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**International Legal Regulation of Law Enforcement Measures  
within Maritime Areas**

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academic degree Doctor of Philosophy in Law

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5.1.5 - International legal sciences

## GENERAL DESCRIPTION OF PhD THESIS

**Relevance of the research topic**

In 1886, in the “Lectures on International Law”, Prof. N.M. Korkunov observed that civilized international community primarily needs appropriate means of international communications. Thus, international law should ensure the international use of natural and artificial ways of communication... From the natural routes of communication, the most important for international life is the high seas<sup>1</sup>... Since the high seas are in the common use of all peoples, the protection of security in the sea is the common cause of all states.<sup>2</sup>

Nothing changes in the XXI century: the fight against crime at sea is really becoming a “common cause of all states”, especially since its level is constantly increasing. In February 2019, at the initiative of Equatorial Guinea, a meeting of the UN Security Council “Transnational organized crime at sea as a threat to international peace and security” was convened. Y. V. Fedotov, Executive Director of the UN Office on Drugs and Crime, “recalled that two-thirds of the world's surface is oceans, most of which are outside the territorial waters of states and in fact do not fall under national criminal jurisdiction”<sup>3</sup>. He stressed that offenders, especially on the high seas, “act with impunity, which is partly due to complex issues of jurisdiction” and called on the international community to “strengthen mutual legal and technical assistance in the fight against organized crime at sea”<sup>4</sup>.

It is well known protection of law from violation is provided, firstly, by the police measures, i.e. by such regulations, which prevent this violation, and when it took place, then there is always a punishment<sup>5</sup>. At the same time, “in all civilized

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<sup>1</sup> Korkunov M.N. International Law: Lectures, read in The Military. Jurid. Acad. N. Korkunov . St. Petersburg: Ed. lieut. Shidlovsky, 1886. p. 179.

<sup>2</sup> Korkunov M.N. International Law: Lectures, read in The Military. Jurid. Acad. N. Korkunov . St. Petersburg: Ed. lieut. Shidlovsky, 1886. p. 182.

<sup>3</sup> Transnational organized crime at sea is becoming increasingly sophisticated. URL.: <https://news.un.org/ru/story/2019/02/1348521> (Accessed: 29.11.2020).

<sup>4</sup> Transnational organized crime at sea is becoming increasingly sophisticated. URL.: <https://news.un.org/ru/story/2019/02/1348521> (Accessed: 29.11.2020).

<sup>5</sup> Course of Russian Criminal Law / op. A. Lokhvitsky, Dr. of science. 2nd ed., revised and enlarged, with the cassation decisions. St. Petersburg: printing house of Y.O. Schroeder, 1871. P. 1.

states, the specific bearer of public punitive law is the supreme government power”, which is “the subject of punitive law in relation to all criminals”<sup>6</sup>. However, when it comes to public international law, the “implementation of police measures” (or law enforcement measures) with the aim of “protecting public law from violation” is inevitably accompanied by objectively arising difficulties.

On the one hand, the rules of international law providing for the use of law enforcement measures to combat crime at sea have been set up for the “greater good” of the international community as a whole. However, the development of a system of the existing binding legal principles prohibiting the use of law enforcement measures within maritime areas<sup>7</sup> followed by universal recognition of the freedoms of the high seas.

Subsequently, a law enforcement officer who carries out law enforcement measures within maritime areas is forced to answer questions that are not always answered unequivocally. Does it mean that some freedoms, in particular, the freedoms of the high seas, are sacrificed for the sake of the “greater good” when deciding to apply coercive measures against carrying a foreign vessel?<sup>8</sup> And is it possible to increase security by losing some freedoms in order to, ultimately, protect these freedoms?<sup>9</sup> Finally, how can human rights be effectively protected in the implementation of the relevant measures, given the inevitable difficulties encountered in their implementation?

During the twentieth century, there was both a codification of the customary principle of freedom of the high seas and the formation of an international legal institution of law enforcement measures within maritime areas, which from the object of discussion and dispute turned into an effective set of measures that could be used to combat crimes and other offenses at sea. To date, law enforcement measures

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<sup>6</sup> Tagantsev N. Punitive activity of the state and its borders: January : Journal of Civil and Criminal Law: January. Publication of the St. Petersburg Law Society. S.-Pb.: printing house of Governing Senate, 1882, B. 1. P. 6

<sup>7</sup> *For the purpose of this research and manuscript the terms “law enforcement measures within maritime areas”, “coercive measures for law enforcement purposes within maritime areas”, “coercive measures” will be used interchangeably.*

<sup>8</sup> Fink M. Maritime Interception and the Law of Naval Operations. The Hague, The Netherland, T.M.C. Asser Press. 2018. P. 63.

<sup>9</sup> Fink M. Maritime Interception and the Law of Naval Operations. The Hague, The Netherland, T.M.C. Asser Press. 2018. P. 63.

within maritime areas can be attributed to a variety of measures: hot pursuit, stopping, boarding, searching, seizure, convoy of the vessel, etc.

At the universal international level, these measures may be applied to such unlawful activities at sea as slave trade, drug trafficking, unauthorized broadcasting on the high seas, illegal transportation of migrants, terrorism, illegal fishing, piracy and other acts against the safety of navigation and fixed platforms located on the continental shelf, as well as other socially dangerous acts that threaten the security of the countries involved and their citizens. However, international cooperation of the countries' law enforcement agencies may actively combat crime at the bilateral and regional levels.

The exercise by states of their law enforcement function to combat crime at sea can't but limit the existing freedoms of the high seas, and, as some authors have noted, the conceptual understanding of the right to inspect a ship is transformed in the direction of perceiving this right not as an exception, but rather as an opportunity<sup>10</sup>. And this means that the concept of *mare clausum*<sup>11</sup> is gradually regaining its position, albeit in a transformed form, i.e. not in the sense of domination of the sea, but in the sense of the ability to exercise jurisdiction over a foreign ship.

In addition, in 2008, UN Secretary-General Ban Ki-moon in his report "Oceans and the Law of the Sea" noted that piracy, armed robbery at sea, terrorist acts against shipping, offshore installations and other maritime interests as well as some others offences are not only criminal activities, but pose a threat to security at sea<sup>12</sup>. This trend was later called the "securitization", which implies that a particular problem is considered a security threat<sup>13</sup>.

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<sup>10</sup> Fink M. Maritime Interception and the Law of Naval Operations. The Hague, The Netherland, T.M.C. Asser Press. 2018. P. 63.

<sup>11</sup> *Mare clausum* (lat.) — "closed sea". D. Selden's concept justifying the possibility of establishing ownership and domination of the sea.

<sup>12</sup> United Nations General Assembly, Oceans and the law of the sea : report of the Secretary-General [Electronic resource] : 10 March 2008. A/63/63 P. 15 // United Nations: [website]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/266/28/PDF/N0826628.pdf?OpenElement>.

<sup>13</sup> Percy S. Maritime Security. In: Ghenciu A., Wohlforth W. The Oxford Handbook of International Security.: Oxford University Press, 2018. P. 612.

In 2005, UN Secretary-General Kofi Atta Annan stressed that progress in development, security and human rights is possible only if all these elements are united. “We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights”<sup>14</sup>.

As a result, one can see the conflict of several phenomena that determine the implementation of law enforcement measures within maritime areas: respect for the freedoms of the high seas, respect for the principle of sovereignty, protection of law and order at sea, ensuring the security of states, protection of fundamental human rights and freedoms.

Organized crime at sea is a huge and actually a global problem. One of core issues is to determine the limits of possible and proper behavior of the people involved in the incident. The matter is improper application or misinterpretation and misunderstanding of the norms of international law can result in various complications of international relations between the countries. Hence, the development of scientifically based proposals regarding the nature and content of the international legal concept of law enforcement measures within maritime areas as well as working out measures to streamline international law enforcement activities at sea is relevant. This research helps to fundamentally understand the nature and role of law enforcement measures within maritime areas and their place in the system of international law. The findings of the research also have some theoretical and practical implications with regard to setting common standards in the implementation of coercive measures.

This study, in our opinion, fills this gap. It is important to note that the focus of this study is law enforcement measures within maritime areas applied to ships that not entitled to complete immunity in accordance with articles 95 and 96 of the 1982 UN Convention on the Law of the Sea.

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<sup>14</sup> Report of the Secretary-General: In larger freedom: towards development, security and human rights for all. 21 March 2005. U.N. Doc. A/59/2005. P. 6. URL: <https://undocs.org/A/59/2005> (Accessed March 03, 2022).

### **The state of scientific development of the topic**

Scholars such as J.C. Bluntschli (1876), S. Destunis (1846), P.C. Jessup (1927), A.V. Gefter (1880), N.A. Zakharov (1917), P.E. Kazansky (1901), L.A. Kamarovsky (1908), M.N. Korkunov (1886), T. Ortolan (1865), L.B. Otfel (1877), F. Perels (1884), A.K. von Raison (1905), V. Sievers (1902), A.N. Stoyanov (1875), M.A. von Taube (1894 – 1902), V.A. Ulyanitsky (1908), D. Westlake (1910), and others had focused their research on right to visit the vessel and right pursue the foreign vessel under the thread of *mare liberum vel clausum*.

Meanwhile international jurists like S.Y. Abramova, J. Allain, M. Vieira, C.J. Colombos, N.S. Konyukhova, N.D. Koroleva, Y. Makhovsky, G.M. Melkov, D.P. O'Connell, A. Peters, A. Petrig, Y. Pidzhakov, N.M. Poulantzas, G. Robin, A.P. Rubin, V.F. Sidorchenko, R. Walker, B. Fassbender, O. Hardy, and others discussed on the process of formation and codification of international legal norms governing the right to visit/search the vessel and the right to pursue the foreign vessel to combat certain offenses at sea.

Nevertheless, it is worth noting that the author of this research reckoned the works of A. Gallagher, A. Ghenciu, V. Gowlland-Debbas, D. Guilfoyle, F. David, N. Klein, A.W. Lowe, E. Papastavridis, K.W. Riddle, Yu.S. Romashev, R.G. Rayfuse, M. Fink, R.R. Churchill, and others as the core theoretical framework of this study.

General questions of the exercise of jurisdiction in the application of law enforcement measures are considered on the basis of the works of such authors as D. Ireland-Piper, P.D. Allot, G. Andreone, C.L. Blakesley, A.I. Boytsov, Y. Brownlie, M. Gavouneli, M. Garrod, G. Cataldi, A.R. Kayumova, S. Kay, A.F. Lowenfeld, I.I. Lukashuk, H.G. Maier, F.A. Mann, D.H. Marks, A.V. Naumov, L. Oppenheim, I.I. Osvetinskaya, C. Ryngaert, J. Fitzmaurice, R. Higgins, S.V. Chernichenko, O.S. Chernichenko, I. Shearer, M. Shaw, and others.

In identifying the features of the implementation of law enforcement measures within various maritime areas, the author relied on the work of researchers such as M.J. Aznar, R. Barns, I.P. Blishchenko, Y.V. Bobrova, G.I. Bogush, R.M. Valeev,

A.N. Vylegzhanin, V.N. Gutsulyak, D.N. Dzhunusova, I.N. Zolotukhin, A.L. Kolodkin, K.V. Krymskaya, G.I. Kurdyukov, S. Maisrikrod, B. Marten, S.V. Molodtsov, S. Oda, D.R. Rothwell, V.N. Rusinova, Y. Song, Y. Tanaka, R.M. Warner, D. Urquhart, M.D. Chong, and others.

The problem of observance of human rights law in the exercise of law enforcement function at sea is devoted to the research of such authors as S. Cunningham, K. Costello, N. Oudejans, B.H. Oxman, C. Pijnenburg, I. Papanicolopulu, C. Rijken, T. Spijkerboer, K.L. Stacey, T. Treves, B. Çalı, A. Schloenhardt, A.G. Oude Elferink and others.

In conclusion, the author uses the scholarly works of J.M. Broder, E.B. Ganyushkina, A.I. Zybkin, J.S. Lindborg, H. Freeman, J.J.F. Espenilla and others to trace the developing the common international standards for the implementation of law enforcement measures at sea.

However, the above-mentioned authors did not aim at comprehensive consideration of the international legal institution of law enforcement measures within maritime areas. Many issues still need for further research. To be specific: **the process of formation and development** of institution law enforcement measures within maritime areas; the **definition** of its essence and content, as well as its place in the system of international law; the **development** of a classification of law enforcement measures within maritime areas; **the determination** of the legal conditions (grounds) for the application of such measures within maritime areas with different international legal status and legal regime, as well as the **elaboration** of proposals for streamlining law enforcement activities at sea using international legal means, which, in our opinion, would significantly improve the efficiency of law enforcement within maritime areas.

**The object of the thesis** is the social relations that develop in the process of applying law enforcement measures within maritime areas.

**The subject matter of the research** is the international legal regulation of law enforcement measures within maritime areas.



**The purpose of the research** is to develop theoretical provisions and practical recommendations aimed at improving its effectiveness, as well as proposals for the formation of international legal standards in this area, which could form the basis for the development of international law, based on a comprehensive consideration of the international legal regulation of law enforcement measures within maritime areas.

To achieve the above goals, the following **objectives** are set:

- to investigate the process of formation and development of the international legal institution of law enforcement measures within maritime areas;
- to define the essence and content of this international legal concept;
- to determine the place of the international legal institution of law enforcement measures within maritime areas in the system of international law;
- to work out a classification of law enforcement measures within maritime areas;
- to articulate the requirements to government bodies authorized to law enforcement measures within maritime areas and their legal status;
- to investigate the legal conditions (grounds) for the application of law enforcement measures within maritime areas with different international legal status and legal regime;
- to analyze the adequacy between the implementation of law enforcement measures within maritime areas and respect for fundamental human rights and freedoms;
- to elaborate proposals for the development of international law aimed at streamlining law enforcement activities at sea;
- to propose and clarify the conceptual apparatus in the study area.

**The methodological approach of this PhD thesis**

The author applies methods of analysis and synthesis, as well as the formal legal method to determine set of coercive measures that can be designated as law

enforcement measures within maritime areas. The historical-legal method and functional comparative legal method has given rise to arguments about the development of the institution of law enforcement measures within maritime areas in the light of *the mare liberum vel clausum* discussion, as well as the need to carry out such measures at sea. It appears that the *law enforcement function* determines the existence of the institution of law enforcement measures within maritime areas in contemporary international law since investigated institution becomes a legal means for solving a social problem (crime at sea).

To develop international standards for the implementation of law enforcement measures within maritime areas several methods are being considered including functional comparative legal method. Since there are no relevant standards for the implementation of law enforcement measures within maritime areas at the international level, the most successful legal solutions of various national legal systems could be employed to develop them. While being settled, constant, uniform and certain the practice of states is an element of international custom which in turn is the source of international law<sup>15</sup>. Eventually fairly representative study of the experience of applying coercive law enforcement measures by various states under certain conditions lead to the conclusion about the formation of international customary norms regulating certain issues. It seems appropriate to use the approach formulated by the International Court of Justice in the North Sea Continental Shelf Case, that attention should be paid to the practice of the states “whose interests are specially affected”<sup>16</sup>.

While using the methods of idealization, legal modeling and legal forecasting author makes an important generalization that patterns of behavior of officials in detecting and securing evidence at suppressing illegal, unreported and unregulated fishing can be transformed into generally accepted methods of detecting and securing evidence of an offence at sea.

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<sup>15</sup> Romashev Yu.S. On the Main Elements of International Custom. In: Current Issues of Modern International Law: Materials of the XVI International Congress "Blishchenko Readings": in 3 parts / ex. ed. A. Kh. Abashidze, N.N. Emelyanova, A.M. Solntsev. Moscow, April 14, 2018. Part 1. M.: RUDN University, 2019. P. 273.

<sup>16</sup> C.M.: International Court of Justice. *North Sea Continental Shelf cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*. Judgment of 20 February 1969 // I.C.J. Reports 1969. P. 43.

### **The legal normative basis of the research**

It's international treaties and international customs make up the normative basis of the study. Multilateral international treaties such as the United Nations Convention on the Law of the Sea, 1982; the Convention on the High Seas, 1958; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and its Protocol, 2005; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 and its Protocol, 2005; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000; the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; the International Covenant on Civil and Political Rights, 1966 and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and others have been used.

In addition, the study is based on bilateral international agreements in the field of combating certain crimes at sea, for example, such as the Agreement between the United States and Antigua and Barbuda on Maritime Counter-Narcotics Operations, 1995; the Agreement between the Government of the United States of America and the Government of Barbados on Cooperation in suppressing Illicit Drug Traffic by Sea, 1997, etc.

The author pays much attention to the consideration of international documents adopted by international organizations such as the United Nations and the International Maritime Organization. Some conclusions are made on the basis of the analysis of control and enforcement applied by fisheries management organizations in the framework of combating illegal, unreported and unregulated fishing. The activities of international intergovernmental organizations operating in this field, such as the North-East Atlantic Fisheries Commission, the North-West Atlantic Fisheries

Organization, the International Commission for the Conservation of Atlantic Tunas, the South-East Atlantic Fisheries Organization and a number of others, are analyzed.

In order to identify international standards in the field under study, the legislation of Barbados, Malta, the People's Republic of China, the Russian Federation, Australia and a number of other states on their territorial sea and contiguous zone is considered.

### **The theoretical basis of the research**

The theoretical basis of this PhD theses comprises of researches of both national and foreign scholars, such as M.J. Aznar, D. Ireland-Piper, E.S. Alisievlch, J. Allain, G. Andreone, I.P. Blishchenko, Y.V. Bobrova, G.I. Bogush, D.S. Boklan, A.N. Vylegzhanin, M. Gavouneli, A. Gallagher, E.B. Ganyushkina, A.V. Gefter, A. Ghenciu, V. Gowlland-Debbas, D. Guilfoyle, V.N. Gutsulyak, D.N. Dzhunusova, A.I. Ziyabkin, P.E. Kazansky, L.A. Kamarovskiy, A.R. Kayumova, N. Klein, A.L. Kolodkin, C.J. Colombos, M.N. Korkunov, N.D. Koroleva, A.W. Lowe, F.A. Mann, S.V. Molodtsov, S. Oda, D.P. O'Connell, T. Ortolan, L.B. Otfel, I. Papanicolopulu, E. Papastavridis, F. Perels, A. Peters, A. Petrig, E.V. Postnikova, N.M. Poulantzas, A.K. von Raison, C. Ryngaert, Yu.S. Romashev, V.N. Rusinova, V. Sievers, V.F. Sidorchenko, Y. Tanaka, M.A. von Taube, T. Treves, V.A. Ulyanitsky, M. Fink, J. Fitzmaurice, S.V. Chernichenko, O.S. Chernichenko, R.R. Churchill, I. Shearer and many others.

### **The empirical basis of the research**

The findings of the research are based on the law enforcement practice of states and international organizations, decisions and other procedural documents in cases considered by international judicial bodies, including the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Human Rights, etc. The author also takes into account the decisions of a number of national courts like the Federal District Court of Australia, the Federal Court of Appeals of Canada, the US District Court for the Southern District of Florida, the US Court of Appeals for the Fifth Circuit of Appeals, etc. to work out international standards for the implementation of enforcement measures.

### **Novelty of the research**

This dissertation research is the first comprehensive study of the international legal institution of law enforcement measures within maritime areas in the domestic legal science. The author defines own definition of coercive measures for law enforcement purposes within maritime areas and unfolds its content.

The research highlights the main stages of the formation of the international legal institution of law enforcement measures within marine areas, determines its essence and content, as well as the place of this institution in the system of international law. In addition, a classification of law enforcement measures within maritime areas is proposed, the range of entities capable of implementing of law enforcement measures within maritime areas is characterized, the legal status of such subjects is established.

Having analyzed the application of law enforcement measures within maritime areas with different international legal status and legal regime, the author formulates general principles for the implementation of such measures. In addition, the importance of observance of fundamental human rights and freedoms in the implementation of law enforcement measures within maritime areas is substantiated, despite the fact that they are carried out in difficult hydrometeorological conditions, in marine areas remote from the coast of states.

Finally, it should be noted that this study is the first attempt, on the basis of a functional comparative legal method, to develop proposals for improving law enforcement within maritime areas.

### **Findings of PhD research**

1. The author proposes the following steps of development of law enforcement measures within maritime areas:

– *the emergence of the international legal institution of law enforcement measures within maritime areas with regard to the fight against piracy (VI century BC – XIX century AD);*

– *the formation of the international legal customary institution of law enforcement measures within maritime areas, the emergence of some groups of treaty norms*

*in this field* (XIX century AD – 1958). At this stage, the process of formation of customary legal norms took place. Those customary legal norms include the procedure to stop offender ships, to establish powers to inspect and search them, as well as the norms governing the process of inspecting and searching a ship, the procedure for its detention, the use of weapon during the procedure of law enforcement measures within maritime areas, etc.;

*– further development of the international legal institution of law enforcement measures within maritime areas at the universal, regional and bilateral treaty levels, expansion of its scope of application* (1958 – to present time).

2. Law enforcement measures within maritime areas are proposed to better understand the activities of countries, carried out by their authorized law enforcement officers within maritime areas with the purpose to maintaining law and order at sea. Under these activities the author implies the activities of authorized law enforcement officers to detect signs of crime or other infraction or sufficient grounds of such infraction. These measures are aimed at suppressing the offense, detecting and securing evidence of its commission in the interests of further prosecution of the persons who commit them. Law enforcement measures within maritime areas are implemented in compliance with international treaties and international customs; general principles of law; decisions of the United Nations Security Council, if the crimes are committed on a mass scale and pose a threat to peace and security; the legislations of coastal states, including those aimed at implementing their international obligations.

3. A balance is needed to be archived between interrelated elements provided for by international law, such as respect for the freedoms of the high seas, adherence to the principle of sovereignty, protection of law and order at sea, ensuring the security of countries, protection of fundamental human rights and freedoms to duly apply law enforcement measures within maritime areas. Nevertheless, the need to maintain law and order at sea remains the core element law enforcement measures within maritime areas.

4. The goal of law enforcement measures within maritime areas is to bring offenders to justice i.e. individuals who have violated the norms of international and domestic law within various maritime areas. These measures include, among other things, urgent investigative actions aimed at preserving and consolidating traces of an offense at sea, since they are carried out before criminal case is brought. Their use is justified by the urgent need to stop the unlawful act and restore the existing law and order, as well as to find evidence that requires immediate consolidation and investigation.

5. It is safe to emphasize the following generally recognized list of law enforcement measures within maritime areas provided for by international law. These measures can be applied in the course of combating offenses at sea. First of all, such measures include *stopping, boarding, investigating an alleged violation on the vessel, checking ship's documents, inspecting (searching) of a vessel, as well as interviewing people on a vessel, etc.*

In addition, there are law enforcement measures within maritime areas, which are of a special nature and depend on the legal status and legal regime of the territory where the alleged offence was committed (*hot pursuit*), as well as on the nature of the unlawful act itself (*escorting/sending the vessel to the nearest relevant port*) and on the consequences of the implementation of such measures (*seizure of a vessel providing armed resistance, towing it to the nearest relevant port, interference with fishing, seizure of fishing gear, etc.*).

Depending on the purpose, the author divides law enforcement measures into: 1) *law enforcement measures within maritime areas aimed at stopping the movement of the vessel* (hot pursuit, stopping the vessel); 2) *law enforcement measures within maritime areas aimed at detecting, preserving and consolidating evidence of an unlawful act* (boarding a ship, its inspection, interviewing people on it); 3) *law enforcement measures within maritime areas, carried out following the discovery of evidence of an unlawful act* (detention of the vessel, escorting/sending it to the nearest relevant port, towing).

6. Implementing the right of the country to exercise its law enforcement function at sea, its officials, firstly, must have such powers in accordance with international law and national legislation, and, secondly, must follow a certain set of rules and restrictions corresponding to international law and the legislation of the state which is in charge of maintain law and order at sea in this area. Ships or aircrafts implementing law enforcement measures, firstly, must be authorized to carry out law enforcement measures within maritime areas, and, secondly, must have marks of state power, i.e., the features of being a representative of the state on behalf of which they exercise law enforcement measures. Such features apply to vessels and they include a flag, registration number for identification, pennant of belonging to law enforcement agencies, special coloring, etc. Aircrafts must be of special coloring and display their registration and nationality markings. Identification requirements apply to officials who are in charge for the application of law enforcement measures within maritime areas.

7. Taking into account the legal objects, i.e. foreign vessels and their crews and subjects, in other words, law enforcement officers, are required to efficiently implement law enforcement measures in question. In addition under general international law treaties of the states concerned and their obligations the legal regime of specific maritime areas and particular jurisdiction over infractions and crimes is also relevant.

8. In order to avoid any further complications of international relations duly authorized officials acting on behalf of the state before carrying out law enforcement measures within maritime areas, must answer the following questions:

1) are law enforcement measures carried out within the maritime territory of the state or beyond its borders? 2) what norms of substantive and procedural law should underpin the implementation of these measures? 3) who do these measures apply to citizens or foreign persons? 4) does the state implementing law enforcement measures within maritime areas have full or limited jurisdiction over the issues?

9. The implementation of law enforcement measures within maritime areas is based on the following principles: collaboration of nations in the implementation of



such measures; reasonable grounds for law enforcement measures within maritime areas; transparency and predictability of the legal procedure at sea; application of generally accepted methods of detecting and securing evidence of an offence at sea; implementation of law enforcement measures within maritime areas must be done in a language understandable to the crews of ships and other people involved in the procedure; ASAP implementation, sufficient to detect and consolidate evidence of an offence at sea; the compliance of the measures taken with treaty norms and general international law; non-discrimination; respect for fundamental human rights and freedoms; mandatory notification of countries of the citizens and vessels against which such measures are taken; reasonable and legitimate use of force.

10. Recognizing that everyone has the right to life, liberty and security of person, and that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or exile, the state implementing law enforcement functions, in exercising *de facto* full and exclusive control over a foreign ship, is bound by obligations to protect human rights throughout the entire procedure of law enforcement measures within maritime areas i.e. from the moment of the request for the vessel to stop and then to convoy it to the port. Another words the state exercising a law enforcement function must refrain from restrictions that cannot be justified by the grounds for interference.

11. The efficiency and effectiveness of application of law enforcement within maritime areas depends on the formation of such international legal standards as identification marks for the ships carrying out law enforcement functions; the procedure and content of the submission of light and other visual signals in order to stop the vessel for law enforcement purposes; the procedure and content of radiocommunication with the vessel in the course of law enforcement; the procedure for the introduction of officials on board of the inspected vessel, the features of their uniform and their documents as well as the distinctive signs; the procedure to obtain the consent of the state to implement coercive measures on board a ship flying its flag.

Many standards require development. These include assessment of the grounds for the implementation of lawful coercive measures; detection, preservation and consolidation of evidence of an unlawful act; treatment of persons on board the ship in case of their detention; use of force and firearms in the course implementation of coercive measures; further measures at sea following the discovery of evidence of an unlawful act.

Currently, there are no universal rules of international law in this area, and the measures implemented are based on the legislation of coastal States and on the scattered norms of international treaties and customs.

### **Theoretical implications**

The provisions set forth in the thesis are the basis for the creation of a new and logically consistent concept of international legal regulation of law enforcement measures within maritime areas. The author identifies the prerequisites and origins of the formation of an international legal institution of law enforcement measures within maritime areas; unfolds the essence and content of this concept, based on the interrelation and interdependence of its elements that have a key impact on the international legal regulation of law enforcement measures within maritime areas; identifies and clarifies the place of law enforcement measures within maritime areas in the system of international law. In addition, the author highlights the entities authorized to carry out law enforcement measures within maritime areas as well their legal status. The variety of methods used and the wide knowledge pool have been essential for the author to make inferences about the subject matter of the research. These findings may contribute to the development of the theoretical aspects of the issue of law enforcement measures within maritime areas in the context of international law.

### **Practical implications**

Some practical implications have risen from the way how scientifically based proposals acquired in the course of the study on streamlining law enforcement activities at sea may contribute to the positive development of interstate relations in the field of combating crime at sea. The findings of the research may be used:

- in international and domestic rule-making;
- by executive authorities represented by duly authorized officials carrying out law enforcement activities at sea;
- in teaching theory and practice at university.
- in cases challenging the legality of the use of law enforcement measures within maritime areas in international and national courts.

### **Reliability and validity of findings**

This research paper provides analysis, interpretation and argument based on in-depth independent research of scientific papers of both Russian and foreign authors as well as a significant amount of normative and empirical material used which makes an original and valid scientific contribution to the issue.

### **Approbation of the research results**

The thesis was completed at the Department of International Law of the Faculty of Law of the National Research University Higher School of Economics. The findings and conclusions of the dissertation research are published in four manuscripts included in the List of peer-reviewed scientific publications of the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

In order to verify theoretical and practical implications on certain issues and findings on the dissertation research the author took part in a number of scientific conferences:

- International Scientific and Practical Conference “Russia in a Changing World: Challenges and Strategies” (MGIMO, Moscow, December 10, 2019) with the report “Law Enforcement Measures within Maritime Areas: from Denial to Acceptance”;
- VI Annual International Scientific Conference of Young Scientists “Actual Problems of World Politics” (Diplomatic Academy of the Ministry of Foreign Affairs of Russia, Moscow, November 29, 2019) with the report “Law Enforcement Measures within Maritime Areas: Contradictions”;
- XVII International Congress “Blishchenkov Readings” (RUDN University,

Moscow, April 13, 2019) with the report “Jurisdictional Aspects of the Implementation of Law Enforcement Measures within Maritime Areas”;

– Days of Science of the HSE Faculty of Law – 2019 (HSE, Moscow, February 27, 2019) with the report “The Legality of Using Ship Towing as a Measure to Combat Illegal Migration to Sea”;

– XIV RAMI Convention (MGIMO, Moscow, October 13, 2022) with the report “Law Enforcement Measures within Maritime Areas: connecting the incompatible”.

**The structure of the dissertation** is determined by the goals and objectives of this research. The thesis consists of an introduction, three chapters containing 8 paragraphs, a conclusion, references section, abbreviations and symbols sections.

## THE MAIN CONTENT OF THE THESIS

The international legal phenomenon of law enforcement measures within maritime areas has been formed due to the need to combat crimes and other offenses within various maritime areas. Back then due to the ineffectiveness of the international legal regulation, the lack of relevant international standards in that area, the existing law enforcement measures didn't justify their purposes. One of the aims of this research is to solve this issue.

The introduction of the dissertation research focuses on the relevance of the topic, the degree of its scientific development, the goals and objectives, the object and subject of the research, the research methodology, the scientific novelty, the theoretical and practical implications, the research findings.

Chapter I "*Theoretical and legal foundations of the international legal institution of law enforcement measures within maritime areas*" is devoted to the formation of the institution under study, its theoretical analysis and the development of significant theoretical provisions on the basis of such analysis.

Paragraph 1 "*Establishment of the international legal institution of law enforcement measures within maritime areas*" is concerned with that this phenomenon originated in order to fight against piracy. But the process of implementing coercive measures aimed at suppressing this crime was better performed, if at all it was, applying the legislation of a particular state. In view of this, it was not until the XIX century, that the formation of certain customary rules of a general nature governing the process of applying law enforcement measures within maritime areas took place.

From the XIX century to 1958, an international institution of law enforcement measures within maritime areas, based on the customary norms of international law, was formed. Already in the first bilateral agreements aimed at combating the slave trade, there were provisions governing the procedure to stop offender ships, establishing powers to inspect and search them, as well as rules governing the process of inspecting and searching a ship, the procedure for its detention, the use of weapon during the implementation of law enforcement measures, etc. Thus, separate groups of treaty norms in this area emerged.

However, it was only the Convention on the High Seas, 1958, that proposed a compromise of the interrelated right of visit and right of search, first enshrined the universal legal nature of the right to inspect a ship suspected of piracy or the slave trade, and finally proposed specific conditions under which it became possible to lawfully exercise the hot pursuit.

In the period from 1958 up to the present time, the international legal institution of law enforcement measures within maritime areas at the universal, regional and bilateral treaty levels is being developed, expanding the scope of its application. However, most historical and contemporary international instruments in force contain solely general provisions enshrining the right to apply law enforcement measures to combat wrongful acts at sea.

*In paragraph 2 “Law enforcement measures within maritime areas in contemporary international law: content and classification”* the author puts forward an idea to define coercive measures for law enforcement purposes within maritime areas as “law enforcement measures within maritime areas”. This term seems to be the most accurate to describe the legal phenomenon under study. As a rule, less precise terms can be found in the scientific literature to refer to activities carried out by authorized officials of states within maritime areas in order to maintain law and order when signs of a crime or offence are detected or if there are sufficient grounds for assuming such an offence. Law enforcement measures within maritime areas are aimed at suppressing the offense, at detecting and securing evidence of its commission in order to carry out further prosecution of the persons who committed them.

Law enforcement measures within maritime areas are carried out with a view to restoring by states the existing law and order within maritime spaces. Implementing the right of the country to exercise its law enforcement function at sea, its officials, firstly, must have such powers in accordance with international law and national legislation, and, secondly, must follow a certain set of rules and restrictions corresponding to international law and the legislation of the state which is in charge of maintain law and order at sea in this area. Ships or aircrafts implementing law enforcement measures, firstly, must be authorized to carry out law enforcement

measures within maritime areas, and, secondly, must have marks of state power, i.e., the features of being a representative of the state on behalf of which they exercise law enforcement measures. Such features apply to vessels and they include a flag, registration number for identification, pennant of belonging to law enforcement agencies, special coloring, etc. Aircrafts must be of special coloring and display their registration and nationality markings. Identification requirements apply to officials who are in charge for the application of law enforcement measures within maritime areas.

A balance is needed to be archived between interrelated elements provided for by international law, such as respect for the freedoms of the high seas, adherence to the principle of sovereignty, protection of law and order at sea, ensuring the security of countries, protection of fundamental human rights and freedoms to duly apply law enforcement measures within maritime areas. Nevertheless, the need to maintain law and order at sea remains the core element law enforcement measures within maritime areas.

It is safe to emphasize the following generally recognized list of law enforcement measures within maritime areas provided for by international law. In addition, there are law enforcement measures within maritime areas, which are of a special nature and depend on the legal status and legal regime of the territory where the alleged offence was committed, as well as on the nature of the unlawful act itself and on the consequences of the implementation of such measures.

Depending on the purpose, the author divides law enforcement measures into: 1) *law enforcement measures within maritime areas aimed at stopping the movement of the vessel* (hot pursuit, stopping the vessel); 2) *law enforcement measures within maritime areas aimed at detecting, preserving and consolidating evidence of an unlawful act* (boarding a ship, its inspection, interviewing people on it); 3) *law enforcement measures within maritime areas, carried out following the discovery of evidence of an unlawful act* (detention of the vessel, escorting/sending it to the nearest relevant port, towing).

Paragraph 3 “*General issues of the exercise of jurisdiction of law enforcement measures within maritime areas*” aims to show that the enforcement of coercive measures is the result of states’ exercising their jurisdiction. In most cases, there is a conflict of jurisdictions between states with regard to the same offence and there is a need to find an optimal solution to this issue. The author discusses different points of view on the doctrine of international law on the classification of different types of jurisdictions.

Taking into account the legal objects, i.e. foreign vessels and their crews and subjects, in other words, law enforcement officers, are required to efficiently implement law enforcement measures in question. In addition under general international law treaties of the states concerned and their obligations the legal regime of specific maritime areas and particular jurisdiction over infractions and crimes is also relevant.

In order to avoid any further complications of international relations duly authorized officials acting on behalf of the state before carrying out law enforcement measures within maritime areas, must answer the following questions:

1) are law enforcement measures carried out within the maritime territory of the state or beyond its borders? 2) what norms of substantive and procedural law should underpin the implementation of these measures? 3) who do these measures apply to citizens or foreign persons? 4) does the state implementing law enforcement measures within maritime areas have full or limited jurisdiction over the issues?

Some common approach is supposed to include the necessary standards of actions in such cases and their international legal consolidation and appropriate application in practice by maritime law enforcement officials. This would help to prevent complications in the relations of the countries concerned.

In Chapter II “*Features of the implementation of law enforcement measures within various maritime areas*” the author scrutinizes the existing treaty rules and practices of the states concerning the application of law enforcement measures within the maritime territory of a particular state, beyond its borders and in a foreign territory.



Paragraph 1 “*Law enforcement measures within sea territory of the state*” sets out various approaches to the implementation of law enforcement measures, issues related to the right of innocent passage through the territorial sea of the coastal state. On the one hand, there is the right of innocent passage, on the other hand, there is the ability of a coastal state to exercise criminal jurisdiction on board a foreign vessel. As for the innocent passage of the vessel it is a two-sided event.

The law enforcement measures applied under Article 19 of the United Nations Convention on the Law of the Sea are aimed at preventing the passage of a vessel as a physical thing if its activities in the territorial sea shall be considered to be prejudicial to the peace, good order or security of the coastal state.

In accordance with Article 27 of the United Nations Convention on the Law of the Sea, 1982, in the course of the exercise by a state of its criminal jurisdiction, law enforcement measures shall be applied to specific persons on board the ship with a view of pre-trial proceedings and with regard to any crime committed on board the ship during its passage, provided that it disturbs the peace of the country or the good order in the territorial sea of the coastal state.

Interpreting the category of “the consequences of the crime extend to the coastal state”, the most contentious question is whether a coastal state needs to establish the existence of the consequences as a characteristic of an offence and it is fixed in some legal terms, or whether this are the consequences which are not enshrined this way or other in legal documents but nevertheless exist in practice?

It seems that in answering this question, it is essential to go beyond the normative understanding of the crime and assume that it is not only about the consequences that can be expressed in quantitative and qualitative characteristics (as in the case of environmental crimes). The following criteria are supposed to be taken into account: 1) the consequences that pose a real threat or harm to the safety of the conditions of life of the *population* of a particular state (for example, an oil spill or other substances that create damage to the state and its ecology, smuggling of potent, poisonous, explosive, radioactive substances, radiation sources, nuclear materials, firearms), 2) the consequences in the form of a violation of border security, which

determines the limit of the *territory* of the state and separates one state from another (for example, illegal border crossing), 3) the consequences that affect the *governance* arrangements and administration procedure (for example, the organization of illegal migration). In other words, it proves the fact the consequences may affect the functioning of the state as a subject of international law.

Paragraph 2 “*Law enforcement measures within various maritime areas outside the territory of the state*” identifies the challenges of implementation of the measures under study on the high seas and within maritime territories with a hybrid legal regime.

On the high seas, the source of State coercion against foreign offenders is not the law as a set of arguments for justifying such coercion, but the law understood as the consent of states arising from the awareness of the need to adhere to a predetermined rule of law. The consent of the flag state for a particular event is not required in cases where universal jurisdiction is established for a crime under international law. However in other cases this consent must be expressed either in the previous agreements or in state practice, or obtained from the flag state for a particular event. Law enforcement measures depend on the type of unlawful act to be suppressed and must be proportionate and adequate to the public danger of the act to be suppressed.

The application of law enforcement measures within maritime territories with a hybrid legal regime is inextricably linked with the goal of establishing a specific maritime zone. To be precise, there are two groups of law enforcement measures with regard to of foreign vessels in the contiguous zone. They are: one that may be carried out with regard to a foreign vessel arriving in the waters of a coastal state. Another is a group of law enforcement measures applying to a vessel flying a foreign flag leaving these waters.

The former includes actions non-procedural actions conducted to decide whether it is necessary to prevent violations of customs, fiscal, immigration or sanitary rules within the territory of the coastal state or its territorial sea. These measures are implemented on reasonable grounds by authorized officers and comprise verification of documents, preventive measures (for example, stopping and inspecting the

vessel). These type of law enforcement measures cannot be transformed into a mechanism for collecting evidence pending prosecution and punishment of the perpetrators. This cannot be done even if there are sufficient grounds that the offence will be committed as soon as the border of the territorial waters of the coastal state is crossed, although the flag state may be informed of the illegal activities of a foreign vessel in question.

The latter comprises law enforcement measures which should be necessary and sufficient not only for the prevention and suppression of the offence, but also for the subsequent punishment of the perpetrators who committed this offence. Therefore this group of law enforcement measures consist of procedural actions that are needed both for verification and prevention, and the same time they ensure subsequent criminal and administrative prosecution under the legislation of the coastal state.

Another significant issue for discussion is a special nature of the archaeological zones, where a particular state is entitled to carry out any law enforcement measures imperative for the protection of the underwater cultural heritage. These archaeological zones created for regulated purposes have additional functional component inherent to cultural heritage. Nevertheless, it is the international law that regulates the implementation of law enforcement measures of any type in these zones.

In paragraph 3 “*Law enforcement measures within foreign sea territory*” the author underlines that the pattern of the above mentioned coercive measures within a foreign territory takes place only with the consent of the coastal state, on the terms of this coastal state, envisaged either by the relevant agreement or specially designated and issued by the state in question in a specific case. Law enforcement measures constitute indirect manifestation of the jurisdiction of a particular coastal state, since a foreign vessel that implements these measures within the territory of the coastal state is its agent. Consequently, law enforcement officials or so-called shipriders are actually representatives of the authorizing state on a foreign ship and this fact is proved by the practice of their appointment by coastal sate.

Finally, formulated in this chapter general principles for the implementation

of law enforcement measures within various maritime areas are immanent for every sea area. These principles include the following: collaboration of nations in the implementation of such measures; reasonable grounds for law enforcement measures; transparency and predictability of the legal procedure at sea; application of generally accepted methods of detecting and securing evidence of an offence at sea; implementation of law enforcement measures within maritime areas must be done in a language understandable to the crews of ships and other people involved in the procedure; ASAP implementation, sufficient to detect and consolidate evidence of an offence at sea; the compliance of the measures taken with treaty norms and general international law; non-discrimination; respect for fundamental human rights and freedoms; mandatory notification of countries of the citizens and vessels against which such measures are taken; reasonable and legitimate use of force.

Chapter III “*Relevant issues in the development of the institution of law enforcement measures within various maritime areas*” focuses on the adequacy between the implementation of law enforcement measures within maritime areas and respect for fundamental human rights and freedoms. It also contains proposals for the development of international law aimed at streamlining law enforcement activities at sea.

The main idea of paragraph 1 “*Respect for human rights in the implementation of law enforcement measures at sea*” is that the state implementing law enforcement functions, in exercising *de facto* full and exclusive control over a foreign ship, is bound by obligations to protect human rights throughout the entire procedure of law enforcement measures within maritime areas i.e. from the moment of the request for the vessel to stop and then to convoy it to the port.

The specifics of maritime activities (distance from the coast, complex hydro-meteorological conditions) can hinder the observance of human rights in the implementation of law enforcement measures. However, the state implementing such measures shall, to the maximum extent, create conditions to the best advantage for the crew of the vessel to fully enjoy their legal rights. Moreover, the state shall refrain from restrictions that cannot be justified by the grounds for interference.

Paragraph 2 “*Common international standards in the implementation of law enforcement measures within various maritime areas*” identifies and shows the emerging standards for the implementation of law enforcement measures within various maritime areas, taking into account the analysis of both international treaty norms and the legislations of various states. In the course of analyzing common standards for hot pursuit and stopping of a foreign offender vessel, attention is paid to the standards for the identification marks for the ships carrying out law enforcement functions; the procedure and content of the submission of light and other visual signals in order to stop the vessel for law enforcement purposes; the procedure and content of radiocommunication with the vessel in the course of law enforcement, etc.

The paragraph also focuses on the standards for the implementation of law enforcement measures aimed at detecting, preserving and securing evidence of an unlawful act at the sea. To this end, various schemes of international control are considered, which are implemented in the relevant Convention areas of the World Ocean, established in order to counter illegal, unreported and unregulated fishing. In particular the author points out to the standards relating to the procedure for the introduction of officials on board of the inspected vessel, the features of their uniform and their documents as well as the distinctive signs; the procedure to obtain the consent of the state to implement coercive measures on board a ship flying its flag; detection, preservation and consolidation of evidence of an unlawful act; treatment of persons on board the ship in case of their detention; use of force and firearms in the course implementation. The author suggests that the existing patterns of officials’ behavior to detect and consolidate evidence of illegal, unreported and unregulated fishing should be used to combat other offenses at sea.

This paper examines the standards relating to the results of the discovery of evidence of an unlawful act on board an the inspected vessel. The author comes to the conclusion that the relevant standards today are mainly based on the legislation of coastal states. In legal terms, these standards relating to the results of the discovery of evidence of an unlawful act on board an the inspected vessel have not been given

sufficient attention at the international level. First, the fact is there is no treaty consolidation or even recommendatory consolidation found in any documents of international intergovernmental organizations. Secondly, the author explains the need to work out and adopt the given standards in the form of a resolution of the International Maritime Organization. The aim of the resolution is to elaborate and define the system of procedural actions in this area.

*In conclusion*, the author outlines the findings and conclusions of the dissertation research.

## **MAIN PUBLICATIONS ON THE TOPIC DISSERTATION RESEARCH**

Research papers with a total volume of 2.4 printed pages were published on the research topic.

### **Articles in periodicals included in the list of HSE recommended journals:**

1. Glazova A.P. State Cooperation to Prevent Illegal Migration at Sea: Law Enforcement Measures. Bulletin of the Voronezh State University. Series: Law. 2019. № 3. pp. 342 – 353. [in Russian]
2. Glazova A.P. Law Enforcement Measures Within the Maritime Areas: the Legal Nature and Actual Problems of Application. Russian Juridical Journal. 2019. № 5. pp. 40 – 49. [in Russian]
3. Glazova A.P. General Issues of the Exercise of Jurisdiction in the Process of Application of Law Enforcement Measures at Sea. Moscow Journal of International Law. 2020. № 4. pp. 106 – 118. [in Russian]

### **Other articles:**

4. Glazova A.P. Historical and Legal Analysis of the Evolution of the Institution of Enforcement Measures at Sea: Past and Present. International Public and Private Law. 2019. № 6. pp. 15 – 19. [in Russian]