of the sovereign, was founded on their place [**Thompson, 1931**: 454-455].

Its basic functions were in the field of merchant law and law of the seas, representation of citizens and traders in front of the local authorities. The exchange of consuls became an object of diplomatic relations and was incorporated in the bilateral agreements, initially in those for friendship, trade and navigation. The first independent consular convention was agreed between France and Spain in 1769 and it served as a model for the conclusion of numerous treaties of that kind [**Zidarova, 2013**: 42].

Conclusion

The end of the 19th and the beginning of the 20th century were marked by significant changes on the global political scene, which led to intensified development of international law and its raising to a new quality level. New order was developed and it required new legal fundaments.

The role of international negotiations increased, international organizations began to appear in different domains, more and more multilateral agreements were being concluded, many legal issues found solution through unified norms. New written rules were agreed in international law and formed the basis for sanctions against the breach of international instruments. International courts and arbitrages were founded. International penal law developed.

All these dramatic changes in the international legal system created connections, dependences and countermeasures which gradually narrowed the area of application of reciprocity. Despite of that, it still has certain importance in some bilateral relations as well as in the field of international trade, which suggests that its role in international private law is not historically exhausted. So there is still reason in the scientific effort for its detailed research.

Finally, an accent would be put on the factors, which turned reciprocity into a preferred instrument for the protection of foreign subjects and merchants in the period from Antiquity to the mid-19th century.

Firstly, it was a convenient means for negotiation, known from the relations based on exchange, and could function in a relatively unregulated international environment.

Secondly, it gave opportunity to each of the contracting parties to instantly react in case that the reciprocal agreement was breached by the other party to it.

Thirdly, reciprocity guaranteed equality between the citizens and merchants of the contracting states and was also a sign for the parity of the states themselves.

On fourth place, it secured adequate protection for the local citizens and traders when abroad.

And last, but not least, it created conditions for opening and development of trade and economic relations.

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