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Distinction between "Prevention" and "Protection" in International Law on the Sea

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Abstract

In the light of the increasingly intensive use of the spaces and resources of the World Ocean, the problem of its rapid pollution is one of the new challenges and threats to the security of people. Protection of the World Ocean from pollution is a key measure in the system to ensure universal environmental security, since it is to the Ocean that rightfully has an exceptional role in ensuring life on our planet. The World Ocean is an integral system directly influencing the climate of the whole planet, the plant and animal world, the processes of life and human activity. At the same time, this part of the Earth's hydrosphere is the most polluted from all natural objects.

Protecting and securing the World Ocean from pollution is possible only on the basis of scientific research conducted jointly by representatives of various branches of science: geography and physics, chemistry and ecology, oceanography and geology, and many others. However, it is possible to identify the actions of states necessary to ensure the protection and securing the oceans and, above all, to provide for international standards binding for all states in this field only within the framework of international law. It is important to highlight the fact that international law, in the context of the above-mentioned relations, fulfills two most important functions: regulative and protective, where the latter both in science and in legislation is determined through such related categories as "protection", "securing" and "preservation". Nevertheless, today, we have to state the fact that there is no single point of view on the delineation of these close but not identical concepts.

Keywords: World Ocean, Protection, Securing, Sources of pollution, Conservation, Cooperation, Environmental safety.

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Introduction

The scientific and technological revolution and the intensification of international navigation contributed to the emergence of acute problems with a pronounced global character associated with the pollution of the World Ocean. The consequences of major environmental disasters in the recent history of international shipping (the accident of the Greek tanker "Prestige" on November 13, 2002, the oil spill in the Gulf of Mexico in 2010) especially demonstrate the increased pressure on the marine environment. Various manifestations of this international legal problem are of concern: from violation of the balance in the entire ecosystem of the World Ocean, including the deterioration of marine biological diversity and the reduction of fish stocks, to the use of "convenient" flags on ships in order to avoid enforcing environmental measures [1]. So, in 2006, the ship Probo Coala chartered by the company Trafigura, delivered to Africa from Amsterdam several hundred cubic meters of toxic wastes which were buried in a landfill in Abidjan. These actions eventually resulted in the poisoning of several thousand inhabitants of Côte d'Ivoire. The vessel was detained only through the intervention of the environmental organization Greenpeace, which prevented it from getting rid of the remaining part of the toxic waste in the port of Paldiski (Estonia) [2].

Studies of the French scientist J.I. Cousteau clearly demonstrated that under the influence of oil settling on the bottom of the oceans, on life under water for the past 20 years has decreased by 40%. Thus, more than 100 thousand seabirds perish off the coast of Great Britain from oil pollution each year; as a result of chemical pollution, organic life is completely absent from the depths of 125 m in the Baltic Sea and to the bottom [3]; In January, 1971 collision in the San Francisco Bay of the Oregon Standard and Arizona Standard tankers, a 100-kilometer stretch of the famous Golden Beach was polluted with oil, resulting in the death of tens of thousands of seals, birds, and large fishes [4].

The famous Norwegian scientist and researcher Thor Heyerdahl in his work "Journey on the "Kon-Tiki" in 1947 talked about the transparency and purity of the Pacific Ocean along the entire route of the balsa raft Kon-Tiki; the route was about 8 thousand km. While traveling on the papyrus boat "Ra" in 1969 the researcher was shocked by the degree of pollution of the Atlantic Ocean. "Even on the shores of Africa, in the middle of the ocean in the area of the West Indies," says Heyerdahl, "we spent the whole day watching a picture that has been mostly resembled the water area of some major port. To the very horizon, the sea surface was desecrated by black lumps of fuel oil with sizes close to a pinhead, to a pea, even to a potato. A year later, following roughly the same route on the ship "Ra-2", out of 57 days during which the drift lasted, we 43 days caught fuel oil with a mesh" [5].

Thus, all the benefits that the World Ocean brings to mankind, simultaneously attracts its pollution. At present, this pollution has reached such a degree that in many regions of the World Ocean, self-purification possibility of its waters has come to its limit, and mankind is faced with the need for urgent elimination of the damage caused, restoring the disturbed balance and preventing its violation in the future. "To ignore the ocean," wrote Thor Heyerdahl, "is to ignore two-thirds of our planet. Destroying the ocean means killing our planet."

The World Ocean is the main component of the earth's biosphere, the key element of the hydrosphere, containing 95% of all water on the planet, the most important link in the ecological system, the source of mineral, biological and strategic resources. The ocean is the main supplier of oxygen to our planet; it is rightly called "Earth's Lungs". Nevertheless, the rapid growth of the population, the development of new territories, the rapid development of the economy and the increasingly intensive use of the spaces and resources of the World Ocean in this connection have led to serious and sometimes irreversible consequences that negatively affect its condition. Mankind has faced a complex problem of contradictions between its growing needs and the inability of the biosphere to provide them. In creating such problems,

humanity must take decisive and coordinated measures to solve them, which implies interaction between countries on prevention of pollution of the World Ocean, conservation of its biodiversity, reduction of pollutant discharges.

Even before the adoption of the United Nations Convention on the Law of the Sea in 1982, the Secretary-General of the United Nations, K. Waldheim, speaking at a meeting of the Committee on Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, said that the norms of international maritime law should, in particular, "protect the marine environment from degradation, because it is from this environment we depend on not only in the sense of obtaining a significant part of the foods that we eat, but also the air we breathe" [6]. The huge role of the World Ocean is also played in providing the world's population with valuable proteins. However, an enormous amount of fish, crabs, shrimp and other inhabitants of the seas and oceans perish as a result of its pollution.

After the entry into force of the most important international legal instrument - the UN Convention on the Law of the Sea in 1982, the main direction of the scientific and practical approach to the study and use of the seas and oceans is the study and practical implementation of the provisions contained therein [7]. Given the fact that, despite the efforts of individual countries and international organizations, the deteriorated status of the oceans is still preserved, the UN General Assembly, at its 55th session in October 2000 expressed concern about the continuing degradation of the marine environment as a result of land-based activities, pollution from ships, the discharge of oil and other harmful substances into the sea, hazardous wastes, including nuclear waste and hazardous chemicals. In this regard, Resolution A / 55 / L / 10, "Oceans and the law of the sea" [8] was adopted, which called upon all states not party to the United Nations Convention on the Law of the Sea dated 1982 to accede to it, to harmonize their national legislation with the provisions of this Convention, and ensure their consistent application in practice. In addition, the resolution calls on the international community to assist developing countries and small island developing states in the control of the World Ocean pollution, as appropriate.

Methods

A systematic structural analysis method is used as a methodological basis for the study that helps to disclose the importance of the issue on distinguishing between similar but not identical concepts, such as the "protection" and "preservation" of the World Ocean from pollution. For the purpose of modern interpretation of the Convention norms, the combination of methods of historical and political science, international legal analysis is the most promising methodology. To solve the problems that are the basis of the research, specific scientific methods were used in addition to general scientific methods, as well as the formal-logical method, the method of comparative jurisprudence and legal modeling, as well as some logical methods, such as induction and deduction, generalization and comparison, contributing to a qualitative and a detailed study of the proposed topic.

Results

Protecting and preserving the World Ocean from pollution is possible only on the basis of scientific research conducted jointly by representatives of various branches of science: geography and physics, chemistry and ecology, oceanography and geology, and many others. However, only within the framework of international law, it is possible to identify the actions of states necessary to ensure the protection and preservation of the oceans and, above all, to provide for international standards binding for all states in this field [9].

It is important to emphasize the fact that international law, in the context of the above-mentioned relations, fulfills two most important functions: regulative and protective, where the latter in both science

and legislation is determined through such related categories as "protection", "securing" and "preservation". The clarification of the content and further delineation of the notions of "protection" and "preservation" in relation to providing for the security of the World Ocean will further ensure the effective international legal protection and preservation of this most important object of the earth's hydrosphere from pollution.

Today, we have to state the fact that there is no single point of view on the delineation of these close but not identical concepts. The terms protection and preservation are used mostly arbitrarily, without taking into account their internal lexical content. Legislators in a number of cases use these terms as equivalent concepts, either as general or particular, where "protection" is understood as a part or the whole of protection and vice versa, that in lawmaking is absolutely unacceptable. Analysis of modern legal literature suggests that there are several points of view on the categories that are being researched, which are sometimes completely opposite.

Thus, as a rule, in law dictionaries, the term "protection" refers to the protection of an object from encroachment, from hostile actions, from danger, and "preservation" is seen as preserving integrity, taking care of the object [10]. So Z.V. Makarov considered these concepts as the general and the particular, guided by the understanding that to protect the rights means not to allow their violation, while preserving them means not only to prevent their infringement, but also to protect them from attack. [11] A.M. Larin, in turn, notes that protection is a more extensive phenomenon than preservation, and consists in protecting a facility from illegal violations and restrictions, as well as in compensating for the harm caused, if it was not possible to prevent or repel the offense [12].

A special group of researchers are those who generally deny the appropriateness of using a particular term. So, T.B. Shubin believes that the term "preservation" has no legal significance and is practically not used in legislation [13]. In turn, A.S. Mordovets expresses the opinion that preservation is a state of lawful implementation of law under the control of state structures, but without their intervention. And protection measures are taken when the exercise of law is difficult, but not violated. In the event that the rights are violated, they must no longer be protected and preserved, but restored [14].

Discussion

In our opinion, the concept of protection and preservation in relation to the World Ocean is different in content and nature of the tasks assigned to each of them. They are not identical and do not correspond in volume as more and less. The World Ocean is always preserved, while it is protected only when its waters or resources are damaged. Preservation is the establishment of a general legal regime, and protection is the measures established in the law and taken upon the existence of a wrongful act, a system of means aimed both at preventing offenses and at eliminating their consequences [15]. The World Ocean is always preserved, but it is protected only when there is a fact of pollution. Thus, with reference to the oceans, the notion of "preservation" is broader in relation to "protection". Nevertheless, the 1982 United Nations Convention on the Law of the Sea does not distinguish between these two concepts, and the term "keeping under control" is used to denote the obligation of states to implement protective measures to prevent pollution of the World Ocean. Thus, in accordance with Article 119 of the Convention, states must take all necessary measures to prevent, reduce or control pollution of the marine environment from all possible sources. To ensure this problem, states shall cooperate on a global or regional basis, both independently and through competent international organizations for the protection of the marine environment from pollution [16]. In other international conventions, the concepts of "protection" and "preservation" are used arbitrarily, without distinguishing and specifying their lexical content. Thus, the Helsinki Convention for the Protection of the Marine Environment of the Baltic Sea Area points out the

need to "preserve the balance" of the Baltic Sea area [17] and the Convention for the Protection of the Mediterranean Sea against Pollution notes the importance of ensuring the "protection and improvement of the state" of the marine environment in this region [18]. An analysis of other universal agreements on securing the preservation of the World Ocean shows that the concept of "protection" is practically not present anywhere.

Nevertheless, in our opinion, the concept of "preservation" is more capacious in comparison with the term "keeping under control." The preservation of the World Ocean is a dynamic process, a complex of international and regional, political and social measures to ensure the physical, chemical and biological properties of the functioning of the World Ocean, within the framework necessary for the existence and development of marine hydrobionts, as well as human health and well-being [19]. It includes activities in the following areas: preventing the testing of mass destruction weapons in the World Ocean; reduction in the use of pesticides and herbicides in agriculture, etc.; reduction of discharges of pollutants into rivers; establishment of a more stringent system concerning maximum permissible concentration of harmful impurities in the marine environment; equipment of ports with special receivers for collecting and cleaning contaminated water; construction of vessels with a double bottom; installation of new modernized equipment for cleaning contaminated water, as well as containers for collection of sewage and other debris on ships and some others.

Consequently, the concept of "preservation of the oceans" includes a broader list of states' obligations to take preventive measures than the concept of "keeping under control."

Conclusions

In general, the delineation of such concepts as "protection", "preservation" and "securing" of the World Ocean is very important for the proper arrangement of priority areas in the activities of states in matters of ensuring the security of this most important natural object.

"Today", V.I. Vernadsky noted, "Nature is increasingly serving humanity on the one hand, and at the same time requires even greater support and protection from it. With the increase of depth and organic connection of society with nature, human history increasingly coincides with the history of nature, and, conversely, the history of nature coincides in everything with the history of mankind, first of all experiencing its increasing pressure" [20].

In the modern world, it is required to establish a more perfect system of ecological relations, the achievement of which is possible only when considering ecological problems in the context of national and international security, since the degradation of the environment is not slowed down in the present state of international relations despite all the efforts made.

As M.M. Brinchuk has aptly noted: "The function of nature in relation to man is legally significant, and is the basis for protecting the environment from harmful, destructive effects of human activity" [21]. In order to resolve international and national environmental problems, human society needs to develop a new system of environmental relations, in which the transformation of international relations will be made towards giving the highest priority to the problem of environmental safety. Humanity is interested in that the impact on the environment should be less destructive, but sparing. The modern environmental law must contain the primary requirements relating to the rational use of all natural objects: land, water, forests, etc., in order to ensure the optimal possibility of realizing the ecological function of nature. Nevertheless, despite the existence of a norm in international law that discloses the concept of "ecological security", the question of the true nature of this concept is still at the stage of discussion, and the existing regulatory framework in this area is disordered and fragmented. Despite the large financial

and organizational investments in this sphere, the issue of ensuring environmental safety is not being resolved, and, in our view, it can be realized only in the process of implementing universal security, which includes not only ecological, but also social and economic components. The results of human activity testify to the need for a transition to a modern type of development that involves the formation of a new worldview, a change in values and stereotypes of thinking, in which security is seen as a collective good.

In June 1992, the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro. During the Conference it was decided to change the course of development of the world community from the path of unsustainable development, with crises and catastrophes, towards the sustainable one, where opportunities are opened for the absolutely harmonious existence of society and nature. And, at the same time, the transition to sustainable development should be comprehensive: changing in the course of only some countries and only with respect to individual components of the natural environment will not solve the problem. There is a need for deep cooperation between states in solving all environmental problems, taking into account the globalization and integration of people's living conditions.

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Footnotes

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