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Combating drug trafficking: the international legal dimension

Боротьба з незаконним обігом наркотичних засобів: міжнародно-правовий вимір

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Abstract

According to the provisions of international legal agreements governing interstate relations at sea, there must be a specific connection between states that release ships flying their flag at sea and those ships that use the attributes of the respective state. This regime provides for the existence of a number of interrelated rights and responsibilities that have both the state and the relevant vessel under its flag. In the event that a seagoing ship violates the rules of international law, the State concerned shall have the right to apply liability to such a ship. It is the purpose of this research that is the analysis of the obligations of the states whose flag ships go to sea that violate the established international legal requirements, in particular - in the field of drugs and psychotropic substances. The author of the article used a number of methods of scientific knowledge to obtain relevant results. Such methods include the dogmatic method, the comparative legal method, the deduction method, and the induction method. As a result of the study, the author concluded that the system of obligations of the "flag state", which includes, inter alia, obligations to stop the illicit trafficking of narcotic drugs and / or psychotropic substances, is the illegal use of "flag vessels" and constitute the concept of «genuine link».

Keywords: international legal acts, illegal transportation, maritime law, drugs and psychotropic substances, the Convention on the Law of the Sea.

Анотація

Відповідно до приписів міжнародно-правових договорів, що регулюють міждержавні відносини на морі, між державами, які випускають у море судна під своїм прапором, і самими цими суднами, що використовують атрибутику відповідної держави, має існувати специфічний зв'язок. Зазначений режим передбачає наявність низки взаємопов'язаних прав і обов'язків, які мають як держава, так і відповідне судно під її прапором. У тому випадку, якщо морське судно порушує норми міжнародного права, відповідна держава наділена правом застосувати заходи відповідальності до такого судна. Саме аналіз зобов'язань держав, під прапором яких виходять в море судна, що порушують встановлені міжнародно-правові приписи, зокрема - у сфері обігу наркотиків і психотропних речовин, і є метою здійснення цього наукового дослідження. Для отримання відповідних результатів автор статті використав ряд методів наукового пізнання. До таких методів належать догматичний метод, порівняльно-правовий метод, метод дедукції, метод індукції. У результаті дослідження автор дійшов висновку, що система зобов'язань «держави прапора», яка включає, серед іншого, зобов'язання щодо припинення незаконного обігу наркотичних засобів та/або психотропних речовин, є незаконним використанням «суден під прапором» і становлять поняття «справжній зв'язок».

Ключові слова: міжнародно-правові акти, незаконні перевезення, морське право, наркотики і психотропні речовини, конвенція з морського права.

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Introduction

It is widely recognized that the scale and trend of increasing illegal production, demand and trade in "drugs and / or psychotropic substances" ("NDPS") is steadily increasing.

International legal acts directly regulate the fight against illicit trafficking of «NDPS». Such acts include conventions and other UN acts. The UN Convention on the Law of the Sea, 1982 is among the acts with universal implication, *inter alia*, in the suppression of illicit traffic in "NDPS" engaged in by vessels on the high seas (further referred to as the "UNCLOS'82"). All abovementioned treaties form the modern international legal regime of the suppression of illicit traffic in "NDPS" engaged in by vessels on the high seas (United Nations, 1958).

The illicit sea trafficking in NDPS is the use against the national and international law of vessels, belonging to certain states, which have obligations towards such vessels. The main obligation is to stop the aforementioned use, which is a part of the "Genuine link" concept. The system of measures aimed at combating illicit trafficking in narcotic drugs and / or psychotropic substances on the high seas is based on certain international conventions adopted under the auspices of the UN, as well as other international agreements, multilateral and bilateral; in this sense, the aim of our study was to investigate some of these documents. The immediate purpose of this study is a comprehensive analysis of the obligations of states whose flags go to sea in violation of established international legal requirements in the field of drugs and psychotropic substances. In particular, the author of the article offers his own vision of ways to improve the international legal regime to combat drug trafficking and psychotropic substances at sea. The article consists of separate parts, each of which examines the relevant normative legal act of an international nature, aimed at combating illicit trafficking in narcotic drugs and psychotropic substances in the context of international maritime law.

Theoretical Framework or Literature Review

It should be remarked, that Waly (2021), the Executive Director of the United Nations Office on Drugs and Crime (UNODC), estimates that 275 million people in the world currently use drugs, and by 2030 that number could increase by another 11 percent.

"The legal international problem" of an illicit traffic of the "narcotic drugs and/or psychotropic substances" (hereinafter referred to as "NDPS"), "*inter alia*, in the high seas, is the most serious problem of the mankind in XXI century" (Kolodkin, Kiselev, & Savaskov, 1984; Parkinson, 1991) and many researchers for a long time have paid attention to the suppression of the illicit traffic in "NDPS" (Stieb, 1989; Gilmore, 1991; Gilmore, 1991). Nevertheless, certain marine scholars have not paid attention to the matter (Blishchenko, 1988; Shchipzov et al., 1995; Shemiyakin, 2002; Skaridov, 2006). G. Antzevich (2013) have researched international legal problems of modern merchant shipping and have not found among them the problem of illicit traffic of the "NDPS".

Many researchers (Weissbrodt, 2002) have classified the suppression of illicit traffic in "NDPS" as an intervention in (withdrawal from) the principle of the free high sea navigation. At the same time, we consider it as a suppression against the illicit use of the vessels, belonging to a certain state, which has the obligation to counteract such a use.

Methodology

The author of the article used a number of methods of scientific knowledge to obtain relevant results. Such methods include the dogmatic method, the comparative legal method, the deduction method, and the induction method. The author used the dogmatic method to thoroughly analyze the content of international conventions on counteraction of «NDPS». The comparative legal method was used to identify shortcomings in international legal regulation of relations on counteraction of «NDPS» concept. In particular, this method concluded that some obsolete international regulations on the research and updated doctrinal approaches to understanding the concept of «genuine link». Methods of induction and deduction were used as paired and mutually enriching, because they allowed to comprehensively analyze the concept of «genuine link», exploring all its elements in the dynamics and inseparable relationship.

The methods used in general made it possible to conclude, that the eradication of illicit traffic in "NDPS" 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 illicit traffic in "NDPS" demands to strengthen interstate coordination,

inter alia, in the fight against illegal proliferation in “NDPS” engaged in by high sea vessels.

Results and Discussion

UNCLOS’82

“UNCLOS’82” prescribes that any “flag State” which has reasonable grounds for believing that the “flag ship” – “ship flying its flag” - is engaged in illicit traffic in “NDPS” may request the cooperation of other States to suppress such traffic (“UNCLOS’82”. Part VII “High seas”. Section 1. “General provisions”. Article 108 “Illicit traffic in narcotic drugs or psychotropic substances”, paragraph 1), and “all States shall cooperate” in the suppression of illicit traffic in “NDPS” engaged in by ships on the high seas contrary to international conventions (Article 108, paragraph 2). It must be noted that the illicit traffic is an activity, which fulfilled: 1) “on the high seas”, that is to say - beyond the limits of any States’ sovereignty; 2) “contrary to international conventions”, that is to say – there are international conventions that prescribe the rules of lawful traffic in “NDPS”.

The Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Article 44. “Termination of previous international treaties” of the “UNSCND’1961” prescribes that the provisions of this Convention, upon its coming into force, shall, as between Parties hereto, “terminate and replace the provisions” of some treaties, which were adopted from 1912 to 1951 (Article 44, paragraph 1, (a) to (i); paragraph 2).

Article 31. “Special provisions relating to international trade” to the “UNSCND’1961” prescribes to States Parties: i) to control under license the import and export of drugs (paragraph 3(a). Article 32. permits, if there is international carriage by ships of limited amounts of drugs as may be needed during their voyage for first-aid purposes or emergency cases shall not be considered to be import or export within the meaning of the Convention (paragraph 1). The carriage shall be subject to the laws, regulations, permits and licenses of the country of registry (the “flag State”) (paragraph 3). The “UNSCND’1961” prescribes special measures and actions to be taken by States Parties, inter alia, that “any drugs, substances and equipment used in or intended for the commission of any of the offences, referred to in article 36, shall be liable to seizure and confiscation” (Article 37. “Seizure and confiscation”).

UNCPS’ 1971

Under the Convention the countries shall take measures to prevent and repressive action against the illicit traffic (“UNCPS’1971”. Article 21. “Action against the illicit traffic”), inter alia: i) to arrange the co-ordination; to this end they may usefully designate an appropriate agency responsible for such co-ordination (paragraph (a); ii) assist each other (paragraph (b); iii) co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a coordinated campaign against the illicit traffic (paragraph (c); iv) ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner (paragraph (d); v) shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under the Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty (Article 22. “Penal provisions”, paragraph 1 (a); vi) any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences shall be liable to seizure and confiscation (Article 22, paragraph 3). But nothing contained in article 22 shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party (Article 22, paragraph 5). For the more information see: Commentary on the “UNCPS’1971” (UNCPS Commentary, 1976).

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems (“UNCIT’1988”. Article 2. “Scope of the Convention”, paragraph 1) (United Nations, 1988a; United Nations, 1988b; United Nations, 2020; United Nations, 2013a; United Nations, 2013b).

Agreement on Illicit Traffic by Sea of 1995

The member States of the Council of Europe have adopted the Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in

Narcotic Drugs and Psychotropic Substances, 1995 (hereinafter referred to as the "CoEAITS'1995"), "desiring to increase their co-operation to the fullest possible extent in the suppression of illicit traffic in "NDPS". The member States have defined the actions, which the intervening State may take and first of all – to enter the vessel.

Conclusions

The author concludes that illicit sea trafficking in NDPS is the use of vessels, belonging to certain states against national and international law. Besides such states have statutory obligations to suppress such use, which is a part of the "Genuine link" concept. The measures aimed at combating illicit trafficking in narcotic drugs and / or psychotropic substances on the high seas is based on certain international conventions adopted under the auspices of the UN, as well as other international agreements, multilateral and bilateral; in this sense, the aim of our study was to investigate some of these documents.

As a result of the study, the author concluded that the system of the "flag state's" obligations includes obligations of suppression to the illicit trafficking of narcotic drugs and/or psychotropic substances, is the illegal use of "flag vessels" and constitute the concept of «genuine link».

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