

Transformation and the trend of controlling the conventional mechanisms of transferring technology

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Abstract: Throughout the history this issue is being proven that the traditional conventional channels of transferring technology which are also being called as gambling contracts due to inefficiency and lack of complete dynamicity have not been successful toward this aim and they have taken a unilateral approach and more than being capable of providing the developing countries with technology have taken steps in alignment with the profits and the utilitarianism of the transmitter that is the developed countries. On the other hand in order to prevent any misuse on behalf of any side of the contract there is a need to specific controlling and supervisory policies which their evident examples should be sought in the anti-competitive preemptive factors and also interfering policies of the technology receiving countries. Due to this, nowadays and under the influence of the occurred events in the international trade relations an inclination toward transferring of technology throughout the channel of associative conventional methods is being created. In fact a kind of revolution in the mechanism of these kinds of contracts has appeared until by means of it sides of a contract get mutually engaged in the trend of performing and transmitting of technology and by sharing the profit and loss mutually consume the maximum amount of their potentiality toward an optimal actualization of technology.

Key words: Technology; Transmitting technology; Conventional mechanism; Gambling patterns; Controlling the contract

Introduction

In view of some experts the process of globalization is being accounted for as a natural process which has evolved as a result of information technology, electronic communications, and the international legal order (Mandegar, 2011). In the meantime, achieving a new technology although is being considered as a common right for all the nations and people and is being accredited based on the principle of trade liberalization as a principle of human rights but in spite of this the process of performing it is contingent upon a mutual and conventional interrelationship and is contingent upon specific regulations that paying attention to them is an undeniable fact (Mandegar;2011). On the other hand technological commerce in addition to being considerable in terms of technology and also in terms of economics and commerce, in the realm of law supporting the technology and the rights which are relevant to it, controlling instruments of exchange and finally identification of conventional mechanisms and frameworks or formats of transmitting the technology in alignment with realizing the exact traits, conditions, and legal niceties of these commercial trades are worthy of considering as well." The expression of technology

transmission is composed of two terms of transmission and technology. The concept of transmission in the science of law is an expressive concept and is familiar to the mind which consists of the subject of transmitting a right or commitment between the transferor and the transferee and the term of technology also means the application of sciences in the industry by means of disciplined and purposeful procedures and studies. Perhaps the best definition of transferring technology which is being presented and being popularized up to know is the one which some authors have referred to it correctly. In compliance with this definition, "transmission of technology can be defined as importing the specific technological factors or elements from developed countries into the developing countries until in this vein the aforesaid countries can be able to achieve and make use of new production equipment and expand and develop the existing equipment (Aghayi, 2005). Doubtlessly, transmission of technology like other issues which are receiving priority concerning the concept of transmission bears several fundamentals and also specific procedures for transmission. In this manner concerning this issue it can be said that transmission of technology is a process in which the receiver of the technology or transferee succeeds in achieving the hidden details which are in the heart of the transferred technology on behalf of the transferor while embedding the

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requisite or urgent field and throughout paying the requisite costs of the relevant tech earns a dominance or mastery concerning better methods for the production and supplying the requisite services (Khazayi, 2007).

The classic and traditional framework of the technology transmission from far pasts has been based on the gambling contracts and this process during the recent years and in accordance with the requirements and the exigencies of the societies in the realm of commerce and enjoying the up to date knowledge, has inclined to the participatory contracts. In a more detailed word in the gambling contracts that in general they themselves have been classified into the founder ownership transfer contract (the exact property or its profit), or commitment-producing contracts. Sides of the contract base this contract on the purpose of personal gambling and utilitarianism (Shiravi, 2005). But due to the diversity of commercial affairs and the development of the societies and the existence of the produced faults in the process of gamblingness of the technology transferring contracts and also several reasons such as mutual requirements of states to each other and preventing the former personal utilitarianism and also misuses of the developed countries their technological superiority and as a result of it disinterest of the developing countries for placing such contracts an inclination toward associative contracts and commitment under the framework of association and common interest is being created. In fact, it is evident that transferring the technology under the framework of gambling contracts by considering its individually-based nature of profit-making has always been in favor of the developing countries and in the meantime the developing countries which play the role of receivers of the technology and the required knowledge get trapped in their misuses out of their privileges and by avoiding from tolerating the gambling contracts gain general acceptance for sharing and associating in a profitable role on behalf of the sides of the contract and the actualization of a common interest as a new generation of technology transferring contracts. Developing countries consider the transfer of technology from developed countries as a significant instrument for filling the gap between the amount of economic growth in the developing countries and the developed countries. The attempt of the societies to enact or codify anti-trust laws and regulations and the attempt of the international society to codify regional and international regulations such as "multi-lateral codes to control the restricting commercial deeds and procedures" is indicative of the importance and the necessity of controlling and monitoring them.

Technological levels of the developed and the third world countries have a tangible distance. To decrease this distance transmission of technology is an undeniable fact of course this transmission is possible through several ways. The significant determining factors for the method of transferring the technology to a large extent are consisting of an

amalgamation of the tendency of the transferor to supply the technology and the technological knowledge and also the capacity of the receiver for achieving and absorbing the technology. Meanwhile, bearing a criterion and a definition which are indicative of the influential transmission of the technology sector is significant and vital. It is mostly probable that both the transferor of the technology and its receiver has an intention to transfer a technology in the best possible way but in practice it is possible that the method of transfer appear in a way that does not meet the intended wants. Thus, in the level of achieving a technology precision and professional work to choose the best method of transmission for technology is necessary. Another story is accommodation and absorption of the transferred technology in which the intended technology should be accommodated to the circumferential conditions and characteristics of its receiver and at last the final level is the development and distribution of the technology which involves the determination and the enterprise and national self-reliance and also creating the necessary substructures on behalf of the government. Technology in a correct sense means application and making use of human knowledge findings in various scientific fields and specifically in the domain of politics, economics, and law. Transmission of the technology is also a transmission of fundamental researches from an individual or a developed country to another person or a developing country. Transmission and absorption of technology is a complicated category that both in terms of science and also in terms of cultural, political, and economic aspects have involved and obsessed not only the developing countries but also lots of western research societies and international organizations. The level of technology in the developed and the third world countries bears a tangible distance and due to this issue to decrease this distance more amounts of technological achievements is an undeniable necessity. It is evident that each side of the contract for the transmission of the technology has specific aims and motivations to make the mentioned contract. This story is crystal clear for any expert in the realm of international trade that the final purpose of absorbing and receiving any technology for the developing countries in a contractual manner should be in alignment with the main contractual motivation, that is complete optimization of the country with the lower level of technology from achievements of the developed countries in the area of technical knowledge and intellectual property rights. In fact realization of the product and anything except for the mentioned thing questions the basis of the contract and in a way causes a denial of purpose in placing a contract. On the other hand, no common sense accepts that a country with a high level of technology accepts to transfer and supply it to the developing countries for royalty and the agreed price and if in any case such a contract get finalized in this manner surely will not bear a correct result and merely leads to the meeting

of the profit and privileges of the transferor of the technology. In spite of this, from past times up to now we are witnessing that the majority of the contracts for transmitting the technology have been made in this manner. These kinds of contracts which are called gambling contracts of transmitting the technology at first glance and also as it is being deduced from them may bring a mutual and reciprocal case to the mind with this explanation that the term gambling contracts comes from the root word in Arabic which are being pronounced as /ævæz/ and /ghobn/ in English phonetic symbols that come from the Arabic infinitive /mofaelæ/ which means a mutual thing. Thus, what ab initio can be deduced in this speech is that under the gambling frameworks for the transmission of the technology a balance between the contractual supplied and offered good or service and also the profit and loss of the contract is being divided between the sides of the contract in a conventional and usual way. Despite this, by considering what is being achieved and got in practice from the process of transmitting technology throughout this way not only no contractual balance in a real sense is being observed but always the majority of the profit gravely goes to the countries that supply the technology. From this point of view even some of the authors recommend the change of the name of this kind of contract from gambling to supplemental, imposed, or one-sided contracts. In this manner and by creating a change in the realm of international exchanges and trade although these kinds of contracts are still being considered as the third class contracts for transmitting the technology inclination and motivation in the developing countries have led to this way that achieve the developed countries technologies throughout a new method until by involving the importer in the channel of transmission relieve the risk and burden of it from themselves and in a balanced and similar way influences the supplier and the receiver country from its profit or loss and its aftermath like itself. In this manner associative formats of transferring the technology as a fairly new mechanism for the traditional and popular methods in this domain show off. Either concerning the license contracts, ceding the ownership, or trademark or in purveying contracts as a part of gambling contracts in practice some malfunctions are being observed that reduces the desires of the receiving countries to achieve the technology in this way to a considerable amount. From among the faults of the licensing contract as the main and most popular contractual frameworks to transmit technology it should be stated that the license contract causes that by bestowing the issue of producing articles under the framework of giving license to the licensee or the license receiver little by little they lose the motivation to compete in the market for that specific article and by undergoing a market isolation pave the way for their bankruptcy among their competitors. On the other hand when the license giver get used to earn the income from license receiver it causes that little by little the

financial and economic of the license giver abates in an increasing way. In addition to this, closing the license-giving contract brings these kinds of faults to the receiver of the license and the license giver always thinks of their own profit and surely brings a kind of technology that in terms of technology is old and is considered to be weak. It is evident that this issue in the long term besides making the receiver of the license dependent to the license giver leads to the creation of motivation for them to produce and create the technology. A contract to transfer the ownership of a technology as bears the faults of the license contract due to the complete transmitting of the intellectual rights of the transferor in a real sense bears more inefficiency in comparison to a license to transfer a technology. In the trademark contract the high costs of inaugurating or registering a trademark for the buyer of the trademark is being considered as an unfavorable case. Although inaugurating a brand under a trademark may be so profitable and have a fast turnover it is necessary to take into consideration some costs such as trade mark cost, license right, a percentage of the revenue for the publicity, and also costs of training for the human resource which should be paid to the seller of the trade mark. Also this issue should be taken into consideration that the transferor should do its activity under the decided framework on behalf of the mother company and does not have the free hand of a personal business. On the other hand it is evident that when a grantor of a trademark presents its license to the representative increases the risk of the destruction of the validity of its brand name since it is possible that some representatives make some mistakes that may not be easily retrievable for the mother company. Finally concerning the inefficiency of the purveying contracts as another kind of gambling contracts we should give full consideration that comprehensive incapability of purveying contracts to meet the transferring expectations is crystal clear. Since these contracts cover only a small part of the intended purposes and in particular are effective in transmitting the technology and due to this issue the majority of them are being offered besides other agreements as a contractible condition in this realm. Also, since sometimes the suppliers of the services are not the bestower of the technology, a complete domination over its whole details and their approaches are entangled in the hair-splitting and sometimes no compatible approaches that deviates the technology transfer from its main way. For instance, in the management contracts it is possible that the supplier doesn't have a true understanding of the receiving organization and the traits of the technology and this thing causes that inharmonious deeds occur and/or the organizational aspect of the technology does not get clear and tangible for the receiver of the technology correctly and completely. Purveying contracts and contracts for the technical and engineering aid often obviate the technical aspects and the vague nesses of this kind and have no role in the transfer of other components of technology. Also,

in the consulting contract the counselor purposefully gives the information to the receiver that merely has a suggestive aspect and due to this does not bind themselves so much to the purposes of technology transfer and is not in alignment to it and as a result it leads to no considerable effect in the totality of the technology transfer. On the other hand and as an expression of the key role of the associative contracts to actualize the technology optimally it should be stated that contrary to the gambling contracts sides of the contract are sharing the profit and the loss of the contract in an associative way. Thus, each side of the contract makes an attempt to take the contractual profit side of the contract toward more profit and to themselves. On the other hand the carried out studies are indicative of the positive relationship between the common investment and achieving the technological knowledge and elevating the human resource and performing the necessities of commerce. In the common investment contracts there are necessary conditions for confronting all the complexities and the difficulties of a project and this close interaction leads to the continuous accession to the technologies of the foreigner side of the contract. It is an issue that in the absence of association was not possible. Continuous exchanges of technological services in alignment with the mutual benefits of the sides of the contract and a feeling of belongingness on behalf of the owner of the technology to do a common investment leaves a positive influence for the advancement of the technological purposes of the home country. Throughout supplying the proven technologies the risk of activity abates and through instant accession to the completing technologies of the other side of the contract risks of failure in the common investment abates and the costs abates. In addition to this, throughout the advent of a kind of controlling mechanism for the transmission, development, and the spread of technology in a common agency little by little a kind of competition for learning among the associates to improve their stances in the intended company forms and this issue expedites and improves the flow of transmitting the technology. In spite of this the copious privileges of the associative contracts versus the gambling contracts by considering this point that the gambling contracts by themselves bear some privileges and functions transmission of technology occurs under an associative framework. This issue gains more importance when the essence of some gambling and associative contracts is incompatible with one another. For instance in the project-oriented contracts most of the fundamental affairs of the country are being applied in a situation that a contract such as licensing for the transmission of the technology in a low level is affordable.

Conclusion

In conclusion it is being suggested that the authorities in the realm of international trade rights in order to relieve this obstacle in harmony with the

experts of the international law and regulation predict a kind of associative contract under a new framework with the entity of definite contracts under the title of "association contract for the transmission of technology" that besides containing all the aces and positive aspects of the gambling contracts have the capability of getting exercised on any kind of technology transfer from substructure affairs to the transmission of technology in the lowest level that even under the framework of association in order to prevent any kind of misuse on behalf of the sides of the contract and the kind of association it is possible to take several policies for supervising and controlling a contract that from among these policies we can refer to the mechanisms for struggling the anti-competitive procedures, interference of the developed states in the process of making contracts for the transmission of technology and also resorting to compulsory licenses.

References

- Afsharipour, Gholamreza.(2008)."Consideration of the entity of granting the exploitation permit", legal magazine of justice".new series.No.64.
- Aghayi, Hasan, and Manoochehr Aghayi.(2005)."Transmission of technology"., 5th edition. The center for the self-sufficiency researches and services of the organization for the development and renovation of industries of Iran. Tehran.
- Akhlaghi, Behrooz and Farhad Emam.(2006)."Principles of the international commerce contracts".2nd edition.Shahr-e-danesh Publication.Tehran.
- Ansari, Abbas."The entity and the efficiency of buyback contracts".MA dissertation in the major of international trade rights."Shahid Beheshti University.(2008).
- Azizi, Mojtaba.(2007)."Consideration of the framework of the management of transmitting the technology process in the oil projects.", MA dissertation.Art faculty. Teacher training University.
- Darvishi, Babak.(2012)."An Islamic jurisprudential and legal study on buyback contract." Civil law instruction magazine.Razavi University of Islamic sciences.No.6.
- Dashti, Hamid.(2006)."Principles and fundamentals of technology transfer contracts based on license contract."MA. dissertation in lex privata.Emam Sadegh University.
- Dashti, Vahid.(2009)."International trade law."1st edition.Jangal Publication.Tehran.
- Erfani, Mahmoud.(2011)."Comparative trade law.", 1st edition.Jangal Publication.
- Eskini, Rabia. And Faramarz Bagherabadi.(2011)."Fundamental commitments

- of the trade mark grantor in the international trade mark contracts. "Quarterly periodical of law., Faculty of law and political sciences.", Tehran University.41th series.No.3.
- Fasih, Seyyed Mohammad.(2007-8)."Declarations on the course of technology transmission rights.", intellectual property MA series course. Faculty of law.Shahid Beheshti University.(2007-2008) academic year.
- Jafari langroodi, Mohammad Jafar.(1995)."Obligations Law".2nd edition.Ganl-e-danesh Publication. Tehran.
- Jafari langroodi, Mohammad Jafar.(2000)."A collection of explanatory notes on the civil law."1st edition.Ganl-e-danesh Publication.Tehran.
- Jafarzadeh, Mirghasem."Declarations on the intellectual productions law."MA period course on the intellectual ownership law.Faculty of law.Shahid beheshti University.1st semester of (2011-12).
- Katoozian, Naser.(2004)."Civil law, properties and ownership", 5th edition.Mizan legal institute.Tehran.
- Khazayi, Houssein.(2007)."International trade law on commercial association.", 1st edition.Ghanoon Publication.Tehran.
- Mandegar, Mustafa.(2009)."Contractual transmission of technology in the international trade law'.MA dissertation in the private law.Faculty of law and political sciences.Tehran University.
- Mandegar, Mustafa.(2011)."a research on globalization and evolution in the transmission of technology."Quarterly periodical of law.Faculty of law and political sciences.Tehran University.41th series.No.3.
- Nasiri, Mohsen.(2011)."International trade law.", 1st edition.Jangal Publication.Tehran.
- Pooladnejad, Reza.(2010)."Level of trademark contract in the intellectual property law."MA dissertation in the private law.Islamic Azad University.Meybod Branch.
- Rabi'i, Mohsen.(2008)."The entity of trademark contract.", Kannon Magazine.No.53.
- Rooholamini, Seyyed Amin.(2012)."Technology transfer contracts through the time.", Davar legal magazine.Affiliated with the faculty of law.Shahid Beheshti University.No.2.
- Sadeghi, Mohsen.(2006)."Station of construction, exploitation, and ceding in the legal system of Iran.", commercial research paper., No.38.
- Safari, Mahmoud.((2012)."Trademark exploitation contract."1st edition.Jangal Publication.Tehran.
- Shams, Abdolhamid.(2003)."Law of trademarks and brands.", 1st edition.Samt academic publications.
- Shiravi, Abdolhossein.(2005)."Construction, exploitation, and ceding contracts.", 1st edition. Tehran University.Qom campus(branch), Qom.