Inna Boyko*
PhD in Political Sciences, Docent,
Associate Professor of the Department
of Maritime Law of
the National University
"Odessa Maritime Academy"
(Odessa, Ukraine)
ORCID: https://orcid.org/0000-0002-0400-2666

***Inna Boyko**, PhD in Political Sciences, Docent, Associate Professor of the Department of Maritime Law of the National University "Odessa Maritime Academy" (8, Didrikhson St., Odessa, Ukraine).

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CASE LAW OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ПРЕЦЕДЕНТНА ПРАКТИКА МІЖНАРОДНОГО ТРИБУНАЛУ З МОРСЬКОГО ПРАВА

ABSTRACT

The author of the paper within the framework of scientific and practical discussions about the essence of law-making of international judicial institutions has proved that the judicial practice of the International Tribunal for the Law of the Sea is based on the case law. It is determined that international bodies of justice consider it necessary to cite and borrowing legal conclusions as their earlier decisions, as well as decisions of other judicial and arbitration bodies. It is noted that absence of a legal confirmation of the lawmaking powers in international judicial bodies does not prevent the recognition that they actually create the international Law, and the result (documents) is manifested by the judgments which reasoning contains universally binding regulations, i.e., judicial precedents. Having analyzed the decision on the case of the "Norstar" vessel in a dispute between Panama and Italy, the author concludes that in accordance with the established practice of applying various pre-trial dispute decisions, that a state is not obligated to continue exchange of opinions if it comes to a conclusion that the possibilities to reach a settlement have been

exhausted. Investigated that As regards the case Ghana versus Côte D'Ivoire that concerns delimitation of the continental shelf beyond 200 nautical miles boundary, the Special Chamber has applied the same methodology for its delimitation which was proposed by the International Court of Justice and became a logical regulatory addition to the provisions of the UN Convention on the Law of the Sea.

The key words: International Tribunal for the Law of the Sea; law-making activity of the bodies of international justice; established jurisprudence; detainment and arrest of merchant ships; the methodology of maritime delimitation.

Introduction

Present-day experts in the international law debate a lot on the role of the international judicial bodies in the international law development. Several lines of the spirited discussion can be singled out: competence of the international tribunals; law-making of the international courts and the impact of consulting conclusions of the international tribunals upon the international law formation; role of judicial precedent in settlement of international disputes; interpretation of the international law provisions in judicial proceedings of the international courts and national courts; and detection of gaps in the international legal regulation. The issue concerning participation of the International Tribunal for the Law of the Sea (ITLOS) in the development of the international law of the sea presents a special interest as, in one respect, the UN Convention on the Law of the Sea, 1982 (UNCLOS'1982), is a very significant international codifying document, however, complexity of the international relations in the law of the sea sphere necessitate, from time to time, either additions to the conventional provisions pr their creative interpretation which is done by the international judicial institutions in charge of the international law of the sea development.

Specialists in international relations and judges of the international institutions, e.g., M.V. Buromenskyi (2006), V.G. Butkevych (2002), O.V. Kyivets (2012), N. Khronovskyi (2013), S.V. Shevchuk (2007), Ch. Romano (1999), M. Shakhabuddin (1996), J. Martinez (2003), G. Guillaume (2011), Ginsburg T. (2004), McAdams R. H. (2004), J. Fitzmaurice (2011), M. Jacob (2011) recognize that more often than not the judgments of the international tribunals are based on the earlier adopted own decisions or decisions of the other international court instances, which can be considered as a trend for the formation of the international law by the international judicial institutions. When literally interpreting provisions of Art. 38 of the International Court of Justice Statute,

E. de Brabandere indicates that the court decisions marked as "an auxiliary means for defining judicial provisions" and adds that such decisions can be classified as material sources. Having said all that, he recognizes that "despite absence of any rule pertaining to the obligatory precedent in the international law in general, references to the previous cases of the Permanent Court of International Justice, the UN International Court of Justice and International Tribunal for the Law of the Sea are a wide-spread practice (Brabandere, 2016, p. 24-55).

As O. Ispolinov points out, "contemporary international courts not only apply and interpret the law but also establish new legal provisions". The scientist proposes to consider presence of the precedent force of court decisions in terms of: 1) from the viewpoint of the binding nature of earlier adopted decisions for the court proper; 2) in practice of those international courts wherein the appeals instance (International tribunals pertaining to former Yugoslavia and Rwanda, ECHR and EU Court) or the supervisory jurisdiction function (this is a vertical precedent); and 3) the precedent force of international judicial bodies (so-called horizontal precedent) (Ispolinov, 2017, p. 80).

Hence, international law experts analyse, by way of scientific and practical discussion, the essence of lawmaking of the international court institutions. The aim of our study is to prove that the judicial practice of the International Tribunal for the Law of the Sea is based on the case law.

Presentation of Main Material

As the most numerous amongst 25 registered cases, where the parties differ in interpretation of the UN Convention on the Law of the Sea, are those concerning immediate release of the detained ships and crew, we propose to consider case No.25 pertaining dispute between Panama and Italy to m/v "Norstar". Proceedings in this case were accomplished with due account of the procedural legal views developed by the International Tribunal for the Law of the Sea in the previous similar cases that have been connected with detainment and arrest of merchant ships.

On November 16, 2015 Panama filed an application with the Tribunal requesting to initiate proceedings versus Italy in connection with a dispute between these two states concerning interpretation and implementation of the Convention (UNCLOS'82, art. 73, 220,226, 292) "in connection with detainment and arrest of oil tanker "Norstar", flag of Panama, by Italy" (The m/v "Norstar"case, preliminary objections, judgment

of 4 November 2016). The decision of February 3, 2016, defined the deadlines for lodging the memorandum and counter-memorandum: on 28 August, 2016 expired the period for lodging the memorandum by Panama, and on 28 January, 2017 is the deadline for lodging the counter-memorandum by Italy. Italy met the deadline on 11 March, 2016, set by item 1 of Art. 97 of the Regulations and submitted to the Tribunal the "written preliminary objections in accordance with item 3 of Art. 294 of the Convention" wherein it challenged "jurisdiction of the Tribunal and admissibility of the Panama points of claim". After the Secretariat accepted the preliminary objections, the proceedings in the case were *ipso facto* terminated in accordance with item 3, Art. 97 of the ITLOS Rules. On 4 November, 2016 the Tribunal gave judgment on the preliminary objections. As far as the representatives of Italy challenged the ITLOS jurisdiction to consider this case and admissibility of Panama points of claim, the Tribunal referred to the case law of the International Court of Justice and its own practice by pointing out that "an interstate dispute means a difference from the judicial viewpoint or the fact, a conflict of legal views or interests. Existence of the dispute can be concluded out of a non-presentation of the rejoinder by the state under such circumstances when the rejoinder is requested" (paras.85,99 with reference to the cases: South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328; Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan) Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 293, para. 44; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation),Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70, at p. 84, para.30; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Preliminary Objections, Judgment of 5 October 2016, para.37; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan), Preliminary Objections, Judgment of 5 October 2016, para.37; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, para.40). Besides, taking into consideration legal views of the UN International Court, the Tribunal made a point that a difference from the viewpoint of the law or the fact, a conflict of legal views or interests or a positive standoff of

a party against the other party's claim may not be necessarily *expressis verbis*. When settling a matter of dispute existence, a position or attitude of a party can be established by a conclusion irrespective of the extent of its recognition by the other party (para.100. The Tribunal refers to the decision: Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 275, at p. 315, para.89; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Preliminary Objections, Judgment of 5 October 2016, para.37; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan), Preliminary Objections, Judgment of 5 October 2016, para.37; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment of 5 October 2016, para.40). Proceeding from the established judicial practice concerning application of various means of pre-trial settlement of contestable matters, the Tribunal indicated that a state is not obligated to continue exchange of opinions when it comes to a conclusion that the possibilities for achieving agreement have been exhausted (para.216 with references and citing the decisions MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at p. 107, para.60; Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10, at pp. 19-20, para.47; "ARA Libertad" (Argentina v. Ghana), Provisional Measures, Order of 15 December 2012, ITLOS Reports 2012, p. 332, at p. 345, para.71; "Arctic Sunrise" (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013, p. 230, at p. 247, para.76; M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010, p. 58, at p. 68, para.63). Taking into account the previous decisions as to detainment and arrest of ships, the Tribunal pointed out that: "diplomatic protection of its citizens by the state should be distinguished from the statements of the flag state concerning individuals and legal entities who participate in operation of the ship and are not citizens of said state, therefore m/v "Norstar" flying Panama flag, its crew, cargo onboard and the owner and each person who participates in ship operation should be considered as such that are

connected to the flag state irrespective of their nationality (para.231. The Tribunal refers to its own previous decisions: M/V "Virginia G" Case (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014, p. 4, at p. 48, para.128). (M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, p. 10, at p. 48, para. 107; M/V "Virginia G" (Panama/Guinea Bissau), Judgment, ITLOS Reports 2014, p. 4, at p. 48, para.128). When objecting the Italy claims as to admissibility of Panama points of claim, the Tribunal used the legal views formulated by the UN International Court concerning the essence and differences of the tacit agreement and estoppel institutions. So, referring to the Court judgment in the case of delimitation of the maritime boundary in the Gulf of Main, the Tribunal indicated that the tacit agreement and estoppel notion should be distinguished from the fundamental principles of good faith and justice because these are based on different legal arguments: a tacit agreement is equivalent to a tacit admission, which is manifested by the unilateral conduct that the other party might interpret as a consent while an estoppel is associated with the idea of exclusion (para.330). Besides, in the case of the maritime boundary delimitation in the Bay of Bengal, the Tribunal has already specified the situation which is connected with the legal institution of estoppel: it occurs when a state behaved so as to create an appearance of a particular situation, and the other state has relied on such conduct in good faith and acted or refrained from acting thereby causing damage to itself (Bangladesh/Myanmar, judgment of 14 March 2012, para. 124).

Thus, the Tribunal: 1) overruled objections put forward to the Tribunal jurisdiction by Italy and established that it is competent to settle the dispute; 2) dismissed the objections put forward by Italy concerning admissibility of Panama points of claim, and decided that the points of claim were accepted.

As of 10 April, 2019, the disputes that have been settled or are being considered by the International Tribunal for the Law of the Sea comprise only two cases that are connected with maritime delimitation: these are a dispute between Bangladesh and Myanmar (case №16), and the dispute between Ghana and Côte D'Ivoire (case №23).

On 27 February, 2015 Côte D'Ivoire applied for the Special Chamber order regarding temporary calls in accordance with item 1 of Art. 290 of the Convention. The Chamber adopted a resolution of 25 April, 2015. On 2-3 February, 2017 there were initial deliberations of the Special Chamber

which was set up for a consideration of the dispute between Ghana and Côte D'Ivoire in the Atlantic Ocean comprised of: judge Bouguetaia (President); judges Rüdiger Wolfrum and Paik, Thomas Mensah, Judge ad hoc and Ronny Abraham, Judge ad hoc (members). As Ghana and Côte D'Ivoire are the participant-states to the Convention (Ghana ratified the Convention on 7 June, 1983, and Côte D'Ivoire – on 26 March, 1984, the Convention came into effect for both states on 16 November, 1994 and on 23 September, 2017, accordingly), therefore the Tribunal jurisdiction did not cause any doubts (para.83). The Special Chamber was solving several interconnected issues: 1) delimitation between the parties of the maritime boundary in the territorial sea, in the exclusive economic zone and the continental shelf, including the continental shelf beyond 200 nautical miles; 2) Côte D'Ivoire's assertion about possible violations of its rights by Ghana which entail the liability of the latter. While solving the first issue it was investigated whether a maritime boundary between the parties had been already defined before their agreement. Ghana referred to existence of the tacit agreement which is expressed in more than 50 years "oil-industry practice" of the parties (para.113). Côte D'Ivoire did not agree with such assertion (para.114). Referring to the legal view of the International Court of Justice, which the Court has formulated in the case of the territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea, the Special Chamber indicated: "the proofs of the tacit legal agreement should be convincing" (para.212). The Special Chamber is of opinion that the oil practice, irrespective of its sequence, cannot, per se, assist in defining the maritime boundary provided the tacit agreement exists. Mutual, consistent and old practice of oil recovery and the neighbouring boundaries of oil concessions can reflect existence of the maritime boundary or they might be explained by other reasons (para.215). As the International Court of Justice pointed out in case Nicaragua versus Honduras in the Caribbean Sea: "the *de facto* line may, under certain circumstances, meet existence of the agreed legal boundary or may be a temporary line or a line established for a specific goal, e.g., a line to divide a scarce resource. Should such temporary line which was convenient for a certain period exist it need to be distinguished from the international border" (Nicaragua v. Honduras, judgment of 8 October 2007, para. 253). The Special Chamber has still another reason not to accept the Ghana's argument as to existence of the tacit agreement on the maritime boundary by citing the view of the International Court of Justice expressed in the judgment concerning the maritime dispute

between Peru and Chile (Judgment of 27 January 2014p., para.111): "the boundary that divides the territorial sea, exclusive economic zone and continental shelf is of a universal character, therefore the proofs pertaining to fisheries may not, per se, determine the delimitation of maritime spaces. Evidences pertaining to oil extraction from sea bottom and subsoil of the sea bed are of a limited value for proving existence of the universal boundary which delineates not only the seabed and its subsoil but also the water column above them" (para.226). Having studied the proofs and facts presented by the parties, the Special Chamber gave a ruling on "the absence of tacit agreement between the parties concerning delimitation of their territorial sea, exclusive economic zone and continental shelf both within the boundaries and beyond the 200 nautical miles boundary" (para.228).

As Ghana representatives declared the estoppel situation, i.e., existence of "clear, stable and consistent" conduct of Côte D'Ivoire for many decades (para.231), the Special Chamber has noted, referring to the legal view expressed by the Tribunal in the dispute concerning delimitation of the maritime boundary in the Bay of Bengal, that the estoppel situation exists in the international law when a state created a specific situation by its conduct while the other state, relying on such conduct, acted in good faith or refrained from acting thereby inflicting damage on itself. The impact of estoppel notion is in that the state precludes, by its conduct, to assert that it does not agree or admits a certain situation (para. 242 contains a reference to the decision: Judgment, ITLOS Reports 2012, p. 4, at p. 42, para.124).

The Special Chamber made use of the methodology for maritime delimitation, which was proposed by the International Court of Justice and became widely accepted. The Chamber stage-wise approved of the delineation of the exclusive economic zone and continental shelf beyond 200 nautical miles (paras. 278,281,287,289 and 409) while numerically citing its previous judgment concerning maritime delimitation in the dispute Bangladesh versus Myanmar (paras. 235, 317 and 325). The problem of the delimitation methodology was solved by the Special Chamber as follows: "the compelling reasons for deviating … from the equidistance/relevant circumstances methodology are absent" (para.324). Côte D'Ivoire advocated application of the "angle-bisector methodology" (para.291) but the Special Chamber pointed out that the appropriate coasts of the parties are characteristic of their straightness and absence of instability, therefore, in connection with that, the Chamber fails to see

grounds for considering determination of the base points impossible or inexpedient (paras. 302, 318).

Case law of the International Court of Justice, in particular concerning the continental shelf delimitation (judgments on the cases involving the continental shelf in the disputes between FRG and Denmark and between FRG and the Netherlands of 20 February 1969; Libyan Arab Jamahiriya and Malta of 3 June 1985) and the arbitral judgment in the case concerning the dispute between Bangladesh and India (Judgment of 7 July, 2014, para.397) enabled the Tribunal to emphasize that any delimitation can lead to a certain modification of nature, however, such delimitation should not completely alter geography or compensate unevenness of nature because "justice does not necessarily means evenness". Justice does not demand that a state having no access to sea is to be allocated a continental shelf territory.

Application of the conventional judicial practice enabled the Special Chamber to define whether concavity of the Côte D'Ivoire coast presents an important circumstance which necessitates adjustment of the temporary equidistance line in favour of Côte D'Ivoire. Hence, in the Tribunal's judgment concerning delimitation of the maritime border between Bangladesh and Myanmar in the Bay of Bengal (para.292) it was established that "at delimitation of the exclusive economic zone and the continental shelf the concavity, *per se*, is a not obligatory circumstance. On the contrary, when the equidistance line between two states results in cutting off of one of these states because of the coast concavity, then in order to adjust this line a fair result might be necessary" (para.421).

Hence, having established the previous equidistance line, the Special Chamber investigated a matter "whether there exist those circumstances that pertain to the case and necessitate adjustment" of this line (para.402) and came to the negative conclusion (para.480). When solving a matter whether it is worthwhile to take into account the circumstances referring to location of the sea mineral resources, the Chamber stressed that "maritime delimitation is not an instrument of the distribution justice" (para.452) and that the appropriate international judicial practice "gives advantage, at least in principle, to such delimitation of maritime spaces which is based upon geographical considerations" and that "those considerations that are not referred to geography can acquire meaning in the extreme situations only" (para.453 with reference to the decisions: Judgment in Territorial and Maritime Dispute (Nicaragua v. Columbia), I.C.J. Reports

2012, p. 624, at p. 706, para.223; Decision of 11 April 2006 for arbitration between Barbados and the Republic of Trinidad and Tobago relating to the delimitation of the exclusive economic zone and the continental shelf between them, RIAA, vol. XXVII, p. 147, at p. 214, para.241; Judgment of the maritime delimitation in the Black Sea (Romania v. Ukraine), I.C.J. Reports 2009, p. 61, at pp. 125-126, para.198).

The maritime delimitation methodology established by the conventional judicial practice needs to have the third stage which includes verification of the fact that the delimitation line, constructed by way of applying the first two stages of the methodology, does not lead to unequitable result because of the expressed disproportionality between the ratios of the corresponding coast lengths; as regards the ratio of maritime spaces allocated to each party, the Chamber indicated that it adheres to the approach of the International Court of Justice in terms of the maritime delimitation in the Black Sea (para.122) and to the Tribunal approach applied in the dispute concerning the maritime boundary delimitation in the Bay of Bengal (para. 477).

Consequently, in order to delimitate the continental shelf beyond 200 nautical miles, the Special Chamber has applied the same 200 nautical miles methodology for its delimitation (para. 526).

Having delimitated the maritime boundary between the parties, the Chamber proceeded to a review of Côte D'Ivoire's assertion concerning the international responsibility of Ghana. Côte D'Ivoire asserted that the Ghana's conduct in the disputable part of the continental shelf had violated the sovereign rights of Côte D'Ivoire as well as Art. 83 of the Convention and the temporary measures proposed by the Chamber in its Order of 25 April, 2015 (para. 544). However, the Special Chamber has come to a conclusion that neither of Ghana's activities gives rise to international responsibility. In support of this conclusion the Chamber clarified the contents of item 3 of At. 83 of the Convention which described two obligations arising with the states that are parties to the delimitation dispute, i.e., the obligation "to make all efforts so as to achieve a temporary agreement of a practical nature", and the obligation "not to jeopardize achievement of the final agreement or does not preclude its achievement" (para.627). The Special Chamber emphasized the mutual obligation envisaged by item 3 of Art. 83, which tells that in the transition period the states should act "in the spirit of mutual understanding and cooperation" (para. 630).

Conclusions

The bodies of international justice admit importance of citation and borrowing legal conclusions (views) – both concerning their own earlier adopted judgments and the judgments of other court and arbitration bodies; absence of a legal confirmation of the lawmaking powers of the international courts does not preclude admittance of the fact that they actually create the law, and the result (documents) is manifested by the judgments which reasoning contains universally binding regulations, i.e., judicial precedents.

When considering m/v "Norstar" case in the dispute Panama v. Italy, the International Tribunal for the Law of the Sea indicates, in accordance with the established practice of applying various pre-trial dispute decisions, that a state is not obligated to continue exchange of opinions if it comes to a conclusion that the possibilities to reach a settlement have been exhausted.

Based on the previous judgments concerning detainment and arrest of merchant ships, the Tribunal pointed out that it had already resolved that implementation of diplomatic protection of its citizens by the state should be distinguished from declarations of the flag state with respect of the individuals and legal entities that participate in operation of the ship but are not citizens of said state, i.e., the ship flying the flag of a certain state, its crew, cargo on board, owner and each person participating in ship operation should be viewed as those that are connected with the flag state, irrespective of their nationalities.

As regards the case Ghana versus Côte D'Ivoire that concerns delimitation of the continental shelf beyond 200 nautical miles boundary, the Special Chamber has applied the same methodology for its delimitation which was proposed by the International Court of Justice and became a logical regulatory addition to the provisions of the UN Convention on the Law of the Sea.

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АНОТАЦІЯ

Бойко І. С. Прецедентна практика Міжнародного трибуналу з морського права. – Стаття.

Автором статті у межах науково-практичної дискусії щодо сутності правотворчості міжнародних судових інституцій доведено, що судова практика Міжнародного трибуналу з морського права є прецедентною. Визначено, що міжнародні органи правосуддя вважають за необхідне цитувати та запозичувати правові позиції як своїх раніше прийнятих рішень, так й рішень інших судово-арбітражних органів. Зазначено, що відсутність юридичного закріплення правотворчих повноважень у міжнародних судових органів не заважає визнати, що фактично вони творять право, а результатом (актами-документами) є рішення, які у мотивувальній частині містять загальнообов'язкові нормативні положення, тобто судові прецеденти. Проаналізувавши рішення у справі щодо судна "Норстар" у спорі між Панамою та Італією, автор робить висновок, що Міжнародний трибунал з морського права відповідно до усталеної судової практики щодо застосування різних засобів досудового вирішення спірних питань, вказав на те, що держава не зобов'язана продовжувати обмін думками, коли приходить до висновку, що можливості досягнення згоди були вичерпані. Спираючись на власні попередні рішення щодо затримання та арешту суден, Трибунал сформулював правову позицію щодо здійснення дипломатичного захисту державою її громадян, при цьому судно, яке ходить під прапором певної держави, його екіпаж, вантаж на борту, власник та кожна особа, яка бере участь у роботі судна, повинні розглядатись як такі, що пов'язані з державою прапора, незалежно від їх національності. Досліджено, що у справі між Ганою та Кот-Д'Івуаром щодо делімітації континентального шельфу за межами 200 морських миль спеціальна камера МТМП застосувала ту ж методику, що і для його делімітації в межах 200 морських миль, яка була запропонована Міжнародним Судом

ООН та стала логічним нормативним доповненням положень Конвенції ООН з морського права 1982 р.

Ключові слова: Міжнародний трибунал з морського права, правотворча діяльність органів міжнародного правосуддя, усталена судова практика, затримання та арешт суден, методологія делімітації морських просторів.

АННОТАЦИЯ

Бойко И. С. Прецедентная практика Международного трибунала по морскому праву. – Статья.

Автором статьи в рамках научно-практической дискуссии о сущности правотворчества международных судебных институтов доказано, что судебная практика Международного трибунала по морскому праву является прецедентной. Определено, что международные органы правосудия считают необходимым цитировать и заимствовать правовые позиции как своих ранее принятых решений, так и решений других судебно-арбитражных органов. Указано на то, что отсутствие юридического закрепления правотворческих полномочий у международных судебных органов не мешает признать их фактически творящими право, а результатом (актами-документами) считать решения, которые в мотивировочной части содержат общеобязательные нормативные положения, то есть судебные прецеденты. Проанализировав решение по делу в отношении судна "Норстар" в споре между Панамой и Италией, автор делает вывод, что Международный трибунал по морскому праву в соответствии с устоявшейся судебной практикой по применению различных средств досудебного рассмотрения спорных вопросов, указал на то, что государство не обязано продолжать обмен мнениями, если оно считает, что возможности достижения согласия исчерпаны. Опираясь на собственные предыдущие решения по задержанию и аресту судов, Трибунал сформулировал правовую позицию по осуществлению дипломатической защиты государством своих граждан, при этом судно, которое ходит под флагом данного государства, его экипаж, груз на борту, владелец и каждое лицо, участвующее в работе судна, должны рассматриваться как связанные с государством флага, независимо от их национальности. Доказано, что в деле между Ганой и Кот-Д'Ивуаром в отношении делимитации континентального шельфа за пределами 200 морских миль специальная камера МТМП применила аналогичную методику при делимитации в пределах 200 морских миль, предложенную Международным судом ООН и ставшею логическим нормативным дополнением положений Конвенции ООН по морскому праву 1982г.

Ключевые слова: Международный трибунал по морскому праву, правотворческая деятельность органов международного правосудия, устоявшаяся судебная практика, задержание и арест судов, методология делимитации морских пространств.