DOI: 10.36719/AEM/2007-2020/53/64-67

Leyla Abdulla Abuzarli
Baku State University
leylaa820.la@gmail.com

PRINCIPLES OF THE LAW OF THE SEA CONCERNING THE PASSAGE REGIMES

Key words: *the principle of freedom of the seas, the principle of sovereignty, the principle of common heritage of mankind, various approaches*
Açar sözlər: *dənizlərin azadlığı prinsipi, suverenlik prinsipi, bəşəriyyətin ümumi irs prinsipi, müxtəlif yanaşmalar*
Ключевые слова: *принцип свободы морей, принцип суверенитета, принцип общего наследия человечества, различные подходы*

Introduction

Generally, the body of water – sea, ocean is most essential for the world. As it is known, without the seas, oceans realization of interstate linkages, especially international trade is impossible. For this purpose, passage regimes through the body of water are determined within the framework of international documents. So, legal principles concerning the passage regimes are important. In this article the various approaches to the principles concerning the passage regimes are researched. During the researching process, relations and differentiations among the main principles are analyzed.

From ancient times due to strengthening of interstate linkage to traverse the neighboring coastal states` territory (also the others`) has become more intensive. The term "traversing" includes such kind of meanings, such as: through the – sea, air, land.

The navigational rights are irreplaceable not only to shipping and maritime nations, but to all nations engaged in international trade. This is because international shipping is responsible for moving 90% of world trade and annually transports over 7 billion tonnes of cargo over a distance of some 4 million miles. (6, p.18) So, the usage of seas is more actual because of its effectiveness. For the realization of this activity it needs to pass through the coastal state`s territory. In this situation an important question arises: How and on which basis is this activity regulated? For the answer to this question, passage regimes were determined within the international and national levels, it will be discussed in the next paragraphs.

As it is clear from legal content, the legal principles are most essential to determine the circumstances. In respect to the passage regimes these principles are derived from international law of the sea. So, what is regulated under the law of the sea? The law of the sea is most important field of international law which regulates the usage of the world's seas and oceans. The law of the sea defines the jurisdiction of states over all kinds of maritime activities, including navigation, the exploitation of living and nonliving resources, the laying of cables and pipelines, and the conduct of marine scientific research. (4, p.1)

The international law of the sea is governed by three principles: **the principle of freedom, the principle of sovereignty and the principle of common heritage of mankind**. (9, p.16)

First of all, I can say that, the abovementioned first principle is the basis for all activities in the body of water – sea, ocean. In accordance with the principles of international law of the sea, "the principle of freedom of the seas" covers particular freedoms that any state may realize on the high seas. These freedoms encompass the freedoms of navigation, fishing, overflight, laying of submarine cables and pipelines, to deal with scientific research and to construct artificial islands and installations. During realization of abovementioned freedoms States shall take into consideration non-violation of the right of other states with regard to exercise freedoms. A ship on the high seas is normally subject only to the jurisdiction of the state whose flag it flies. Limited exceptions to this rule apply, for example in cases of socalled "hot pursuit" from zones of coastal jurisdiction for wrongs committed in those zones. A vessel committing piratical acts on the high seas is subject to the jurisdiction of any state. (5, p.2)

There are two main doctrines about the freedom of the seas in the history of the law of the sea: "Mare Liberum" or freedom of the sea and "Mare Clausum" or national control over the seas.

The principle of freedom comes from the doctrine of Mare Liberum (was written in 1609) by Dutch jurist Hugo Grotius. Grotius emphasized that, exemption of waters that adjacent to the coast, the sea was common for all. He also stated that, the body of water could not be appropriated as it was not subject to occupation. The first is that those things which cannot be occupied or were never occupied can be proper to none because all proprety hath his beginning from occupation. (7, p.26) "Besides, according to him, the right of occupation

presupposes exhaustion by promiscuous use of that thing. Such could not be said of the sea neither by navigation nor by fishing". (1, p.23)

That principle applied to virtually all of the sea, namely the high seas beyond a narrow belt of water along the coastlines, called the territorial sea, which was under the sovereignty of the coastal State. (3, p.13) "For the last nearly 200 years, it has been accepted as an undisputed principle, almost a dogma, which no one could dare challenge. Recognized and referred to as a jus cogens, it is supposed to be in the interests of all mankind." (3, p.215)

For the principle of freedom there is also a doctrine of Mare Clausum by British author John Selden which is against to abovementioned doctrine, stipulated that States can control over the parts of sea for the protection of its interests. As we know, for the "protection of its interests" includes activities with regard to commercial purposes, navigation, fishering and etc.

In modern law significant elements of both of the abovementioned doctrines remain. But more, the principle of the freedom of the high seas (mare liberum) prevailed over the attempts of some states to claim sovereignty over broad areas of the seas to the exclusion of other states (mare clausum). However, even under the principle of the freedom of the high seas, the right of a state to realize control over a belt of "territorial waters" close to its coast was recognized.

Today, the high seas include the largest part of the 71 percent of the earth's surface that is covered by oceans. (5, p.46) In the high seas, the vessels, ships of all nations, including also land-locked states' ships, have the right to navigate and deal with certain other activities without impediment by other states. In these activeties, a ship is regulated by international law and the law of this ship's flag state.

If we talk about the principle of sovereignty, first of all we should look through the Preamble of United Nations Convention on the Law of the Sea (hereinafter UNCLOS or LOS Convention). "The States Parties to this Convention, recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment, (8, p.25) As it is seen, State sovereignty is most essential for the realization of the norms of this Convention. So, realization of the coastal State`s sovereign rights is determined in different types: complete sovereignty and limited sovereignty.

So, what can be include to the scope of sovereignty? For the answer to this question, the scope of sovereignty includes:

(1) a right to possess, use, and "freely dispose" of the natural resources within its territory;

(2) a right to freely determine and control the exploration, development, and disposition of these resources;

(3) a right to manage natural resources in accordance with national developmental and environmental policies;

(4) a right to regulate foreign corporations and investors in their activities regarding these resources; and

(5) a right to nationalize or expropriate property in resources, subject to the requirement to pay appropriate compensation. (2, p.220)

How is "Sovereignty" regulated under UNCLOS` norms? UNCLOS, Article 2 – "Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil" states as:

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law. (8)

According to Anna Stilz, in international law, states' territorial sovereignty has traditionally been grounded in a principle of effective control. Effective control is a relative concept: when two states press competing claims to sovereignty, it is necessary to decide which of the two claimants has done more to exercise sovereign governance over the territory. An organization gains territorial rights when it has been the most effective at physically controlling the territory and exercising governmental functions within it. (2, p.25)

In according with UNCLOS requirements, we can combine the scope of zones on which coastal States exercise sovereign rights; and zones on which there is not any realization of any coastal States. The scope of zones as following:

1) Zones of coastal State complete sovereignty:

1.1. internal water;
1.2. the territorial sea;
1.3. archipelagic waters.
2) Zones of coastal State limited sovereignty:
2.1. the contiguous zone
2.2. the exclusive economic zone (EEZ)
2.3. the continental shelf
3) Zones beyond the limits of coastal State sovereignty:
3.1. high seas;
3.2. the seabed and subsoil, known as the Area.

If we look through the principle of common heritage of mankind, we`ll see that this principle is against the principle of sovereignty and the principle of freedom. The main distinction among them is that, the principle of freedom and the principle of sovereignty serve for the coastal States` interests, but the principle of common heritage of mankind serves for the common interest of mankind. The term mankind is not an abstract notion at all. In according with LOSC International Seabed Authority is an operational body for the mankind and it acts on behalf of mankind completely.

The Preamble of LOS Convention states as: The States Parties to this Convention, Desiring by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,... and Article 136 – "Common heritage of mankind" of LOS Convention provides as: The Area and its resources are the common heritage of mankind.

According to Y.Tanaka, it may be argued that the term "mankind" is a transspatial and transtemporal concept. It is transspatial, because "mankind" includes all people on the planet. It is transtemporal because "mankind" includes both present and future generations. (9, p.19)

"Features often associated with the common heritage principle include:
1. a prohibition of acquisition of, or exercise of sovereignty over, the area or resources in question;
2. the vesting of rights to the resources in question in humankind as a whole;
3. reservation of the area in question for peaceful purposes;
4. protection of the natural environment;
5. an equitable sharing of benefits associated with the exploitation of the resources in question, paying particular attention to the interests and needs of developing states; and
6. governance via a common management regime". (5, p.78)

"The Common Heritage of Mankind is an ethical general concept of International Law and is explicitly included in two international treaties; These are the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, and the 1982 United Nations Convention on the Law of the Sea. It postulates that some localities belong to all humanity and their resources are available for everyone's use and benefit, taking into consideration the future generations and the needs of the developing countries. It is intended to achieve aspects of sustainable development of common spaces and their resources, thus replacing the outdated legal concept of the "freedom of the high seas". (1, p.35)

Conclusion

Yes, we generally looked through the principles of international law of the sea, which are generally related with the passage regimes. In my opinion, the approach to the abovementioned principles should be analyzed comprehensively. In addition to the abovementioned opinions, the principles concerning the passage regimes should be combined in two groups:

1) principles, related with the usage of the seas, in respect to the user State;
2) principles, related with the usage of the seas, in respect to the coastal State.

In detail, we can show the principle of providing the safety, principle of protection of environment (especially marine environment). If we analyze the norms of LOS Convention, we`ll see additionally such kind of principles too:

1) the peaceful uses of the seas and oceans;
2) the equitable and efficient utilization of their resources;
3) the conservation of their living resources;

4) protection and preservation of the marine environment.

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Keçid rejimləri ilə əlaqədar dəniz hüququnun prinsipləri

Xülasə

Məlumdur ki, su hövzələri – dənizlər, okeanlar dövlətlərarası əlaqələrin, eləcə də beynəlxalq ticarətin həyata keçirilməsində mühüm vasitə kimi çıxış edir. Bununla bağlı beynəlxalq sənədlər çərçivəsində keçid rejimləri müəyyən edilmişdir. Su hövzələrindən keçid qaydaları beynəlxalq dəniz hüququnun prinsipləri əsasında tənzimlənir. Məqalədə keçid rejimlərinin əsasını təşkil edən həmin prinsiplərə dair müxtəlif yanaşmalar təhlil edilmiş və həmin prinsiplərin əhatə dairəsinə genişləndirmə aparılaraq, fərqli yanaşma irəli sürülmüşdür.

Принципы морского права при переходных режимах

Резюме

Известно что, водоемы - моря и океаны - являются важным аргументом как в межгосударственных отношениях, так и в международной торговле. В этой связи переходные режимы были определены в рамках международных документов. Правила пересечения водных бассейнов регулируются принципами международного морского права. В статье анализируются различные подходы к этим принципам, которые составляют основу переходных режимов, расширяется область применения этих принципов и выдвигается иной подход.

Rəyçi: h.f.d. C.Hacıyev

Göndərilib: 12.04.2020 Qəbul edilib: 14.04.2020