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Status obligations of a “flag state”: counteraction to unauthorized broadcasting from the high seas

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Abstract

The investigation analyzes the status obligations of a “flag state” that are related to the suppression of the illegal use of “flag ships”. The purpose is to investigate the modern international legal regime of the suppression of an unauthorized transmission from the high seas and, at the same time, to prepare the doctrinal foundations for defining the complete complex of “flag State” obligations. In this regard, the subject is the international conventions that constitute the regime for the suppression of unauthorized broadcasting, which is carried out by ships on the high seas, adopted at one time by international organizations the League of Nations and the United Nations. The methodology consists of systematic and formal-legal methods, as well as methods of analysis and synthesis. The conclusions stress that States should take all appropriate measures with a view to achieving the results of the erasure. It should therefore be noted that these provisions are dedicated, inter alia, to “flag vessels” and “flag States”.

Keywords: flag state; maritime law; flag vessel; offshore; unauthorized transmission.

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Obligaciones de estatus de un “Estado del pabellón”: supresión de una transmisión no autorizada desde alta mar

Resumen

En la investigación se analiza las obligaciones de estatus de un “Estado de bandera” que están relacionadas con la supresión del uso ilegal de los “buques de bandera”. El propósito es investigar el régimen legal internacional moderno de la supresión de una transmisión no autorizada desde alta mar y, al mismo tiempo, preparar los fundamentos doctrinales para definir el complejo completo de las obligaciones del “Estado del pabellón”. En este sentido, el tema son las convenciones internacionales que constituyen el régimen de supresión de la radiodifusión no autorizada, que se lleva a cabo por barcos en alta mar, adoptado en un momento por organizaciones internacionales, en particular, la Liga de las Naciones y las Naciones Unidas. La metodología consta de los métodos sistemático y formal-legal, así como métodos de análisis y síntesis. Las conclusiones destacan que los Estados deben adoptar todas las medidas apropiadas con miras a lograr los resultados de la supresión. Por lo tanto, se debe señalar que estas disposiciones están dedicadas, entre otras cosas, a los “buques de pabellón” y a los “Estados del pabellón”.

Palabras clave: estado del pabellón; derecho marítimo; buque de bandera; alta mar; transmisión no autorizada.

Introduction

The UN Convention on the Law of the Sea of 1982 prescribes that vessel have the nationality of the State whose flag they are entitled to fly and that there must exist “a genuine link” between a “flag State” (a State which entitles a vessel to fly its flag) and the “flag vessels” (the vessels which are entitled to fly the States’ flag). But the Convention has neither definition of the term “genuine link” as a legal link “legal rights – legal obligations”, nor defines the full complex of a State’s and of the vessels’ rights and obligations.

The first beginnings of British pirate radio appeared in 1960. The Dutch station Veronica was then broadcasting in English from Dutch territorial waters. To do this, within the radio station there was a separate British division called CNBC. Veronica’s English-language broadcasts never gained wide popularity due to significant signal and distance problems between Dutch waters and the British coast. Veronica stopped broadcasting in English, as the radio was doing well in Holland, and the management wanted to free up time for advertising. Veronica took the first step: broadcast illegally from the ship and broadcast rock. Thus, began the radio revolution.

It is generally accepted worldwide that the unauthorized broadcasting from high seas (hereinafter referred to as “UBHS”) pose a serious adversely affect the economic, cultural and political foundations of society.

The suppression of “UBHS” is based on the rules of international law which, *inter alia*, are prescribed by conventions, agreements and declarations of the United Nations and Council of Europe. Provisions of abovementioned international documents form the modern international legal regime of the suppression of “UBHS”. Thus, it will be natural to analyze the core international conventions which are related to the matter. So, the purpose of our study is to analyze the legal norms and legal rules, which are related to the regulation of contemporary problems of the suppression of “UBHS”, namely definitions, legal characteristics and legal methods of suppression, prospects of application and the implementation of treaties, international measures and procedures adopted to its review or monitor.

Many scholars have classified the suppression of “UBHS” as an intervention in (withdrawal from) the principle of the “freedom of navigation in the high seas”, that means the intervention in the exclusive jurisdiction of a “flag State” which it exercises over the “flag vessels” in the high seas – ocean spaces which are situated beyond the national sovereignty of any State (Kolodkin et al., 1984; Parkinson, 1991). But our proposition is to classify this suppression as the straggle against the illegal use of the “flag vessels” and the obligations of the suppression of “UBHS” as the status obligations of a “flag State”, which forms an integral part of the “genuine link” conception.

1. Theoretical Framework or Literature Review

There are real preconditions for the active development of socio-dangerous phenomenon in contemporary world. Guattari (1984) points out that “the lines of escape combine with the objective lines of “de-territorialization of the system” to create an irrepressible “aspiration for new areas of freedom”. One example of such an escape line is the “free radio stations”. Technological development, and in particular the miniaturization of transmitters and the fact that they can be put together by amateurs, “encounters” a collective aspiration for some new means of expression. There are some researches, in which they have investigated the regulation of “radio piracy” in the USA (Bender, 1988; White, 2011; Misiroglu, 2015), in Britain (Chapman, 1992) and Meers (2021) declare that “while there are almost no Belgian pirate radio stations left today”, history shows that despite the odds, a new wave of clandestine radios can conquer the air any time.

Additionally, Arend (2009) notes: “When I teach the law of the sea, we always spend some time discussing the heinous crimes that are prohibited on the high seas. Some of them are quite familiar – piracy, slave trade, narcotics trafficking. But there is one outlawed activity that is normally not so familiar to the students – pirate broadcast”. Robertson (1982) proposed the application of international legal concepts in order to bring pirate radio stations under state control.

The provision of the “UNCLOS’82”, which prescribes that all States shall cooperate in the suppression of “an unauthorized broadcasting from the high seas” (hereinafter referred to as “UBHS”) “have become a new in international law of the sea” (Balobanov et al., 1986) and the legal international problems related to the suppression of “UBHS” were investigated by Kovalev (2003), Byers (2004), Kolodkin (Kolodkin et al., 2007), Peters (2014); Dubner and Arias (Dubner & Arias., 2017), Ong and Shatat (Ong et al., 2021); Proelß (2021), Williams (2021), Kuznietsov (2020) and many others. Nevertheless, certain marine scientists have not paid due attention to the matter (Kolodkin et al., 1984; Blishchenko, 1988; Parkinson, 1991; Shchipzov, 1995; Shemiyakin, 2002; Skaridov, 2006).

Further, Antzelevich (2013) have researched international legal problems of modern merchant shipping and have not found among them the problem of suppression of “UBHS”.

Pavlova, Polunina, Tkalych, Mankovskyi, and Zubair (2020) studied the problems of the obligations of states in the context of environmental security of the oceans, which can also be attributed to the «genuine link» conception. Thus, we see the possibility and importance of studying the modern international legal regime of suppression of “UBHS” as the suppression of illegal use of the “flag vessels” and the obligations of suppression as the status obligations of a “flag State”.

2. Methodology

The methodology used are systematic and formal-legal methods, as well as methods of analyses and synthesis.

We applied the system method to show the place of the norms of certain international conventions, as well as multilateral and bilateral, in the modern international legal regime of the counteraction to the “UBHS”. In this sense, we have considered that “UBHS” is an illegal use of the “flag vessels” and there are the status obligations of a “flag State”, inter alia, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the “genuine link” conception. Thus, the purpose of our study was to investigate modern international legal regime of the suppression of “UBHS”.

It was advisable to start considering from the studying of the groundwork laid by the United Nations and the Council of Europe in the matter of this article. We handled a formal legal method to demonstrate the content of the conventions with were adopted under the aegis of these international organizations. The study confirmed that eradication of “UBHS” is a collective responsibility of all States and that, to that end, coordinated action within the framework of international co-operation is necessary.

Thus, the “UBHS” is an international criminal activity, the suppression of which demands urgent attention and the highest priority, what, in its turn, demands to improve international co-operation. Related initiatives in the suppression of “UBHS” started to take form of multilateral international agreements comparatively not so long ago, but the true effectiveness of the treaties can be assessed by the extent to which the States Parties to these treaties apply its provisions at the national level. The research method used in this research is using normative legal research methods and it can be concluded that the regulations regarding the suppression of “UBHS” is contained, inter alia, in Part VII. “High seas” Article 109 of the “UNCLOS’82”.

Methods of analysis and synthesis are used to generalize and draw conclusions about results of the study. Every State is free to use the high seas but is not allowed to take illegal actions or violate the law, both national law and international law, which in its application are often violated by countries in the world. In particular, the implementation of international treaties, which “generally refers to both the national measures adopted by States and international measures and procedures adopted to review or monitor those national actions” (Weissbrodt & Dottridge, 2002).

3. Results and Discussion

- **Preliminary notes**

Related anti-slavery initiatives started to take form of the international agreements comparatively long ago. But, although slavery has existed since ancient times the 1815 For the purposes of this article, we will understand the term “obligation” – as a legal duty and the term “status” – as a person’s legal standing or capacity – the term, which derives from Roman law, in which “it referred to a person’s freedom, citizenship, and family rights” (Martin, 1994).

The term “high seas” means “all parts of the sea that are not included in the territorial sea or in the internal waters of a State” (United Nations, 1958. Article 1) and “No State may validity purport to subject any hart of the high seas to its sovereignty” (“UNCLOS’81”. Part VII. Article 89. “Invalidity of claims of sovereignty over the high seas”).

A “flag State” means “a State which entitles a vessel to fly its flag” or “a State whose flag a ship flies or entitled to fly” and the “flag vessels” means “the vessels which are entitled to fly the States’ flag and “ship” means any self-propelled sea-going vessel used in international seaborne trade for transport of goods, passengers, or both” (United Nations, 1986).

Article 2. “Definitions”); and “there must exist “a genuine link” between the State and the ship” (“UNCLOS’82”. Part VII “High seas”. Article 91. “Nationality of ships”).

- **The UN Convention on the Law of the Sea, 1982**

Each state that has ratified “UNCLOS’82” receives certain subjective rights, legal obligations, and responsibilities and, consequently, legal status as a “participating state”. It should be noted that “UNCLOS’82” should not change the content of the rights and obligations of the participating countries contained in other documents.

Article 109, Part VII, UNCLOS’82, stipulates that the states of the world must cooperate in order to suppress unauthorized broadcasting from the high seas. The term “unauthorized broadcasting” means broadcasting to a wide audience, contrary to international rules, from a ship or from an installation on the high seas, other than distress signals.

Anyone who engages in unauthorized broadcasting may be arrested and prosecuted; any vessel conducting unauthorized broadcasting may be arrested; any broadcasting device engaged in unauthorized broadcasting may be confiscated. But the above measures can be applied only by the state:

- 1) Which has jurisdiction.
- 2) On the high seas, and;
- 3) in accordance with Article 110 of the Convention.

The states that have jurisdiction to take the above measures are the flag state of the ship; the state of registration of the installation; the state of which the person is a citizen; any State where a broadcast signal may be received; or any State where permitted radio communications are subject to interference.

Article 110 of UNCLOS’82 provides that warships with appropriate jurisdiction that encounter a foreign vessel engaged in unauthorized broadcasting have the right to detain such a vessel if such a vessel does not have international immunity.

The “UNCLOS’82” is “the first general multilateral international agreement (the agreement of universal kind)”, which has the provisions related to the struggle against the “UBHS”; “namely the “UNCLOS’82”

brings most important contribution” in the struggle against the unauthorized broadcasting (Kolodkin et al., 2007). Before the adoption of the “UNCLOS’82” even the “UNCHS’1958” had no provisions, which were dedicated to the matter (see: “UNCHS’1958”. Article 22).

It must be noted that certain researchers declared that the crimes, which are committed in the high seas and connected with the “UBHS”, “are not so numerous and have not vital menace to the states’ safety at sea” (Romashev, 2001, p. 53), but the states, which citizens received the unauthorized radiotransmissions, classify them as menace to their national interests. Usually, the states understand that the actions mentioned above could make obstacles to the accepted distribution of the frequencies, as well as could, inter alia, lead to uncontrolled use of radiofrequencies, which are dedicated to sending of distress signals.

- **International Radio Regulations**

Radio Regulations was adopted by the International Telecommunication Union (hereinafter referred to as the “ITU”) on the International Radio Conference in 1947. “Radio Regulations” means the Radio Regulations annexed to, or regarded as being annexed to, the most recent International Telecommunication Convention which is in force at any time (“SOLAS”. CHAPTER IV. “Radiocommunications”. Part A. “GENERAL”. Regulation 2. “Terms and definitions”, paragraph 1.11).

There are three core sectors developed in the “ITU”: Radiocommunication Sector, Telecommunication Standardization Sector and Telecommunication Development Sector (Convention of the International Telecommunication Union. Chapter I. “Functioning of the Union”. Sections 5, 6, 7). For the purpose of the above instruments of the “ITU”, the following terms shall have the meanings defined below: “mobile service” - radiocommunication service between mobile and land stations, or between mobile stations; “radiocommunication” - telecommunication by means of radio waves (where the term “radiocommunication” also includes telecommunications using electromagnetic waves, propagated in space without artificial guide and where “radio waves” are electromagnetic waves, propagated in space without artificial guide (ANNEX. “Definition of Certain Terms Used in this Convention and the Administrative Regulations of the International Telecommunication Union”).

- **The European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories of 1965**

The European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories of 1965 (hereinafter referred to as the “UAPPS’1965”) and usually referred to as “Prevention of Pirate Stations”, was adopted in Strasburg 22.01.1965 under the aegis of the European Economic Council.

The member States of the Council of Europe have adopted the “UAPPS’1965”, considering that the Radio Regulations annexed to the International Telecommunication Convention prohibit the establishment and use of broadcasting stations on board ships, aircraft or any other floating or airborne objects outside national territories and also the desirability of providing for the possibility of preventing the establishment and use of broadcasting stations on objects affixed to or supported by the bed of the sea outside national territories.

The “UAPPS’1965” is concerned with stations which “transmit broadcasts intended for reception or capable of being received, wholly or in part, within the territory of any Contracting Party, or which cause harmful interference to any radio-communication service operating under the authority of a Contracting Party in accordance with the Radio Regulations”.

Conclusions

The results found highlight that an unauthorized broadcasting from high seas is an illegal use of the “flag vessels” and there are the status obligations of a “flag State”, *inter alia*, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the “genuine link” conception.

The modern international legal regime of the suppression of an unauthorized broadcasting engaged in by vessels on the high seas is constructed by the norms of certain international conventions, which was adopted under the aegis of the United Nations and the League of Europe, as well as of other international agreements, multilateral and bilateral; in this sense the purpose of our study was to investigate some of these documents.

The study shows that with the documents, which was investigated, concrete rules and articles were dedicated upon with the purpose to the suppression of an unauthorized broadcasting from high seas engaged in by vessels on the high seas. Moreover, all appropriate measures with a view to achieve the results of the suppression are to be taken by all States. So, we want to note that these provisions are dedicated, *inter alia*, to the “flag vessels” and, thus to the “flag States”.

It must be noted that certain researchers declared that the crimes, which are committed in the high seas and connected with the “UBHS”, “are not so numerous and have not vital menace to the states’ safety at sea” (Romashev, 2001, p. 53), but the states, which citizens received the unauthorized radiotransmissions, classify them as menace to their national interests. Usually, the states understand that the actions mentioned above could make obstacles to the accepted distribution of the frequencies, as well

as could, inter alia, lead to uncontrolled use of radiofrequencies, which are dedicated to sending of distress signals.

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