

1. Introduction

Since the time of Grotius the law of the sea has been a substantial part of international law. The United Nations Convention on the Law of the Sea (LOSC, the Convention) plays a crucial role in efforts to gather the world together in a solid agreement on an international regime for the oceans. This agreement which includes all the key issues of sea law was reached inside the cross-fire of ideological wars of state events after a long list of failed attempts. The ideological wars of the past additionally perpetrated incomplete and ill-informed perceptions about the Convention that obstruct rational evaluation. However, its innovativeness, focus on widespread ratification and the presence of a large number of compromises are not in doubt.

One of the weaknesses of international law is that generally, states are reluctant to accept the jurisdiction of courts and arbitrators. The United Nations Convention on the Law of the Sea became a remedy that removes this weakness in an essential manner regarding the sea. It was the first treaty with such huge mandatory compromissory clauses, which has been widely ratified. The ratification demon-

strated that the consensus can be expressed in fairly precise norms and regulations that narrow the issues and limit disputes.

The International Tribunal for the Law of the Sea, established in accordance with Annex VI; the International Court of Justice; an arbitral tribunal, constituted in accordance with Annex VII and a special arbitral tribunal, constituted in accordance with Annex VIII, are judicial bodies which can exercise the compulsory jurisdiction in accordance with article 287 of LOSC. These institutions, which are frequently named Law of the Sea tribunals (LOS tribunals, sea tribunals) in legal literature, exercise jurisdiction under compulsory procedures, entailing binding decisions.

Mixed boundary disputes over land and maritime territory, usually named 'mixed disputes' in academic literature and connected to a dispute regarding maritime boundary delimitation, are frequently encountered and controversial cases. These disputes inevitably included the concurrent claims of an unresolved dispute concerning rights over land territory [1]. In some cases, there is no clear division among maritime dispute and the other type of dispute. For instance, establishing land boundaries that might have an impact on the delimitation of a sea boundary or maritime delimitation need the continental or insular land sovereignty decision. The question as to whether this type of dispute falls under the compulsory jurisdiction of the Convention remains open.

Opinions on the resolution of mixed disputes are divided. Some authors believe that if territorial disputes are related to

LEGAL POSITION OF LOS TRIBUNAL REGARDING MIXED DISPUTES

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Abstract: The article contains an analysis of the jurisdiction of the maritime tribunals over the three mixed disputes, related to issues of sovereignty over land. State sovereignty is a very delicate issue, related to territorial sovereignty; therefore, it is inappropriate to consider the state's statement on the abolition of certain dispute settlement procedures in accordance with article 298 as more significant issues of territorial sovereignty. The awards on an Arbitration before an arbitral tribunal, constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, and An Arbitration before an arbitral tribunal, constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China, illustrate the position of LOS tribunals regarding mixed disputes, which connected to terrestrial sovereignty issue.

According to a decision analysis, concerning the jurisdiction of mixed disputes, related to sovereignty over land, the LOS tribunal considers the need for a preliminary decision on sovereignty over land, the intention of the plaintiff and the consequences of resolving the claim for a sovereignty dispute are taken into account. However, the tradition is not stable so the modification of criteria in future decisions is possible.

Therefore, LOS tribunals have developed an approach to determining jurisdiction over mixed disputes that relate to land, but this will be further developed and detailed in the future.

Keywords: public international law, dispute resolution, maritime law, procedural law, jurisdiction.

the interpretation or application of the Convention, LOS tribunals will have jurisdiction over them. Their opponents express the opinion that no issue that related to the questions of the land sovereignty matters can be resolved without the consent of the state parties under any circumstances. The main controversial issues are the limits of mandatory dispute resolution, which could potentially invade the sovereign rights of states and the ability of LOS tribunals to carry out their functions effectively. The jurisdictional dilemma of sea tribunals regarding mixed disputes might disadvantageously influence their effectiveness, potentially permitting some States to outflank dispute settlement procedures on the grounds that land sovereignty matters are engaged [2].

Judicial practice also does not give an unambiguous answer to the question of the jurisdiction of mixed disputes, related to unresolved issues of land sovereignty. Therefore, resolving mixed disputes is sophisticated. On the one hand, the rights and freedoms of countries, guaranteed by the Convention, has a great importance for ensuring the rule of law in the law of the sea, and on the other

hand, any tribunal statement, which may directly or indirectly affect the delimitation dispute can be negatively perceived not only by the state parties, but and the whole international community. Consequently, the creators of the Convention aimed to design a balanced text for esteeming the expressed sensitivity of States to the mandatory settlement of disputes, concerning sovereign rights and delimitation of maritime and land territory [3].

There are currently no monographs on the jurisdiction of the LOS tribunals over mixed disputes, related to land sovereignty. However, these issues are raised in monographs on related topics. For example, Maria Gavouneli analyses the features of jurisdiction under the LOSC, its basic premises and essential compromises, its evolution and its ability to meet new challenges of our time in her book "Functional Jurisdiction in the Law of the Sea" [4]. The book "Dispute Resolution in the Law of the Sea" by Igor V. Karaman is aimed at studying the resolution of disputes that have arisen since the entry into force of the Convention and when analyzing the role of mandatory procedures, entailing binding decisions through the prism of general international law and jurisprudence [5]. Furthermore, numerous articles are devoted to the jurisdiction in mixed disputes. For instance, Irina Buga examines whether the maritime tribunals under the LOSC have jurisdiction over dispute resolution on maritime borders, related to simultaneous issues of sovereignty on land, in the article "Territorial Sovereignty Issues in Maritime Disputes: A jurisdictional Dilemma for Law of the Sea Tribunals" [6]. The article "Some

Reflections on the Operation of the Dispute Settlement System in the UN Convention on the Law of the Sea during Its First Decade” by Robin Churchill considers the choice of means for the mandatory settlement of disputes, jurisdictional issues in exceptional cases of mandatory jurisdictions and the application of temporary measures [7]. Natalie Klein came to the conclusion that there is no solid doctrine that analyses and explains contemporary case law, while most studies focus on the analysis of a specific mixed dispute in the article “Expansions and Restrictions in the UNCLOS Dispute Settlement Regime: Lessons from Recent Decisions” [8].

The characterization of the Dispute, concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait by applying tests, described in the Chagos Marine Protected Area Arbitration award, and set out in that award’s dissent and in The South China Sea Arbitration [9]. Alexandre Pereira da Silva examines how arbitral tribunals have dealt with mixed disputes by analyzing “Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)” and “South China Sea Arbitration (The Philippines v. China)” as well as making predictions regarding Dispute Concerning Coastal States Rights in the Black Sea, Sea of Azov, and Kerch Strait [10]. Furthermore, the analysis of the limits of jurisdiction of courts and tribunals, whose legal authority is established on the basis of Part XV of the United Nations Convention on the Law of the Sea, was made by Alexander Proelss in the article “The Limits of Jurisdiction Ratione Materiae of UNCLOS Tribunals” [11].

However, a comprehensive analysis for identification of the cause that influences the decision on the jurisdiction of the LOS tribunals over mixed disputes has not been done. The author intends to establish the factors, which influence LOS tribunal’s jurisdiction in “mixed disputes”. The aim of the research is to establish factors that influence the scope of jurisdiction of the LOS court in “mixed disputes”.

2. Methods

The author mainly uses the analytical legal method. The comparative method is used for analyzing “mixed dispute” definitions to understand what are the core stated features of these types of dispute and for comparisons of the case details and decision tests in Chagos arbitration and South China Sea arbitration decisions to determine the main factors, affecting the jurisdiction of mixed disputes, related to land sovereignty, and to compare the circumstances of the dispute between Ukraine and Russia with the Chagos arbitration and South China Sea arbitration in order to determine the likely response of the Tribunal and the factors that could affect it.

3. Results

Mixed disputes, which are characterized by a lack of clear division among the dispute, related a law of the sea and other types of dispute, remain frequently occurring and controversial in LOS tribunals practice. There is no clear division among the issue, concerning law of the sea and other types of issue in some disputes. Among the main scientific problems can be identified:

- poor consistency in legal literature and lack of consensus regarding the approach to interpretation of the provisions of the Convention on the jurisdiction of maritime tribunals over mixed disputes;
- modest judicial practice, which is often greatly influenced by the political and diplomatic environment.

State sovereignty is a very delicate issue, related to territorial sovereignty; therefore, it is inappropriate to consider the state’s statement on the abolition of certain dispute settlement proce-

dures in accordance with article 298 as more significant issues of territorial sovereignty. The awards on an Arbitration before an arbitral tribunal, constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, and An Arbitration before an arbitral tribunal, constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People’s Republic of China, illustrate the position of LOS tribunals regarding mixed disputes, which connected to land sovereignty issue.

The position of the LOS tribunals regarding mixed disputes, related to disputed sovereignty on land, can be traced in the an Arbitration before an arbitral tribunal, constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland and An Arbitration before an arbitral tribunal, constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People’s Republic of China. The two decisions of the tribunal for the first two disputes have some similar features in the tests. Both decisions implied two conditions for determining jurisdiction, but the method, used in the Chagos case, was developed in the South China Sea case.

Some logical connection between the second question in the Chagos case (“to what extent does Article 288 (1) permit a tribunal to determine issues of disputed land sovereignty as a necessary precondition to a determination of rights and duties in the adjacent sea?”) [12] and the first condition in the South China Sea case (The tribunal does not have jurisdiction if “the resolution of the Philippines’ claims would require the Tribunal to first render a decision on sovereignty, either expressly or implicitly” [13]) can be noticed. In both cases, the tribunal considers it important to determine the need for a decision on sovereignty to resolve the dispute. However, in the first case, the tribunal asks a theoretical question, pointing to an article that defines its interpretation and uses static approach to answer. The tribunal concludes that “dispute over territorial sovereignty would ever be considered to be a dispute”, concerning the interpretation or application of the Convention during The Conference [14]. The only exception is disputes, involving maritime boundaries and historic titles, which regulated by Article 298 (1) (a) (i). In the South China Sea case, the tribunal already asserts the need to determine sovereignty before adjudicating a lawsuit as a barrier to a dispute. The task of the tribunal in this case is to determine what is the relationship between the claim and the dispute about sovereignty in a particular situation.

There is also a similarity between the first question in the Chagos case (what is the nature of the dispute, encompassed in Mauritius’ First Submission?) and the second condition in the South China Sea case (the actual objective of the Philippines’ claims was to advance its position in the parties’ dispute over sovereignty). In both cases, the question is asked about a specific situation. Moreover, in both cases the goal of the claimant country is implied. However, in the first case, a more veiled explanation (the main nature of the dispute), which is essentially determined by intention, is used, since Mauritius’s previous behavior and its political ambitions are analyzed to answer this question. In the second case, the criterion is openly designated as the purpose of the claim. The second significant difference of the second decision is the presence of a new criterion – the consequences of the consideration of the claim for a dispute about sovereignty.

Another important feature of the second decision is a clear indication that in the presence of at least one of the conditions, the court does not have jurisdiction over the dispute, while in the Chagos case the court considered it necessary to consider both issues together.

Therefore, the South China Sea case decision is more detailed and clear and includes more criteria than the Chagos case decision. However, the general idea is clearly traced for determining the jurisdiction of disputes.

In a dispute between Ukraine and Russia, the decision of the tribunal will depend on the recognition of the dispute on sovereignty as legitimate, upon condition that the tribunal does not deviate from the course of previous decisions. But a new jurisdiction test is possible because there is no enduring tradition.

Therefore, if the LOS tribunal considers the jurisdiction of mixed disputes, related to sovereignty over land, factors, such as the need for a preliminary decision on sovereignty over land, the intention of the plaintiff party and the consequences of resolving the claim for a sovereignty dispute, are taken into account. The introduction of additional criteria in subsequent decisions should not be ruled out, since the approach to determining jurisdiction over disputes, related to land, is at the initial stage of the formation of both doctrine and practice.

4. Discussion

The conclusion of Robert G. Volterra, Giorgio F. Mandelli, and Álvaro Nistal assumptions about a possible scenario for a decision in a dispute between Ukraine and Russia as well as identifying the nature of the dispute as one of the key issues in both Chagos case and South China case decisions [15]. However, the authors see the dissention between weights on the applicant's own formulation of its claims [15]. But the current research has shown that the second condition in the South China Sea case (the actual objective of the Philippines' claims was

to advance its position in the parties' dispute over sovereignty) has a common focus with the first question in the Chagos case (what is the nature of the dispute, encompassed in Mauritius' First Submission?).

Alexandre Pereira da Silva considers the analyzed case-law to be contradictory and sees the possibility of confusion in subsequent decisions [10]. However, the conclusions of the current study see the connection and the certain evolution between both decisions. However, the assumption of Pereira da Silva about the subsequent concretization of questions in tests for determining jurisdiction [10] coincides with the conclusions of this study.

The need to develop a single jurisdiction test in the current research is in line with the conclusion of Alexander Proelss that all means of dispute settlement in terms of Art. 287 (1) UNCLOS should develop and follow a uniform approach as to the limits of their jurisdiction in order to provide for the necessary legal certainty [11].

Therefore, it is important to note the consistency of scientific research regarding the jurisdiction of ships and tribunals, including this study on the relationship between the Arbitration before an arbitral tribunal, constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, An Arbitration before an arbitral tribunal, constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China and Dispute, Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), the need for clarity in determining the jurisdiction of mixed disputes and finding a fair balance between protecting the sovereignty of states and the guarantee of the rights, defined in The Law of the Sea Convention.

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