UDC 341.225.5
DOI https://doi.org/10.32782/2524-0374/2024-12/93

FROM "THE CANNON-SHOT RULE" TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: THE HISTORY OF THE LEGAL STATUS OF THE TERRITORIAL SEA AND THE EXCLUSIVE ECONOMIC ZONE

ВІД «ПРАВИЛА ГАРМАТНОГО ПОСТРІЛУ» ДО КОНВЕНЦІЇ ООН З МОРСЬКОГО ПРАВА: ІСТОРІЯ ПРАВОВОГО СТАТУСУ ТЕРИТОРІАЛЬНОГО МОРЯ ТА ВИКЛЮЧНОЇ ЕКОНОМІЧНОЇ ЗОНИ

Halchynskyy S.V., PhD Student at the Department of International Law
Ivan Franko National University of Lviv

The article examines the evolution of the legal status of the territorial sea and the exclusive economic zone from the Middle Ages to the end of the twentieth century. For centuries, the controversial issue of the breadth of the territorial sea and the exclusive economic zone has been determined by international custom, which was shaped by the recognition or non-recognition of strong maritime powers. The author analyses the development of thought on the status of the territorial sea and the exclusive economic zone from the time of dominance of strong maritime powers and the concept of the "closed sea" in the XIV–XVI centuries and the awareness of the need for the open sea and the determination of jurisdiction over adjacent waters, first through the "the cannon-shot rule" and later through the "three mile rule", to the debatable attempts to regulate this status at the 1930 Hague Conference of the League of Nations and at the 1958 UN Geneva Conference and to its final definition as a result of the codification of international maritime law by the 1982 UN Convention on the Law of the Sea.

Most scholars of the sixteenth century who discussed the legal status of the sea considered it to be res nullius – a non-existent thing that could be unilaterally appropriated. In the second half of the sixteenth century, the King of Poland and Queen Elizabeth I of England **started a new trend – defending the principle of the free sea**.

The concept of the "free sea" and freedom of navigation, which is still relevant today, was best developed in the early seventeenth century by the "father" of modern international law, the Dutch jurist, theologian and diplomat Hugo Grotius (1583–1645).

In 1630–1660 authors from various nations were protecting a given state's right to a specific maritime space in the "Battle of the Books", capturing for history that in the seas **the "force dominated but under the mantle of international law's legitimacy".**

At the beginning of the eighteenth century Dutch jurist and judge Cornelius van Bynkershoek developed "**the cannon-shot rule**" **for sovereignty over the sea**. In the early nineteenth century, "the cannon-shot rule", which was used by several strong powers to ensure freedom of the seas, was replaced by the "three-mile rule".

At the beginning of the twentieth century virtually all states automatically agreed to recognise a distance of three miles, or one nautical league, to delimit sovereignty over the sea, and this distance became a custom in international law.

At the Hague Conference on the Progressive Codification of International Law in 1930, proposals to limit the width of the territorial sea to three miles, to recognise the claims of some states to a wider sea and to establish a 12-mile control zone for ships were rejected.

The 1958 Geneva Conference and the Second United Nations Conference on the Law of the Sea, convened in Geneva in 1960, also failed to reach agreement on these issues.

The international community managed to unify most of the provisions on territorial waters, seabed, internal sea and related rules only in the "constitution of the oceans" as the 1982 United Nations Convention on the Law of the Sea is called.

Key words: international custom, law of the sea (maritime law), international law of the sea (international maritime law), the 1982 United Nations Convention on the Law of the Sea, the "constitution of the oceans", "the cannon-shot rule", the "three-mile rule", freedom of navigation, the legal status of the territorial sea, the width of the territorial sea, the exclusive economic zone.

Стаття досліджує еволюцію формування правового статусу територіального моря та виключної економічної зони із часів Середньовіччя до кінця XX століття. Протягом століть дискусійне питання ширини територіального моря та виключної економічної морської зони визначалося міжнародним звичаєм, який формували своїм визнанням або невизнанням сильні морські держави.

Автор дослідження проаналізував шлях розвитку думки щодо статусу територіального моря та виключної економічної зони від часів домінування сильних морських держав та концепції «закритого моря» XIV–XVI століття та усвідомлення необхідності відкритого моря та визначення юрисдикції на прилеглі води спочатку через «правило гарматного пострілу», а згодом за «правилом трьох миль» до дискусійних спроб врегулювати цей статус на Гаазькій конференції Ліги Націй 1930 року та Женевській конференції ООН 1958 року та фінального його визначення внаслідок кодифікації міжнародного морського права Конвенцією ООН з морського права 1982 року.

Більшість вчених XVI століття, що обговорювали правовий статус моря, вважали його res nullius – неіснуючою річчю, яка може бути присвоєна в односторонній спосіб. У другій половині XVI століття король Польщі та англійська королева Єлизавета I **започаткували нову тенденцію – відстоювання принципу вільного моря**. Концепцію «вільного моря» та свободи навігації, яка актуальна і досі, найкраще розвинув у своїх роботах на початку XVII століття «батько» сучасного міжнародного права, голландський юрист, теолог і дипломат Гуго Гроцій (1583–1645).

У 1630–1660 роках автори з різних держав відстоювали право тієї чи іншої держави на певний морський простір у «битві книг», закарбувавши для історії, що у морях **«домінувала сила під мантією легітимності міжнародного права».**

На початку XVIII століття голландський суддя Корнеліус ван Бункерсхук вивів «**правило гарматного пострілу**» **для суверенітету над морем**. На початку XIX століття «правило гарматного пострілу», яке використовувалося кількома сильними державами для забезпечення свободи морів, було замінене на правило трьох миль.

З початком XX століття практично усі держави автоматично погодилися на визнання відстані у три милі, або одну морську лігу, для розмежовування суверенітету над морем, і ця відстань стала звичаєм у міжнародному праві.

На Гаазькій конференції з прогресивної кодифікації міжнародного права 1930 року пропозиції обмежити ширину територіального моря трьома милями, визнати вимоги деяких держав на ширше море та встановити 12-мильну зону контролю суден були відхилені.

За підсумками Женевської конференції 1958 року та II конференції ООН з морського права, скликаної в Женеві 1960 року, досягти згоди з цих питань теж не вдалося.

Уніфікувати більшість положень щодо територіальних вод, морського дна, внутрішнього моря та пов'язаних із цим правил світовій спільноті вдалося лише у «конституції океанів», як називають Конвенцію ООН з морського права 1982 року.

Ключові слова: міжнародний звичай, морське право, міжнародне морське право, Конвенція ООН з морського права 1982 року, конституція океанів, «правило гарматного пострілу», «правило трьох миль», свобода навігації, правовий статус територіального моря, ширина територіального моря, виключна економічна зона.

Introduction. The history of the development of customary international law convincingly confirms that at all times it has been the "law of the powerful" – that is, virtually all examples of international custom were based on the consolidation of rules that were formed by the strongest states in the world at the time. The controversial issue of the breadth of the territorial sea and the exclusive economic zone was no exception: for centuries, it was determined by international custom, shaped by the recognition or non-recognition of strong maritime powers, and was codified only as a result of a difficult consensus when voting for the 1982 UN Convention on the Law of the Sea. Over the course of the development of human civilization, the world has gone from proclaiming freedom of navigation and simultaneously prohibiting navigation in certain seas to clearly defining the status of the territorial sea and exclusive economic zone, with each stage of this history depending on the influence of the position of the world's powerful states at the time.

The article examines the formation of the status of the territorial sea and the exclusive economic zone from the Middle Ages to the end of the twentieth century. The author examines the approaches of formal and customary law to the status of the high seas and the evolution of the status of the territorial sea from the "the cannon-shot rule" to its clear fixation as a result of the adoption of the 1982 UN Convention on the Law of the Sea. The purpose of the article is to study the development of the legal status of the territorial sea and the exclusive economic zone from the Middle Ages to the end of the twentieth century and to show how this development was influenced by the world's powerful states.

1. The legal status of the sea in the Middle Ages: the law of force "under the mantle of international law's legitimacy"

In the Middle Ages, both formal and customary law of those times practically did not define the status of the sea as such. In particular, American lawyer and researcher of international maritime law Bernard G. Heinzen in his article "The Three-Mile Limit: Preserving the Freedom of the Seas" notes that **most scholars of the sixteenth century who discussed the legal status of the sea considered it to be res nullius – a non-existent thing that could be unilaterally appropriated.**

This position was confirmed by the practice of the time – for example, since the 14th century, the United Kingdoms of Denmark and Norway (from 1397 to 1523, the Kalmar Union of Denmark, Sweden and Norway [1]) tried to keep the entire Norwegian Sea as a mare clausum (closed sea), proclaiming a "dominion" over the entire North Atlantic between Norway and Iceland, and since the late 15th century, Portugal and Spain claimed the exclusive right of navigation and trade in most of the Atlantic and Pacific oceans [2, p. 598–599].

Instead, in the second half of the sixteenth century, the King of Poland and Queen Elizabeth I of England **started a new trend – defending the principle of the free sea**. Poland assembled a coalition against Denmark's "closed sea" in the Baltic and officially informed the Danish side that the use of the sea was open to all. In 1580, Queen Elizabeth I harshly rejected Spain's complaint about Sir Francis Drake's expeditions, declaring: "the use of the sea and air is common to all; neither can any title to the ocean belong to any people or private man, forasmuch as neither nature nor regard of the public use permitteth any possession thereof" [3, p. 107].

And 8 years later, this declaration was backed up by the actions of the English navy, which defeated the Spanish Armada and destroyed Spain's monopoly on navigation in most of the sea. In 1602, in the context of a long-running dispute with Denmark over fishing rights, the English made the doctrine of the oceans as res communis more concrete by ordering their diplomats to proclaim, in response to the Danish concept of a "closed sea", that "though property of sea, in some small distance from the coast, may yield some oversight and jurisdiction, yet use not princes to forbid passage or fishing... the which by Law of Nations cannot be forbidden ordinarily; neither is it to be allowed that property of sea in whatsoever distance is consequent to the banks, as it happeneth in small rivers, where the banks are proper to divers men; whereby it would follow that no sea were common, the banks on every side being in the property of one or other" [3, p. 111].

The concept of the "free sea" and freedom of navigation, which is still relevant today, was best developed in the early seventeenth century by the Dutch jurist, theologian and diplomat Hugo Grotius (1583–1645), often called the "father" of modern international law. He derived his legal principles of international law from what he called "universal reason". His treatise Mare Liberum defended the freedom of the seas in the context of protecting the interests of the Netherlands as the leading naval power of the time [4].

In his major work, De Jure Belli AC Pacis (The Rights of War and Peace, including the Law of Nature and of Nations), Hugo Grotius derived the universal principles of international law, including the principles of freedom of trade and freedom of navigation. In particular, he describes the basic requirements for trade contracts and enshrines the prohibition of persecution of persons who insist on fulfilling the concluded contracts [5, p. 305].

Grotius also defines the principles of freedom of movement in other states for traders [5, p. 74]. In the same work, Grotius derives the principle of law "The law, by its silence, permits those acts, which it does not prohibit" [5, p. 303]. In his important early work De Jure Praedae ("On the Law of Prize and Booty"), Grotius strengthened and expanded the derivative right to trade derived by Franciscus de Vitoria, noting that the divinely sent function of trade became the source of the sacred right of hospitality, which placed the right to trade and commerce at the centre of the privileges exercised by the sovereign [6, P.10].

Hugo Grotius believed that an attack against the natural rights to commerce or hospitality, i.e. restrictions on access to markets, could be a reason to declare war against another European state. "The injury based on a right to engage in trade had become, in Grotius' hands, good cause to justify a European nation's initiating "just war" against another European nation", notes in the article "Constructing International Law in the East Indian Seas: Property, Sovereignty, Commerce and War in Hugo Grotius De Jure Praedae – The Law of Prize and Booty", or "On How to Distinguish Merchants from Pirates" in the magazine "Brooklyn Journal of International Law" Professor of the University of Miami School of Law Ileana M. Porras [7, p. 774].

The work "On the Law of Prize and Booty" became the basis for a separate work by Grotius – Mare Liberum (The Free Sea) [4], in which the postulates of freedom of navigation and freedom of world trade were derived and enshrined. In the first chapter of this treatise, Grotius says that according to the law of nations, (maritime) navigation is free for anyone: "it is lawful for any nation to go to any other and to trade with it" [4, Ch. I, P.10]. He considers freedom of navigation to be a natural right for all nations: "For even that ocean wherewith God hath compassed the Earth is navigable on every side round about, and the settled or extraordinary blasts of wind, not always blowing from the same quarter, and sometimes from every quarter, do they not sufficiently signify that nature hath granted a passage from all nations unto all?" [4, Ch. I, p. 11].

The work "Mare Liberum" had an impact not only on attitudes to the sea, but also to coastal waters, both in East India and West India, as well as on intra-European disputes and on relations between European powers and peoples outside Europe [4, Introduction, P.XI]. In his later work of 1625, De Jure Belli Ac Pacis, in three books (The Right of War and Peace), Hugo Grotius recognised the admissibility of exercising jurisdiction over a part of the sea within the general principle of freedom of the seas.

In 1630–1660, what Eduardo Cavalcanti de Mello Filho called "**Battle of the Books**" happened: authors from various nations began to write works protecting a given state's right to a specific maritime space [8, p. 50–51].

In particular, in 1635, John Selden defended the possibility of the sea being appropriated by a nation in his work "Mare Clausum" – England then proclaimed **Oceanus Britannicus (as the waters of the modern English Channel were called at that time)**, which included the right to fish in the sea areas close to the British coast and the North Sea. At the same time, Johan Isaaksz Pontanus, in opposition to Selden, defended the rights of the Danish and Norwegian crowns to free navigation, and Pietro Battista Borgo proved the right of Genoa's primacy to navigate the adjacent seas. The primacy of England was defended by the authors John Borough (in 1651) and William Welwood (in 1653) [8, p. 50–51].

William Welwood criticised Grotius' work "Mare Liberum" – in his public response "Of the Community and Propriety of the Seas" he argued that "the part of the main sea or great ocean which is far removed from the just and due bounds above mentioned properly pertaining to the nearest lands of every nation" [4, Of the Community and Propriety of the Seas, p. 74].

According to Cavalcanti, these "myriads of works" reflected the state of inequality at the time – **in the seas the "force dominated but under the mantle of international law's legitimacy"** [8, p. 51]. This state of affairs led to constant disputes over access to the sea and its resources, and these disputes were mostly resolved by military means.

2. First attempts to determine the status of the territorial sea: from "the cannon-shot rule" to the "three-mile rule"

At the beginning of the eighteenth century, legal scholars of that time began to increasingly understand the need for a unified approach to the regulation of the legal status of maritime waters near the coasts of maritime states. The topic of jurisdiction over a part of the sea or territorial waters for security, fishing, taxation or other purposes was developed by the Dutch jurist and judge Cornelius van Bynkershoek (hereinafter – Bynkershoek).

In his work De Domino Maris Dissertatio (On Sovereignty over the Sea, 1702), Bynkershoek defined how the sovereignty of a state could extend to the "maritime belt" around its territory. In particular, in the second chapter of the work, he says that the right to ownership of the maritime belt can be determined by the extent to which a state can control it on an equal footing with its land territory [9, p. 43]. "The power of the land properly ends where the force of arms ends. Therefore, the sea can he considered subject as far as the range of cannon extends. This interpretation seems to have been used by the Estates of the Belgic Confederation in their decree of January 3, 1671, which is considered and praised" [9, p. 44], – Bynkershoek wrote. In his opinion, it is the distance of a cannon shot that guarantees the state both control and ownership of a part of the sea [9, p. 44].

Bynkershoek's "The cannon-shot rule", although used almost until the twentieth century and from which the "three-mile rule" for sovereignty over the sea was derived, was in fact quite relative and controversial. In his 1954 article "The Historical Origins of the Three-Mile Limit" [10, pp. 537–553] published in "The American Journal of International Law", H. S. K. Kent emphasised that the establishment by various states of a limit at the level of three nautical miles for the control of territorial waters had nothing to do with the "the cannon-shot rule", if only because both rules originated in different parts of Europe.

In particular, the formation of "the cannon-shot rule" has historically been associated with the Mediterranean states and the Netherlands, while the practice of declaring territorial jurisdiction at a certain distance from their shores was practiced by the Scandinavian states – Denmark, Norway and Sweden. In his opinion, "the cannon-shot rule" in the seventeenth and eighteenth centuries was intended primarily to protect neutral states from being drawn into disputes between belligerent states.

The rule of distance measurement was first applied in Denmark in 1598, when a decree from that year proclaimed the exclusive right of Icelandic fishermen to fish within a belt of two nautical leagues (one league equals approximately three nautical miles) from the island's coast. The reason for this decision was the growing number of foreign fishermen in the region – according to H. S. K. Kent, Denmark was trying to give up its claims to the whole sea, which it could not control, and retain the exclusive right to fish at least in coastal waters.

The distance of this belt increased from 2 to 8 leagues, then decreased to 6 leagues and was fixed at 4 leagues in 1682 during the reign of Christian V.

The distance of 4 leagues was fixed until 1836, when it was reduced to one nautical league.

In turn, "the cannon-shot rule" was first used in 1610 by the Dutch during a fishing dispute with Great Britain. "The cannon-shot rule" was also part of French law at the time. It was originally used as a custom, but as Sayre Swarztrauber writes in the book "The three-mile limit of territorial seas: a brief history", since 1685, France has been using "the cannon-shot rule" as a law – initially for the seizure of ships as war trophies, considering the range of a cannon-shot as the limit of territorial waters in matters of ship seizure [11, p. 52–53].

After disputes over ship seizures with Denmark (1691) and Portugal (1693), France further formulated a rule of the law of the sea that prohibited the seizure of ships in neutral ports or in places protected by the fortresses of neutral states (in French, "sous les canons des forteresses", which literally means "under the guns of fortresses"). This rule was aimed at protecting warships seeking refuge [11, p. 54–55].

However, neither "the cannon-shot rule" nor the distance rule has ever been a universally accepted standard – any, even limited, attempts by some maritime powers to extend jurisdiction to parts of the sea along the coast have been resisted by other strong maritime powers, with disputes resolved through both discussion and force.

Sovereignty over territorial waters up to a certain distance has been proclaimed in other parts of the world. For example, in 1793, the United States of America "temporarily" declared the first exclusive zone for neutrality purposes along the entire coast for a distance of three miles [2, p. 615], as mentioned in a note from Thomas Jefferson's secretary to a British minister on 8 November 1793. The exclusive maritime zone of one nautical league, or three nautical miles, was established by the United States in 1794 by a special law that prescribed "that the district courts shall take cognizance of complaints by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof" [12, p. 384].

In the early nineteenth century, "the cannon-shot rule", which was used by several strong powers to ensure freedom of the seas, was replaced by the three-mile rule, which applied to fishing and other activities, as well as neutrality, by England, which dominated the sea at the time.

In addition to the United States, both maritime powers and states without a strong navy and maritime trade also began to use the English league, or three nautical miles, to define territorial sovereignty at sea. Although some governments and courts in the first half of the nineteenth century continued to refer to "the cannon-shot rule" as a law, most used the term to describe a single zone, usually limited to three nautical miles along the entire coast – i.e. "the cannon-shot rule" **customarily became the equivalent of the three-mile rule**.

At the same time, Sweden, Denmark and Norway continued to proclaim a maritime neutrality zone based on one German league, or four nautical miles in width [2, p. 618].

Another state that attempted to assert territorial sea jurisdiction beyond three miles from the coast in the nineteenth century was Spain – during the Civil War, the Spanish side

informed the United States of a neutrality zone of 6 miles off the coast of Cuba, but the United States officially refused to recognize Spanish sovereignty beyond 3 miles [13].

On 9 August 1863, Spain threatened to use its navy to enforce its claim, but the United States responded that it could not consider Spain's position legitimate. Despite the fact that the United States and Spain agreed on the terms of an arbitration agreement in this case, the issue was never raised.

In 1906, Spain first issued a law (Decree of 17 December 1906) prohibiting foreigners from fishing within six miles of its shores, although it continued to tolerate British fishing within three miles of its coast in the first half of the twentieth century [2, p. 631], but on 23 September 1914, it legislated a neutrality limit of three miles from the coast.

In the early twentieth century, Russia was the only state to attempt to assert a forceful claim to sovereignty beyond three miles from the coast, but its efforts to maintain this sovereignty were unsuccessful. On 29 May (11 June) 1911, Russia issued a law prohibiting fishing within a 12-mile zone from its Pacific coast [14]. This decision provoked a protest from Japan, which immediately restored its right to fish off the Russian coast on the basis of the Portsmouth Agreement signed in 1905.

In 1910, the Russian Duma proposed closing the White Sea to foreign fishermen and establishing a 12-mile jurisdiction from the coast of the northern Arkhangelsk province, but due to a strong protest from England, the Duma did not dare to approve this decision.

The resistance to the decision of the Soviet Union to impose a 12-mile fishing restriction along certain coasts in 1921 was much more severe – it was opposed by Norway, Germany and England, which in 1923 sent a warship to the USSR with orders "to prevent interference with British vessels outside the three-mile limit, using force if necessary" [15]. As a result of this pressure, the USSR paid compensation for the seizure of British fishing vessels, and later concluded agreements with Germany and England allowing fishing up to three miles from the disputed coast, granted Norway licences to shoot seals, and signed an agreement with Norway allowing fishing in the White Sea and Arctic Ocean on the most favourable terms for Norway.

According to Bernard Heinzen, although claims to the territorial sea were still considered a limitation of the principle of res communis, i.e. the common ownership of the high seas by all nations, **virtually all states in the early years of the twentieth century automatically agreed to recognise a distance of three miles, or one nautical league, to recognise sovereignty over the sea, and this distance became a custom in international law [2, p. 629].** This customary rule was not superseded by any other rule until the 1958 Geneva Conference on the Law of the Sea, but even after that conference, three miles, or one nautical league, remained the maximum limit on the territorial sea recognised by international law [2, p. 636].

3. The Hague Conference of 1930 and the Geneva Conference of 1958: no settlement of the territorial sea

In the twentieth century, the international community made two attempts to define a single status of the territorial sea during conferences of the League of Nations and the United Nations, which ended in failure. The first attempt to regulate the issue of territorial waters took place during the Hague Conference on the Progressive Codification of International Law, held under the auspices of the League of Nations on 13 March – 12 April 1930. The second committee of the conference was devoted to the regulation of the territorial sea [16, p. 123–124]. During the discussion, the committee agreed on only two issues – the recognition of the principle of freedom of navigation, which was supported by all the participating states, and the recognition by international law of the sovereignty of states in the maritime zone around their coasts. Instead, the conference delegates did not agree on the basic scheme of settlement of territorial sea issues proposed by the committee, namely:

1. Limiting the width of the territorial sea to three miles;
2. Recognition of the claims of individual states to a territorial sea of greater width;
3. Recognition of the principle of a zone in open waters outside the territorial sea in which a state could exercise control over ships to prevent violations of customs or sanitary regulations or to prevent threats to the security of the state or its territorial sea, and the definition of such a zone at a distance of no more than 12 miles from the coast.

The comments of the country delegates concerned all points of this scheme. The definition of a single zone of the territorial sea three miles from the shore was opposed by states that had national interests in defining a wider strip of territorial waters. The states that were in favour of defining a single distance of the territorial sea without any exceptions were not ready to make exceptions to "the three-mile rule". And the idea of an additional zone with the right to control up to 12 miles was supported by many, but did not become the basis for a compromise, as some states were in favour of customs control in such a zone but objected to controlling ships for threats to national security, as they believed that such checks threatened the right to free navigation.

Taking into account the positions expressed, the conference committee concluded that it was impossible to reach agreement on these fundamental principles [16, p. 124]. This conclusion also influenced the outcome of discussions on other issues related to the territorial sea.

In the opinion of the delegates, the committee decided to propose to the conference that it call upon the Council of the League of Nations to invite the governments of the world to continue to study and discuss the question of the breadth of the territorial sea and related matters and to find ways to encourage further work on codification and understanding of states in working on the development of international maritime traffic, and to recommend to the Council of the League of Nations to convene a new separate conference to deal with issues related to the territorial sea. The Committee also recognised the issue of the jurisdiction of States over foreign ships in their ports as not meeting the objectives of this conference and not requiring immediate resolution and recommended that the Geneva Convention on the International Regime of Seaports of 9 December 1923 be supplemented by provisions regulating the legal rights of States with respect to ships in their internal waters.

As a result of the absence of a formal agreement by the Hague Conference, many states have continued to assert sovereignty over the territorial sea beyond three miles, some have officially adopted a three-mile limit on their territorial sea, and others have publicly refused to recognise the legitimacy of other states' claims to the territorial sea beyond three miles [2, p. 597].

The next attempt to resolve the problem of the status of the territorial sea took place after the end of World War II – during the Geneva Conference on the Law of the Sea, which lasted from 24 February to 27 April 1958. **By this time, most of the world's maritime powers recognised the maximum width of the territorial sea of three miles as customary international law**. Only 27 out of 73 maritime states proclaimed a greater width of the territorial sea, namely:

- 6 miles – Ceylon, Greece, Haiti, India, Iran, Israel, Italy, Libya, Spain and Yugoslavia;
- 9 miles – Mexico;
- 10 miles – Albania;
- 12 miles – Bulgaria, Colombia, Ethiopia, Guatemala, Indonesia, Romania, Saudi Arabia, the USSR, the United Arab Republic, Venezuela;
- Up to 200 miles – Chile, Ecuador, El Salvador, Korea, Peru [2, p. 641–644].

The demands of another 6 states – Honduras, Lebanon, Portugal, Thailand, Uruguay, Yemen – were uncertain or unknown.

The 1958 Geneva Conference on the Law of the Sea, whose objectives were "to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate" [17], failed to compile the provisions of the international law of the sea into a single instrument, as the unity achieved at the meetings on the global codification of the international law of the sea was lost.

According to the author of the introductory text to the conference materials, Tullio Treves [17], a Judge of the UN International Tribunal for the Law of the Sea and Professor at the University of Milan (Italy), it was impossible to approve a single width of the territorial sea at the conference because of the procedure of its work, which was identical to the UN General Assembly – the forum, attended by 86 states, worked in the mode of five committees and one plenary session, and the decision of the committee could be adopted by a simple majority, but its approval by the plenary session required two-thirds of the votes cast.

Therefore, the only concrete achievement of the conference on the definition of the width of the territorial sea, according to Tullio Treves, was the determination that the zone adjacent to the territorial sea cannot extend beyond 12 miles from the baseline from which the width of the territorial sea is measured – this provision was included in Article 24 of the Convention on the Territorial Sea and the Contiguous Zone [18], which became one of the main results of the Geneva Conference on the Law of the Sea in 1958. The Convention also sets out detailed provisions, rules for measuring and defining the territorial sea and the contiguous zone, its main lines, bays, rules for delimitation of territorial waters for states whose coasts are opposite each other, as well as rules for the peaceful passage of civilian and military vessels through the territorial seas and contiguous zones.

Following the 1958 Geneva Conference, the UN General Assembly identified the issues of territorial sea breadth and fishing limits as its key unresolved issues that warrant further efforts to reach agreement on a global scale. These topics were the main issues on the agenda of the Second UN Conference on the Law of the Sea, which took place in Geneva from 16 March to 21 April 1960. This conference also failed to meet its expectations – among the proposals to approve the width of the territorial sea from 3 to 200 miles, a compromise at the committee level was the idea to define the width of the territorial sea as 6 miles and a 6-mile fishing zone, but it failed to get the two-thirds of the votes needed for approval at the plenary session [17].

4. United Nations Convention on the Law of the Sea: Legalisation of a Custom

The international community managed to unify most of the provisions on territorial waters, seabed, internal sea and related rules only in the 1982 United Nations Convention on the Law of the Sea [19], which was adopted on 10 December 1982 in Montego Bay, Jamaica. The Convention entered into force on 14 November 1994, and as of July 2024, 169 states and the European Union are parties to it [20].

As Tullio Treves [21] a Judge of the UN International Tribunal for the Law of the Sea and Professor at the University of Milan (Italy), notes in his introductory note to the Convention, it is considered the "constitution of the oceans" because it represents the result of an unprecedented and never repeated effort to codify and progressively develop international law. More than 400 articles, including 320 articles of the main body and nine annexes of the Convention, constitute the most extensive and detailed codification of international law of the sea that states have ever attempted and successfully completed under the auspices of the United Nations.

The decision to convene the Third United Nations Conference on the Law of the Sea was made by the UN General Assembly on 17 December 1970. This was preceded by a speech by Maltese Ambassador to the United Nations Arvid Pardo in 1967, in which he drew attention to seabed mineral resources beyond national jurisdictions, in particular, polymetallic deposits found in the deep sea, the exploitation of which could bring significant economic benefits, and proposed to make them the common inheritance of humankind. After that, the UN established a special committee on the seabed, which continued its work under different titles until 1973. The main outcome of this committee's work was the UN General Assembly Resolution 2749 of 17 December 1970 [22], according to which the seabed and ocean floor beyond the limits of national jurisdiction and its resources "are the common heritage of mankind". According to the resolution, no state can assert sovereignty over it or exercise sovereign rights, and the use of such resources can only be for peaceful purposes. According to the document, the exploration and exploitation of global seabed resources is possible only "in the international regime".

The second factor that accelerated the work on the Third Conference on the Law of the Sea, according to Tullio Treves, was the structural changes in the world community – ten years before Arvid Pardo's landmark speech, the number of independent states in the world had doubled. This exacerbated the problem of distrust in the existing rules of international law – the 1958 Geneva Conventions on the Law of the Sea were not interesting for accession or ratification for newly independent states that had different priorities for the use of the seas than those of the 1950s. **The exploitation of the living and non-living marine resources was more vital to them than the rules of navigation for merchant and naval fleets, and the idea of declaring exclusive or sovereign rights to a part of the maritime space beyond the territorial sea, initially proposed only by South American states, was widely supported.** In addition, the need to protect the marine environment has also gained widespread support and understanding.

The Third United Nations Conference on the Law of the Sea began its work with a short procedural session in New York in 1973. The main work on its documents began in 1974 in the Venezuelan capital of Caracas. Discussions, procedures and deliberations continued until the spring of 1982, and on 30 April 1982, at the final session in Montego Bay, the UN Convention on the Law of the Sea was adopted as a whole – 130 States Parties voted in favour, 4 against and 17 abstained.

The 1982 United Nations Convention on the Law of the Sea introduced the following changes and new concepts to traditional maritime law:

- The maximum breadth of the territorial sea is fixed at 12 miles and that of the contiguous zone at 24 miles;
- A new "transit passage regime" was established for straits used in international navigation. It introduces permanent passage without the right to suspend for straits for which there is an alternative route and straits connecting the high seas or economic zone with the territorial waters of a state;
- States consisting of archipelagos may, under certain conditions, be recognised as "archipelago states", whose internal waters are equivalent to those of coastal states, but with the right of unconditional transit passage for third-state vessels;
- Coastal states can declare a 200-mile exclusive economic zone, including the seabed and water, where they can exercise sovereign rights and jurisdiction over resource activities, including the environmental protection, marine scientific research and construction of artificial islands and installations;
- The concept of the continental shelf has been confirmed with the possibility of declaring an exclusive economic zone of the seabed up to 200 miles from the coast with the possibility of extending this zone to a width of more than 200 miles under certain conditions and with the approval of the Commission on Limits of the Continental Shelf;

• A special regime was established for the high seas, which, along with its resources, was declared the common heritage of mankind;

• For the first time, international documents provide detailed requirements for the protection of the marine environment;

• Detailed requirements for conducting marine scientific research based on the principle of consent of the coastal state are set out.

Conclusions. To summarise, the path that international law of the sea has travelled and overcome since the days of ancient Rome to the 1982 United Nations Convention on the Law of the Sea convincingly demonstrates that international custom, which has always been shaped by the strongest states in the world, was and remains the basis of international law of the sea.

Customary rules of international law of the sea were formed as a result of wars and interstate consensus, and scientists and jurists of the respective times just summarised the state of affairs at a particular moment in their works, while their proposals for improving the legal framework often remained ideas and proposals, as international custom and the positions of strong maritime powers, supported by the results of maritime armed conflicts, continued to determine the regimes of the high seas and inland waters.

Over the centuries of struggle between states for access to the sea and its resources, customary international law of the sea has evolved from the concept of the closed sea to the recognition of the high seas as the property of all mankind, and the position on the internal sea – from the "the cannon-shot rule" to clear distances of internal waters, territorial sea and exclusive economic zone.

Only after the Second World War did international law of the sea move from the formation of customs by the "right of force" to global discussions and the search for interstate compromise, which, however, lasted for decades.

The most comprehensive document that summarised the rules of international maritime law was the 1982 United Nations Convention on the Law of the Sea, which incorporated the norms of international custom in the law of the sea, to which most states of the world agreed. As of December 2024, the 1982 UN Convention on the Law of the Sea has been signed and ratified by 167 states and the European Union, and another 14 UN member states have signed but not ratified it [23].

In the twenty-first century, as armed conflicts intensify in the world, the world order system, including international law of the sea, may potentially take on new customs and undergo significant changes. What these changes will look like will depend on which states become or remain strong at sea and what conditions and rules they offer to the rest of the world.

REFERENCES

1. Britannica, The Editors of Encyclopaedia. "Kalmar Union". Encyclopaedia Britannica, 19 Jul. 2024. URL: https://www.britannica.com/place/Kalmar-Union (дата звернення: 17.12.2024).
2. Heinzen, B. G. The Three-Mile Limit: Preserving the Freedom of the Seas. Stanford Law Review, 1959, 11(4), p. 597-664. URL: https://doi.org/10.2307/1226663 (дата звернення: 17.12.2024).
3. Fulton T.W. The Sovereignty of the Sea. William Blackwood and Sons. Edinburgh and London. 1911. URL: https://www.gutenberg.org/files/54977/54977-h/54977-h.htm#FNanchor_195 (дата звернення: 17.12.2024).
4. Grotius Hugo. The Free Sea (Mare Liberum). Translated by Richard Hakluyt with William Welwod's Critique and Grotius's Reply Edited and with an Introduction by David Armitage. Major Legal and Political Works of Hugo Grotius. Liberty Fund. Indianapolis, Indiana. 2004. URL: https://scholar.harvard.edu/files/armitage/files/free_sea_ebook.pdf (дата звернення: 17.12.2024).
5. Grotius Hugo. The Rights of War and Peace, including the Law of Nature and of Nations, translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers, by A.C. Campbell, A.M. with an Introduction by David J. Hill (New York: M. Walter Dunne, 1901). – 315 p. URL: https://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-1901-ed (дата звернення: 17.12.2024).
6. Kelly J. Patrick. Customary International Law in Historical Context: The Exercise of Power without General Acceptance. Widener University Delaware Law School Legal Studies Research Paper Series no. 17-06. – 2.2. Historical Overview. P.10. URL: https://www.researchgate.net/publication/324503206_Customary_International_Law_in_Historical_Context_The_Exercise_of_Power_Without_General_Acceptance/link/5ad0b5b1458515c60f4e7ebf/download?_tp=eyJjb250ZXh0IjpTmZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19 (дата звернення: 17.12.2024).
7. Porras Ileana M. Constructing International Law in the East Indian Seas: Property, Sovereignty, Commerce and War in Hugo Grotius De Jure Praedae – The Law of Prize and Booty, or "On How to Distinguish Merchants from Pirates", 31 Brook. J. Int'l L. (2006). P. 774. URL: https://brooklynworks.brooklaw.edu/bjil/vol31/iss3/5/ (дата звернення: 17.12.2024).
8. Cavalcanti de Mello Filho, Eduardo. The Law of the Sea in History: a Study Departing from the Maritime Spaces. 2020, 5 Perth International Law Journal. 43-62 pp. URL: https://www.academia.edu/49963163/THE_LAW_OF_THE_SEA_IN_HISTORY_A_STUDY_DEPARTING_FROM_THE_MARITIME_SPACES (дата звернення: 17.12.2024).
9. Bynkershoek, Cornelius van. De Dominio Maris Dissertatio, 1702. URL: https://ia902905.us.archive.org/32/items/dedominiomarisdi0000bijn/dedominiomarisdi0000bijn.pdf (дата звернення: 17.12.2024).
10. Kent H. S. K. The Historical Origins of the Three-Mile Limit. – The American Journal of International Law. Vol. 48, No. 4 (Oct., 1954), pp. 537-553 (17 pages). Published By: Cambridge University Press. URL: https://www.jstor.org/stable/2195021 (дата звернення: 17.12.2024).
11. Swarztrauber, Sayre Archie. The three-mile limit of territorial seas: a brief history. 1970. URL: https://core.ac.uk/download/pdf/36708492.pdf (дата звернення: 17.12.2024).
12. Acts of the Third Congress of the United States, Act of June 5, 1794, Ch.51, Sec. 6. – P. 384. URL: https://tile.loc.gov/storage-services/service/ll/llsl/llsl-c3/llsl-c3.pdf (дата звернення: 17.12.2024).
13. Letters From Secretary Steward to Spanish Minister, Dec 16, 1862, Aug 10, 1863 in 1 Moore, Digest of International Law 706-9, 709-12 (1906).
14. Letter from Mr. Guild to Secretary of State, Feb.3, 1912, Foreign Rel. U.S. 1304 (1919).
15. Statement of Under-Secretary of State for Foreign Affairs in the House of Commons, May 1923.
16. League of Nations. Acts of the Conference for the Codification of International Law. 1930. URL: https://icsid.worldbank.org/sites/default/files/parties_publications/C8394/Claimants%27%20documents/CL%20-%20Exhibits/CL-0236.pdf (дата звернення: 17.12.2024).
17. Treves Tullio. Introductory Note to 1958 Geneva Conventions on the Law of the Sea. – 2008. URL: https://legal.un.org/avl/ha/gclos/gclos.html (дата звернення: 17.12.2024).
18. Convention on the Territorial Sea and the Contiguous Zone. Done at Geneva, on 29 April 1958. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%20516/volume-516-I-7477-Other.pdf (дата звернення: 17.12.2024).
19. United Nations Convention on the Law of the Sea (with annexes, final act and procès-verbaux of rectification of the final act dated 3 March 1986 and 26 July 1993). Concluded at Montego Bay on 10 December 1982. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf (дата звернення: 17.12.2024).
20. United Nations Convention on the Law of the Sea. Participants. URL: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5 (дата звернення: 17.12.2024).
21. Treves Tullio. Introductory Note to United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982. 2008. URL: https://legal.un.org/avl/ha/uncls/uncls.html (дата звернення: 17.12.2024).
22. Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. URL: https://digitallibrary.un.org/record/201718/files/A_RES_2749(XXV)-EN.pdf (дата звернення: 17.12.2024).
23. United Nations Convention on the Law of the Sea. List of parties. URL: https://www.unclos.org/ (дата звернення: 17.12.2024).