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Attempted Annexation of Crimea and Maritime Environment Legal Protection

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ABSTRACT

This article is devoted to establishing the real situation with the legal protection mechanisms for maritime ecosystems adjacent to the Crimean Peninsula and to elaborate the relevant proposals. Its authors reflected and analyzed the framework on the current interstate conflict-related challenges to

the ecology of the Black Sea and Sea of Azov. Researchers watched the current proceedings that Ukraine initiated in this area and proposed additional legal and organizational steps for Ukraine and other civilized nations to improve the ongoing situation. Article proves that the current mechanisms of the international human rights and ecologic law are not well applicable to those issues as they do not include the preliminary consent of other conflict's State party. Article reflects the key challenges for maritime environment, including uncontrolled fishing, discharge of sewage from coastal cities, significant pollution due to the Black Sea Fleet activities, pollution due to the uncontrolled operation of drilling facilities, destruction of unique Karkinitsky and Kalamitsky bays's seabed, pollution of those bays by Northern Crimea's chemical industry, desalination plants' construction in the peninsula, artificial usage the external borders of the Crimea-adjacent marine protected areas for Russia's territorial claims spreading. The mechanisms, established by the international maritime law, used by Ukraine since 2015, like Case No. 2017-06 "Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait" in the ad hoc Arbitrary Tribunal regarding the United Nations' Convention on the Law of the Sea, 1982 are not too effective in the environmental issues. Article pointed that in this Case No. 2017-06 Tribunal rejected own jurisdiction to the Ukraine's conventional demands as coastal State for the Crimean Peninsula, including the relevant issues of the maritime ecology. Authors propose to start preparations on Ukraine's next usage the mechanisms, established by the UN Convention on the prohibition of military or any other hostile use of environmental modification technique, 1976. Relevant risks and possible results of such eventual usage were evaluated in the article.

The key words: *arbitration tribunal, Black Sea, Crimea, environmental modification technique, international legal disputes, interstate conflict, maritime environment, Sea of Azov.*

Introduction

Issues of protection the maritime environment reflect the fundamental natural principles on modern international law. They stay on the crossroad of the maritime, ecologic and human rights law. But in special situation, when the maritime spaces where pollution, dumping and illegal excavation of the biologic and mineral sources happens in the conflict zone the international humanitarian and criminal law also come to this meeting. So, the situation of protection the maritime spaces of Black Sea and Sea of Azov (hereinafter –

BS&SA) including the Kerch Strait, attached bays and estuaries, that are adjacent to the Crimean Peninsula is specific.

But the issues of legal protection of BS&SA's environment in conditions of the Ukrainian-Russian interstate conflict have as the relevant actuality, so the broad legal, conventional, precedent and doctrinal ground, which is still not researched now. Russia's attempt to redefine the legal order of the Azov-Black Sea basin has in recent years become an increasingly prominent aspect of the Russian-Ukrainian (and Russian-Western) conflict (Atland, 2021, p. 6). Ukraine's state bodies have any sustainable vision on those issues, and they do not program effectively own activities in this area (Criticism by Environmentalists of the Nature Conservation Draft Strategy: Forgotten Crimea). However, the situation in the BS&SA sharply raised the question of non-standard and asymmetric methods of ensuring and implementing the jurisdiction of a coastal state (Kormych, Averochkina & Gaverskyi, 2020, p. 34). Such an approach is especially relevant to protecting the marine environment in the sea areas where the nominal legal jurisdiction and effective control do not match. Besides, the development of Ukrainian environmental policy within frameworks of the European integration process demands a new approach to management as a combination of regulation and motivation based on sustainability (Shevchenko et al., 2021, p. 57), which, considering the current situation in the Ukrainian part of BS&SA, turns us to seek ways and means of most effective utilization of available international instruments to protect the maritime environment.

Methodology

In this article we have to research and compare the sources of the international humanitarian, criminal, ecologic and maritime law, to evaluate the level of their implementation in the ongoing interstate judicial proceeding. Also, we must determine the challenges that arise from the situation with the Crimea for the

BS&SA ecology and to propose the additional mechanisms of their solution. So, the formal juridical, comparative, historic and prognostic methods will be used. The goal of this article is to establish the real situation with the legal protection mechanisms for BS&SA's ecosystems adjacent to the Crimean Peninsula and to elaborate the relevant proposals. The tasks of this essay are to reflect and analyze the framework on the conflict-related challenges to the BS&SA's ecology, to watch the current proceedings Ukraine initiated in this area and to propose additional legal and organizational steps for Ukraine and other civilized nations to improve the ongoing situation.

1. Framework of the Crimea-related challenges for the maritime ecology

The illegal occupation and the attempted annexation by the Russian Federation (hereinafter – RF) of the Autonomous Republic of Crimea and city of Sevastopol (hereinafter – the Crimea) in 2014 started the Russian-Ukrainian ongoing conflict, which become a key factor for further development of the BS&SA ecosystems. The case relates to Russia's occupation of Crimea in 2014, fundamentally disrupted the maritime order in the BS&SA (Schatz & Koval, 2019).

The attempted annexation of the Crimea have been condemned in a series of international acts, including UN General Assembly resolutions 2014 68/262, 2016 71/205, 2017 72/190, 2018 73/263 2019 74/168, 2020 75/192, 2018 73/194, 2019 74/17, 2020 75/29, resolutions of the OSCE Parliamentary Assembly (Resolution on militarization by the Russian Federation of the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, the Black Sea and the Sea of Azov, 2019), of the Parliamentary Assembly of the Council of Europe 1988 (2014), 2028 (2015), 2067 (2015), 2112 (2016), 2132 (2016), 2145 (2017), 2198 (2018), 2231 (2018) etc., of the European Parliament's resolutions

2014/2841 (RSP), 2014/2965 (RSP), 2016/2556 (RSP), 2016/2692 (RSP), 2017/2596 (RSP), 2017/2869 (RSP), 2018/2754 (RSP), 2018/2870 (RSP), 2019/2734 (RSP), 2019/2202 (INI) etc.

Those acts paid special attention to the brutal violation by the RF the fundamental human rights, including rights of the indigenous peoples and minorities in the Crimea, to the Russia's ongoing aggression against Ukraine, on committing by the RF's representatives the war crimes and crimes against humanity in the Ukraine's occupied territories. Prosecutor of the International Criminal Court in her reports in 2019 and in 2020 pointed, that during the occupation the Crimea by RF such international crimes allegedly were committed by Russia's authorized representatives on the peninsula, as brutal violations, reflected by the points 'i', 'ii', 'v', 'vi' and 'vii' of part 2 'a' and by the points viii, xiii and xxi of part 2 'b' of article 8 of the ICC Rome Statute (Report on Preliminary Examination Activities, 2020).

The attempted annexation the Crimea by Russia was not recognized by the international community. Human rights violations in the Crimea, including racial and other discrimination of the Crimean Tatars and ethnic Ukrainians now are the subject to consideration in international courts, including the International Court of Justice (case 166) and the European Court of Human Rights (case 20958/14 and others). European Court established in its Decision on 16 December 2020 that RF's administrative practices exist in the Crimea since 2014 on systematic violation the European Convention of Human Rights.

UN structures, such as UN Human Rights Committee, recognised the responsibility of RF for violations the international law in the Crimea since 2014 (Concluding Observations on the Seventh Periodic Report of the Russian Federation; List of Issues in Relation to the Eighth Periodic Report of the Russian Federation). Numerous cases on protection the investments were started by Ukraine's business entities regarding ongoing events in the Crimea (NJSC Naftogaz

of Ukraine (Ukraine) et al. v. the Russian Federation). And more, some cases were initiated by Ukraine on violations the international maritime law such as demands of the UN Convention on the Law of the Sea, 1982 (hereinafter – UNCLOS) in the PCA's Arbitrary Tribunals and International Tribunal for the Law of the Sea (hereinafter – ITLOS).

As experts of the Association of the Reintegration of Crimea (hereinafter – ARC) mentioned already, the attempted annexation of the Crimea such fundamental challenges for the ecology of the entire BS&SA as:

– uncontrolled and unregulated mass industrial fishing (poaching) in temporarily occupied Crimea (as well as in the Novoazovsky district of the Donetsk region) in the BS&SA waters, including the Sivash Bay;

– massive discharge of sewage and household waste from coastal cities of Crimea, including Sevastopol, where sewage treatment facilities have degraded or completely ceased their activities since 2014;

– significant pollution of the BS&SA waters due to the activities of the Black Sea Fleet of the RF, in particular with oil products, propellant components, effluents, and pollution due to the discharge and flooding in the framework of the Russian military facilities in the sea;

– risks of radioactive contamination of the BS&SA water area due to the expected deployment of nuclear weapons in Sevastopol;

– significant pollution of the BS&SA water area with oil products due to the illegal and uncontrolled operation by Russia of drilling facilities on the continental shelf of Ukraine in the Black Sea (Arkhangelskoye, Golitsinskoye, Odeskoe, Shtormovoye oil shelf fields);

– destruction of unique seabed, island and coastal ecosystems of the Karkinitsky and Kalamitsky bays, including the wetlands of global importance and the areas for spawning and feeding of

commercial fish stocks, due to the massive uncontrolled excavation of sea sand from the shelf by the Russian-controlled entities;

– the predatory usage by the chemical industry of the Northern Crimea of Sivash for waste disposal, including utilization of the unique Sivash brine as raw material; pollution of the Karkinitsky Bay and the air above it with emissions from this industry;

– the risks from the construction of the industrial desalination plants announced by the RF in Crimea, that might result in the discharge of waste from their activities into the sea;

– the artificial usage by Russia of the external borders of the marine protected areas, established by Ukraine before the occupation of the Crimea, for the further spread of its own territorial claims ("Small Philophoric Field", "Swan Islands", "Karkinitsky" by decree of the Russian Government dated September 13, 2018 № 1091, by prescript of the Russian Government dated November 30, 2019 № 2874-p etc.) (Crimea and Ukrainian Maritime Environmental Strategy).

2. Realization the UNCLOS mechanisms and BS&SA ecology

Relevant Russia's violations the international demands to the maritime environmental issues, regarding the relevant UNCLOS demands are reflected in the pending case No. 2017-06. (Ukraine v. the RF) "Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait" in the arbitrary tribunal under aegis of the Permanent Court of Justice. Some issues of the Russia's behavior contrary the UNCLOS demands, relevant to the BS&SA ecology are reflected in other arbitration cases, "Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen" (Ukraine v. the RF) No. 2019-28, and "NJSC Naftogaz of Ukraine (Ukraine) et al. v. the RF" No. 2017-16, also as in Case No. 26 Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. RF), in the ITLOS.

On 16.09.2016, Ukraine served for this case on the RF a Notification and Statement of Claim under Article 287 and Annex VII to the UNCLOS referring to a dispute concerning Ukraine's rights in the BS&SA. The demands of Ukraine in their major part grounded on its rights as a coastal State for Crimea. In Case No. 2017-06 Ukraine pointed that the RF invaded and occupied the Crimea, and then purported to annex it. The RF "categorically denied" those allegations; instead, the RF pointed out in this case that a "referendum on the future of the peninsula" was allegedly held in response to a "coup d'état in Kiev in February 2014," which "provoked deep division in the Ukrainian society."

The RF declared that since "the majority of voters opted for reunification" "Crimea declared its independence on March 17, 2014 and on March 18 it concluded an international treaty on accession to the RF". The RF adds in this case that following Crimea's accession, it "assumed all the rights and duties of the coastal State in relation to the waters adjacent to the peninsula" and that "internationally, Russia unconditionally affirmed its status as a coastal State in relation to waters surrounding Crimea".

Regarding the Ukraine's Memorial, 2018 in this Case No. 2017-06 Tribunal researches the alleged violations of UNCLOS by RF, exactly by:

– excluding Ukraine from accessing fisheries within 12 miles of the Ukrainian coastline and within its EEZ, by exploiting such fisheries, and by usurping Ukraine's exclusive jurisdiction over such living resources; by unlawfully interfering with Ukraine's exclusive jurisdiction over Ukrainian-flagged fishing vessels in Ukraine's territorial sea, EEZ, and continental shelf.

– excluding Ukraine from accessing gas fields in its territorial sea, EEZ and continental shelf, and extracting gas found in such fields, and usurping Ukraine's exclusive jurisdiction over the hydrocarbons in such fields; by causing proprietary data on the relevant hydrocarbon resources;

– failing to cooperate with Ukraine concerning the May 2016 oil spill off the coast of Sevastopol etc.

– its unauthorized and unilateral construction of the Kerch Strait bridge and of submarine power cables, gas pipeline across the Kerch Strait; by impeding transit passage through the Kerch Strait as a result of the Kerch Strait bridge; by failing to cooperate and share information with Ukraine concerning the environmental impact and the risks and impediments to navigation concerning of the Kerch Strait bridge;

– aggravating and extending the dispute between the parties since the commencement of this arbitration in September 2016, including by completing construction of the Kerch Strait bridge, expanding its hydrocarbon and fisheries activities in Ukraine's territorial sea, exclusive economic zone (hereinafter – EEZ), and continental shelf (Award Concerning the Preliminary Objections of the Russian Federation; UN Will Research the Maritime Ecology Challenges, Connected with Crimea).

On those issues, Ukraine requested the Tribunal to order the RF to cessation and restitutio in integrum, including ending its purported exercise of prescriptive jurisdiction over the living and non-living resources found in zones within which the UNCLOS guarantees to Ukraine exclusive jurisdiction over such resources.

The RF submits that the PCA's Tribunal has allegedly "no jurisdiction" over Ukraine's claims as "the dispute in this case concerns Ukraine's claim to sovereignty over Crimea" and a "dispute over territorial sovereignty is not a dispute concerning the 'interpretation or application of the Convention' pursuant to Article 288(1) of UNCLOS." Also, the RF declared that case No. 2017-06 is allegedly inadmissible as it is related with military activities, as UNCLOS allegedly is not related to the legal regime of Sea of Azov and Kerch Strait, as Ukraine allegedly failed to comply the negotiations procedures demanded by UNCLOS and other acts also (Award Concerning the Preliminary Objections of the Russian Federation).

This PCA's ad hoc Tribunal adopted on February 21, 2020 the Award where it upheld the RF's objection that the Tribunal has no jurisdiction over Ukraine's claims, to the extent that a ruling of the Tribunal on the merits of Ukraine's claims necessarily requires it to decide, directly or implicitly, on the sovereignty of either Party over Crimea. In Award Tribunal agreed that the RF's claims on the Crimea as on the "own" territory and that Tribunal has no competence to research the grounds of those claims. Of course, those claims are absolutely invalid, as it is clear from the international law, but the only fact of their presence allowed to the RF to block the Ukrainian coastal State's demands including ecological ones.

More in the Award the Tribunal found that the RF's objection that the Tribunal has no jurisdiction over Ukraine's claims concerning activities in the Sea of Azov and in the Kerch Strait as on "internal waters of Ukraine and RF where the UNCLOS is not applicable" does not possess an exclusively preliminary character, and accordingly decided to reserve this matter for consideration and decision in the proceedings on the merits. At the same time Tribunal rejected the other objections of the RF to its jurisdiction. It requested Ukraine to file a revised version of its Memorial, which shall take full account of the scope of, and limits to, the Tribunal's jurisdiction as determined in this Award.

Inter alia, the Tribunal rejected the RF's objection on the issue that Ukraine's claims concerning fisheries, protection and preservation of the marine environment, and those demands would be allegedly addressed to a special arbitral tribunal under UNCLOS Annex VIII, but not to the current Tribunal, constituted under Annex VII to the UNCLOS. The PCA's Tribunal mentioned for this issue that "the dispute before it cannot and should not be split or fragmented" (Award Concerning the Preliminary Objections of the Russian Federation). The Memorial Ukraine must give execution the Award is not available, but we may suppose not that the issues of

BS&SA's environment related to the pollution from the Crimea will not be in further well reflected in this case. So, we need to think about some other ways for such environment' protection, except the ongoing UNCLOS arbitration.

3. Possible steps for protection the BS&SA ecology on the universal level

The aggravating ecological crisis in the Crimea necessitates the search for mechanisms to establish the facts of encroachment on the relevant BS&SA's maritime environment, to determine the perpetrators and bring them to justice, to ensure compensation for the damage caused. Common practice of the International Court of Justice, like cases "Argentina v. Uruguay (Case for the Construction of Pulp Mills on the Uruguay River)" and "Nicaragua v. Costa Rica (Case for the Construction of a Road along the San Juan River)" (Crimea and Ukrainian Maritime Environmental Strategy) is not full applicable for the interstate conflict situations. Ukraine now has a limited, abovementioned possibilities in the ICJ as RF ratified almost all relevant conventions with reservations and this situation makes impossible the Ukraine's application to the ICJ without RF's preliminary consent on it. Such possibilities do not include the universal or regional ecologic conventions, and regarding the UNCLOS the above pointed Arbitrary Case No. 2017-06 did not become the very effective tool of protection the maritime environment.

Acts of international humanitarian law do not establish special requirements for environmental protection in the occupied territories. The IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 mentions these issues only in measuring the need to ensure "public health and hygiene" (Article 56), and approves a draft agreement relating to hospital and safety zones and localities in Annex I, which may also apply to "localities which the Powers may utilize for the same purposes". Such zones may include

areas of special environmental protection or environmental disaster, but they may be established only by mutual consent of the parties to the conflict. Mechanisms for control and monitoring of compliance with these requirements of the RF do not exist, as these functions in world practice are inherent in the International Committee of the Red Cross, which currently has a very restrained position on Crimea, and does not have a properly organized representation in the region.

At the same time, acts of international criminal law establish requirements for the parties to the conflict through criminalization in para. iv p. "b" part 2 Art. 8 of the ICC Rome Statute of such a war crime as "other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law", namely, the Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated. It is obvious that the commission of such a crime is possible only during an active form of hostilities and does not cover the situation of occupation without such actions. Therefore, the use of the mechanisms of the ICC, which has been activated by Ukraine since 2015, is considered impossible to protect the environment of Crimea, and the environmental damage to the peninsula is not and will not be investigated by the ICC Prosecutor's Office in the abovementioned case.

On the other hand, such a not very known act as the Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976 is still in force for 78 countries. This document was ratified without reservation by a Decree of the Presidium of the Supreme Soviet of the USSR № 7538-IX (Ukaz o ratifikatsii Konventsii o zapreshchenii voiennogo ili lubogo inigo vrazhdebnogo ispolzovaniia sredstv vozdeistviia na prirodnuiu sredu, 1978), which is important for further analysis of the situation.

As the RF declares itself as the extension of the USSR so it therefore recognizes the validity of the Convention, 1976. Ukraine, regarding the Article 7 of its Law "On Succession of Ukraine" of September 12, 1991 № 1543-XII is the successor of rights and obligations under international treaties of the USSR, which "do not contradict the Constitution of Ukraine and to the interests of the republic" (Zakon pro pravonastupnytstvo Ukrainy, 1991). Thus, Russia has direct responsibilities under Convention, 1976, and Ukraine can apply the mechanisms of this treaty, including in the current interstate armed conflict. For part 1 of Article 1 of the Convention, 1976 its member states are obliged not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party (Babin, 2021).

In Article 2 of this Convention "environmental modification techniques" refers to any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space. Given the current situation on the maritime spaces around the Crimean Peninsula, such changes can be considered at least as the construction of the Kerch Bridge to militarize the peninsula and the construction of thermal power plants operating on offshore gas extracted from the shelf, construction the desalination plants of the seashore, excavation the sand in the Karkinitsky Bay etc. These actions have signs of wide scale effect on the environment; they bear signs of manipulation of the natural processes (currents of the Kerch Strait, minerals of the Black Sea shelf etc.).

For Article 4 of the 1976 Convention, States Parties shall take any measures it considers necessary in accordance with its constitutional processes to prohibit and prevent any activity in violation of the provisions of the Convention anywhere under its jurisdiction or control. The value of this act in the BS&SA's maritime

environment dimension also lies in the fact that the 1976 Convention is applicable, regardless of the situation of peace or war. As it is well known, the RF denies the state of the armed conflict between itself and Ukraine but declares in the above pointed Arbitrary Case No. 2017-06 the status of an allegedly "disputed territory" over the Crimea. Moreover, the application of the 1976 Convention does not require the consent of the offending State. Dispute settlement mechanisms under the 1976 Convention are provided for in its Article. 5. First of all, it is bilateral interstate consultations with the use of services of international organizations, as well as the Consultative Committee of Experts (Part 1 of Article 5). Regardless of such possible consultations, under Part 2 of Article 5 of this agreement, the dispute may be referred by the UN Secretary-General to such Consultative Committee of Experts within one month of receiving a request from a State Party (for which the consent of other States is not required) (Babin, 2021).

In this case, any State Party may appoint an expert to this ad hoc Committee, the functions and rules of procedure of which are set out in the Annex to the 1976 Convention. Therefore, such Committee will be convened (formed) only if the State requests it to apply Convention of 1976. Under this Annex, the Committee is chaired by the UN Secretary-General or by his representative as Committee's chairman, whose task is to clarify the facts and set out the expert positions to be reflected in the Committee's final document (summary). Following consideration of the request, the Committee shall transmit to the UN Secretary-General such summary of its findings of fact, incorporating all views and information presented to the Committee during its proceedings; the Secretary-General shall then distribute the summary to all States Parties to the 1976 Convention.

It is noteworthy that this summary is not approved by a vote of experts and must be agreed by consensus, and the Committee can approve by a majority vote only its own rules of procedure ("procedural

questions"). It is obvious that under the conditions of initiating the procedure under part 2 of Article 5 of the 1976 Convention, this Committee is likely to include both RF and a number of other pro-Russian states. At the same time, given the participation in the 1976 Convention of most civilized countries of the world and their obvious interest in the situation on BS&SA's maritime environment, they also will delegate own experts to the Committee, and Russia will not have an advantage in such ad hoc body. However, the number of experts in the Committee is not limited by the 1976 Convention and by its Annex. Therefore, the Committees' document (summary) will reflect the views of civilized countries on the BS&SA's maritime environment challenges related to the occupation of the Crimea.

In addition to consultations and to the formation of the ad hoc Committee, part 3 of Article 5 of the 1976 Convention provides another way of resolving disputes under this treaty. Under this rule, any State Party to this Convention, 1976 may lodge a complaint against a State, violating this treaty, with the UN Security Council. Such a complaint must contain all relevant information, as well as all possible evidence to support its validity. Part 4 of Article 5 of this Convention, 1976 points that upon receipt of such a complaint, the UN Security Council may conduct an investigation and must inform the Convention's parties on such investigation's results (Babin, 2021).

Regarding the results of such investigation, according to Part 5 of Article 5 of this Convention, the UN Security Council may decide that such Party concerned has been harmed or is likely to be harmed as a result of violation of the Convention. If the Security Council approves such decision, each Convention's State Party will be obliged to provide or support assistance, in accordance with the provisions of the UN Charter, to any State Party whose damage has been approved, at the request of that State. Therefore, this process will involve several stages, the first of which will be the UN Security Council' decision to launch an investigation procedure.

It is noteworthy that according to the requirements of part 3 of Article 27, part 3 of Article 52 of the UN Charter, 1945 the RF, as the state against which the complaint will be filed, will not have the right to veto the initiation of such investigation and of the subsequent adoption of the relevant decision by the UN Security Council. Although it can be expected that the results of the investigation will be blocked, for example, due to the veto of communist China, or it will not receive the required majority of members of the UN Security Council, it is likely that the investigation procedure itself will be conducted by the Council. After all, the procedural decision to start it has a chance to recruit the required number of the Security Council's members of the and not be blocked by China.

Therefore, parts 2 and 3 of Article 5 of the 1976 Convention provide Ukraine with two existing and relatively simple mechanisms for special discussion and study of the main challenges to the BS&SA's maritime environment in the conflict zone at the highest possible level – under the auspices of the UN Secretary General or the UN Security Council, respectively. Also, nothing prevents Ukraine from choosing all three procedures provided for in Article 5 of the Convention, 1976 (consultations, ad hoc Committee's investigation and UN Security Council' investigation) for various ecologic challenges of BS&SA's maritime environment at the same time.

Although such investigations are likely to result in the UN interim documents only, the very fact of such a process will increase the significance of BS&SA's maritime environmental issues to the highest possible level and at the same time will ensure the establishment of facts by either ad hoc Committees experts or the UN Security Council.

Conclusions

Legal mechanisms of protection the BS&SA's maritime environment in conditions of the ongoing interstate Russian-Ukrainian conflict must be realized by Ukraine in its external policy. Proceeding in the PCA Arbitrary Tribunal, Case No. 2017-

06, did not become the very effective tool of such environmental protection. Ukraine as coastal state must start other universal legal mechanism of such protection, including the procedures, established by the Convention, 1976. Such mechanisms demand not only well-grounded legal position's elaboration, but the systematic work of the evidences' gathering and fact-checking. At the same time, it is necessary to pragmatically assess both Ukrainian diplomacy's potential and initiative, and the level of present experts' funding and qualification. That is why, unfortunately, such conventional mechanisms of maritime environmental protection, despite their absolute reality and obvious expediency, will most likely remain exclusively a matter of further scientific and expert discussion. At the same time the present forms of activities of individuals and legal entities, such as human rights and ecologic NGOs, to be executed for protection the BS&SA's maritime environment must be a topic of special scientific research.

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Бабін Б., Чвалюк А., Плотніков А. Замах на анексію Криму та правовий захист морського довкілля. – Стаття.

Статтю присвячено встановленню особливостей механізмів правового захисту морських екосистем, які прилягають до Кримського півострова, та розробці відповідних пропозицій. Її автори відобразили та проаналізували питання, пов'язані з викликами для екології Чорного та Азовського морів за умов міждержавного конфлікту. У статті відображено поточні міжнародно-правові процеси, розпочаті Україною за цим напрямом, та запропоновано додаткові правові та організаційні заходи щодо вдосконалення реагування України та інших цивілізованих держав світу на ситуацію, що триває. У статті доведено, що нинішні механізми міжнародного права прав людини та міжнародного екологічного права є погано застосовними до цих питань, оскільки потребують на попередню згоду іншої держави-учасниці конфлікту. Стаття відображає ключові виклики для морського середовища, включаючи неконтрольоване рибальство, скидання стічних вод прибережних міст, значне забруднення через діяльність Чорноморського флоту та неконтрольовану роботу бурових установок, знищення унікального морського дна Каркинітської та Каламітської заток, їх забруднення хімічною промисловістю Північного Криму, будівництво опріснювальних установок на півострові, штучне використання зовнішніх меж прилеглих до Криму морських заповідних територій для розширення територіальних претензій Росії. Механізми, встановлені міжнародним морським правом, що використовуються Україною з 2015 року, такі як справа № 2017-06 "Спір щодо прав прибережної держави у Чорному морі, Азовському морі та Керченській протоці" у спеціальному арбітражі відповідно до Конвенції ООН з морського права 1982 р., виявилися не надто ефективними з екологічних питань. У статті доводиться, що у справі № 2017-06 арбітраж визнав відсутність власної юрисдикції щодо конвенційних вимог України як прибережної держави для Кримського півострова, включаючи відповідні питання морської екології. Автори пропонують розпочати підготовку до наступного використання Україною механізмів, встановлених Конвенцією ООН про заборону військового або будь-якого ворожого використання засобів впливу на довкілля 1976 р. У статті оцінено відповідні ризики та можливі результати такого потенційного використання.

***Ключові слова*:** Азовське море, арбітражний трибунал, засоби впливу на довкілля, Крим, міждержавний конфлікт, міжнародні правові спори, морське середовище, Чорне море.

Бабин Б., Чвалюк А., Плотников А. Покушение на аннексию Крыма и правовая защита морской окружающей среды. – Статья.

Статья посвящена определению особенностей механизмов правовой защиты морских экосистем, прилегающих к Крымскому полуострову, и раз-

работке соответствующих предложений. Ее авторы отобразили и проанализировали вопросы, связанные с вызовами для экологии Черного и Азовского морей в условиях межгосударственного конфликта. В статье отображены текущие международно-правовые процессы, начатые Украиной в этом направлении, и предложены дополнительные правовые и организационные меры по усовершенствованию реагирования Украины и других цивилизованных государств мира на сложившуюся ситуацию. В статье доказано, что нынешние механизмы международного права прав человека и международного экологического права плохо применимы к данным вопросам, поскольку требуют предварительного согласия другого государства-участника конфликта. Статья отражает ключевые вызовы для морской среды, включая неконтролируемое рыболовство, сброс сточных вод прибрежных городов, значительное загрязнение в связи с деятельностью Черноморского флота и неконтролируемую работу буровых установок, уничтожение уникального морского дна Каркинитского и Каламитского заливов, их загрязнение химической промышленностью Северного Крыма, строительство опреснительных установок на полуострове, искусственное использование внешних границ прилегающих к Крыму морских заповедных территорий для расширения территориальных претензий России. Установленные международным морским правом механизмы, используемые Украиной с 2015 года, такие как дело № 2017-06 “Спор о правах прибрежного государства в Черном море, Азовском море и Керченском проливе” в специальном арбитраже в соответствии с Конвенцией ООН по морскому праву 1982 г., оказались не слишком эффективными для решения экологических вопросов. В статье доказывается, что в деле № 2017-06 арбитраж признал отсутствие собственной юрисдикции в отношении конвенционных требований Украины как прибрежного государства для Крымского полуострова, включая соответствующие вопросы морской экологии. Авторы предлагают начать подготовку к последующему применению Украиной механизмов, установленных Конвенцией ООН о запрещении военного либо любого иного враждебного использования средств воздействия на природную среду 1976 года. В статье оценены соответствующие риски и возможные результаты такового потенциального использования.

***Ключевые слова*:** Азовское море, арбитражный суд, Крым, межгосударственный конфликт, международные правовые споры, морская окружающая среда, средства воздействия на окружающую среду, Черное море.

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