

STATE REGULATION OVER OPERATIONS WITH MILITARY GOODS AS AN PROTECTION ELEMENT OF A STATE NATIONAL SECURITY

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ABSTRACT

The article is devoted to the study of the features of state regulation over operations with military goods as a protection element of the state national security. It was established that States in order to maintain peace and protect the interests of all States, have undertaken a number of obligations to ensure arms control, export control and combat with gunrunning. It was found that the state regulation over operations with military goods is carried out by drawing up supervision lists, issuing licenses\permits, exchanging information, compiling reports, and declarations, conducting inspections and imposing sanctions for law violation in this area. It is revealed the experience of Poland, Canada and Ukraine in the sphere of making state regulation over the military goods export. It is concluded that it is necessary to harmonize the legal regulation of regulation over operations with military goods in the European Union States; to create an electronic application system for obtaining a license\permit for operations with military goods in Ukraine; to strengthen cooperation between public and private entities in the sphere of regulation over operations with military goods.

Keywords: State Regulation, Military Goods, Dual-Use Goods, Security, National Security.

INTRODUCTION

World community has long come to the conclusion that regulation over operations with military goods is needed to counteract the proliferation of weapon of mass destruction and the maintenance of international stability and the protection of political, economic and military interests of the state, because this control prevents the acquisition of weapon, other military goods and technologies to implement actions that impinge on state and world national security and are penal. In addition, this state regulation over operations with military goods is an integral part of foreign economic activity regulation of all developed countries.

Despite a number of international and regional initiatives to maintain peace and security, all states of the world without exception, has priority issue of making control over military goods. Such control should be not only one of the elements of protecting the state national security but also an instrument for regulating foreign economic relations for the purchase-sale weapon, other military goods and technologies at the same time.

LITERATURE REVIEW

Governments around the world have adopted national security policy that address an increasing range of risks and weak pockets, including climate changes, pandemic, cybercrime, terrorism and threats to infrastructure, industry and mass media (Heath, 2019). In Ukraine, the issue of security is still relevant given the significant negative impact of hybrid war, which creates threats to the peace stability, financial and economic systems of the state (Reznik et al., 2020). Heath notes that the generally recognized national security policy is increasingly in conflict with the rules of trade and investment at the same time (Heath, 2019).

One of the main rules of mercantile right is free trade, but there are some restrictions when sales outlet consists of strategic positions, such as goods that may have military or civil and military applications. In such cases, trade in such goods is controlled through supervision lists, licensing, permits for supply chain stakeholders, information exchange mechanisms, reports, declarations, inspections and sanctions (Colussi, 2016).

Blum notes that the weapon import does not affect the internal sales, since import and domestic production of weapon are complementary, and countries mostly import precisely that weapon that they do not manufacture. But both the production of weapon and purchases from other states should meet security requirements (Blum, 2019).

Kravchenko et al. note that European States, including Ukraine, are parties to the Wassenaar Arrangements on export control of arms and dual-use goods and technologies adopted in 1966. The main goal of these arrangements is to prevent terrorists from buying such goods. Accordingly, the task of states-parties in the context of these arrangements is to ensure that the transfer of arms, dual-use goods and technologies does not contribute to the development and maintenance of capabilities that could undermine the goals of the arrangement (Kravchenko et al., 2019).

Whereas dual-use goods for Alavi & Khamichonak are technological goods that are freely available on the world market and can be obtained from a limited number of exporters. In the EU, there are 5, 000 enterprises engaged in the export of dual-use goods and technologies, allocating a 10 % of all export from the EU to dual-use export (Alavi & Khamichonak, 2017).

METHODOLOGY

The study of the issue of state regulation over operations with military goods as a protection element of the state national security has made monographic methods, as well as formal-logical and comparative-legal methods. First of all, the monographic method allowed to find out the content of recent researches on this topic, in turn, the formal-logical to reveal the features of legal regulation of state control over operations with military goods in Ukraine and foreign countries, and the comparative-legal to compare the best practices of the world states in this sphere.

FINDINGS AND DISCUSSIONS

The Association Arrangement between Ukraine, on the one hand, and the European Union, the European Community from atomic energy and the States members, on the other hand, provides for enhanced cooperation and dialogue on the issues of international security and anti-

crisis management in order to respond to global and regional challenges and major threats. One of the provisions of the Arrangement is to ensure state control over arms, export control, and the fight against the gunrunning.

The best practices of effective export control are at the same time:

1. The use of reliable methods and procedures for assessing the parties involved in the export operation;
2. Establishing sufficient liability to deter and/or punish export control violations;
3. Providing appropriate training and resources to law enforcement bodies;
4. Exchange of information between States on a bilateral basis with respect to export operations entities that are suspicious (Legislation, 2016).

In particular, the EU Council in 2017 updated the list of military goods that require enhanced state regulation when exporting:

1. Smoothbore weapon of 20 mm or more bore, weapon of more than of 12,7 mm bore;
2. Devices for installing ammunition and safeties;
3. Bombs, torpedoes, missiles, other explosive devices and charges;
4. Warning equipment specially designed for military needs;
5. Chemical substances, radioactive materials, related equipment for the storage;
6. Maritime assets, equipment, components for them;
7. Planes, unmanned aerial vehicles, aeromotors, and related equipment specially designed or modified for military use;
8. Armoured or protective equipment;
9. Specialized equipment for military training or for simulating military scenarios, simulators designed for training in the use of firearm;
10. Software developed for military use (European Union Law, 2017).

This list is broader, of course; in addition, there are exceptions for each type of military goods that are not subject to strict control in the case of the export.

In the Republic of Poland was adopted in 2000 the Act *“On foreign trade in goods, technologies and services of strategic importance for state security and the maintenance of international peace and security”*, which takes into account the requirements of Council Regulation (EU) No. 428/2009 of May 5 2009 *“On establishing a general regime for controlling the export, transfer, mediation and transit of dual-use goods”*. According to the Act *“On foreign trade in goods, technologies and services of strategic importance for state security and the maintenance of international peace and security”* of November 29 2000, military goods are weapon, ammunition, explosives, the components, or technologies defined by the provisions of the above-mentioned Council Regulation (EU) (Ministry of Foreign Affairs, 2017). The Law of Ukraine at the same time *“On state regulation over international transfers of military and dual use goods”* of February 20, 2003 includes the following military goods:

1. Military products;
2. Military services;
3. Military technologies;
4. Technical data;
5. Technical assistance;
6. Basic technologies (Law of Ukraine, 2003).

There are identified items of strategic importance for state security and the maintenance of international peace and security as dual-use items or military goods at the same time along with military goods (Ministry of Foreign Affairs, 2017).

Somewhat broader features of dual-use goods are defined in the Law of Ukraine “*On state regulation over international transfers of military and dual-use goods*” of February 20, 2003 respectively, such goods should be understood as certain types of products, equipment, materials, software and technologies services related to them that are not specifically intended for military use, but may be used for military or terrorist purposes or for the development, production, use of military goods weapon of mass destruction, delivery means of this weapon or nuclear explosive devices chemical substances, bacteriological, biological and toxic preparations, the list of which is determined by the Cabinet of Ministers of Ukraine (Law of Ukraine, 2003).

In Canada, it is prohibited to export weapon, the components, and ammunition to countries under the United Nations Organizations Security Council arms embargo. In addition, Canada also prohibits the sale of automatic firearms to countries that are not on the Canadian automatic firearms control list (Canada’s Automatic Firearms Country Control List). It is worth noting that Ukraine is included in this list, which means that Canada can sell weapon to Ukraine.

According to the export control policy guidelines, the government of Canada controls the export of military goods to countries:

1. That pose a threat to Canada and the allies;
2. That are involved in or under threat of military actions;
3. That are subject to UNO Security Council sanctions or which governments consistently violate human rights unless it can be shown that there is no reasonable risk of using military goods and technologies against civilians.

In addition, such regime for controlling the export of military goods is intended to avoid the use of such goods and technologies for the development of nuclear, biological or chemical weapons of mass destruction. That is why all applications for the export of military goods and technologies are carefully reviewed and evaluated for compliance with the foreign and defense policy of Canada (Global Affairs, 2017).

In Ukraine, the international transfer of military goods is carried out by the subject of international transfers of goods or by a foreign business entity if he\she has the appropriate permission or conclusion of the State export control service of Ukraine.

According to the Decree of the Cabinet of Ministers of Ukraine of November 20, 2003 permission for the export and import of military goods is not granted if the UNO Security Council establishes an embargo on the export of such goods and if, according to the results of an expert examination in the sphere of state export control, there are grounds to believe that they are intended for:

1. The creation of weapon of mass destruction or the delivery means;
2. Use for terrorist or other illegal purposes;
3. Use in activity related to the creation of nuclear explosive devices, acquisition, creation, accumulation or use of chemical weapon as a means of warfare or pathogens and toxins as biological and toxic weapons or the components (Legislation, 2003).

However, today the problems of state regulation over the export of military goods are the long terms of preparation of documents and the high cost of mediations, as well as insufficient

awareness of exporters about the application status for obtaining approvals. Electronic license\permit application systems allow exporters to monitor the status of the application for comparison in Germany (ELAN K2), Canada (EXCOL), Singapore (TradeNet) and other developed countries. If an error is found in the documents submitted for consideration, exporter can promptly eliminate all violations. The license issuance period in Singapore is 5 days, in Canada- 10 days, in Germany – 30 days.

Alavi and Khamichonak also draw attention to the fact the harmonization of export control for military and dual-use goods between States is relevant for the States of the European Union that have long been members of the Union and the new members (Alavi & Khamichonak, 2016). Supporting scientists, we believe that one of the elements of improving state regulation over operations with military goods should be also the strengthening of cooperation between public and private entities, in particular, producers of military and dual-use goods in order to minimize potential threats to the state national security.

RECOMMENDATIONS

It is obvious that the priority direction for improving the state regulation over the export of military goods in Ukraine should be the development of an electronic system for applying a license\permit for operations with military goods and tracking the status of application based on the above. It is advisable to pay attention to the harmonization of state regulation over operations with military goods between States that have long acquired membership in the European Union and new members of the European Union at the same time, at the regional level. However, it is important to strengthen cooperation between public and private entities in this sphere for all States without exception.

CONCLUSIONS

Thus, the state regulation over operations with military goods aims to minimize risks associated with the illegal use of such goods, which negatively affects the state of national security. State regulation over operations with military goods consists in drawing up lists of goods, which operations are subject to increased state regulation, issuing licenses\permits, exchanging information, compiling reports, joining declarations, conducting inspections and imposing sanctions in case of regulatory breach violation as evidenced by the experience of Ukraine, Poland, Canada. The following issues need to be addressed at the same time:

1. Harmonization of legal regulation of control over operations with military goods in the European Union states;
2. Creation of an electronic application system in Ukraine for obtaining a license\permit for operations with such goods;
3. Strengthening of cooperation between public and private entities in the sphere of control over operations with military goods.

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