

ICEST 2021**II International Conference on Economic and Social Trends for Sustainability of Modern Society****MILITARY AUTONOMOUS INHABITED UNDERWATER
VEHICLES: POLITICAL AND LEGAL ISSUES**

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Abstract

This work examines the international legal status of autonomous uninhabited vehicles. The main purpose of the study is expressed in the reflection of points of view regarding the legal regulation of the activities of military unmanned underwater vehicles. The target is revealed through the prism of the incident on December 15, 2016 in the South China Sea, when a US military research glider was captured by the Chinese naval forces. As an advantage of the work, it is necessary to highlight the interdisciplinary nature of the research, carried out using the main method of legal sciences, the formal dogmatic and dialectical method, which allows us to consider the contradictory tendencies of the main political players. The author comes to the conclusion that neither intelligence activity nor the use of weapons with the help of unmanned underwater vehicles is prohibited by international law. However, the regulation of underwater vehicles is fraught with at least three problems. First, there are different points of view regarding the status of military activity using robotic technology. Secondly, the legislation of coastal states restricting freedom of navigation in the exclusive economic zone, which complicates the coordination of actions of participants in international relations, including with respect to the use of robotic technology. Third, the issue of military activity is closely linked to issues of state interests and security. Therefore, in contrast to the future development of normative regulation of the civilian industry of disembodied robotics, military activity will not be widely regulated in the foreseeable future.

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1. Introduction

At the moment, there are no norms in international law that unequivocally regulate the issue of the functioning of unmanned underwater vehicles. Uncertainty of status is associated, first of all, with anthropocentrism (Gavrilov & Dremlyuga, 2020) of the law of the “pre-digital” era. This lag in law does not in any way affect the development and use of robotic technologies in general and underwater technologies in particular. Thus, over the past 20 years, the leading countries of the world have increased their funding for robotic developments in the civil and military spheres by 30 times (Illarionov et al., 2011). Deep-sea underwater vehicles have proven themselves especially well for reconnaissance purposes. However, there are also international conflicts in connection with the discovery of reconnaissance devices. The most famous conflicts between the United States of America and China in the South China Sea, in which the conflicting parties use different approaches to understanding the legal status of unmanned underwater vehicles.

2. Problem Statement

Legal status of automatic unmanned underwater vehicles.

3. Research Questions

The research objectives are:

- to consider the points of view regarding the status of autonomous unmanned underwater vehicles in the implementation of reconnaissance activities;
- to determine the possibilities of legal regulation of unmanned underwater vehicles for offensive purposes;
- to assess the likelihood of adopting a common document regulating military activity on the high seas and the exclusive economic zone of coastal states, taking into account the political situation.

4. Purpose of the Study

Establish the main approaches to the legal status of military autonomous unmanned underwater vehicles in legal doctrine and political practice.

5. Research Methods

The study is based on such methods as formal dogmatic, which allows to establish the content and systematize the rules of law governing the legal status of autonomous uninhabited underwater vehicles; system-structural and dialectical analysis, which allows differentiation and detailing of socio-political processes under the influence of automation and robotization; a predictive method and a modelling method,

on the basis of which trends in the development of international regulation on this topic in the near future were identified.

6. Findings

The 1982 UN Convention on the Law of the Sea provides for various water areas with different legal status, within the framework of which the activity of warships of foreign states is regulated in different ways. Thus, such activities in territorial waters cannot be carried out without the permission of the government of the coastal state.

In the exclusive economic zone and the high seas, the 1982 Convention does not prohibit freedom of activity, and freedom of activity, in its broadest sense, also includes military intelligence (Pedrozo, 2014). Therefore, some coastal countries, guided by the framework article 310 of the Convention, declare the need to obtain permission to conduct military maneuvers in their exclusive economic zone. These states include, first of all, China, which restricts the freedom of navigation of foreign warships with the help of national legislation.

The above practice may contradict Article 58 of the Convention on Free Access of All States to Lawful Uses of the Sea. Thus, in the field of military use of the exclusive economic zone, the first problematic field arises - the ambiguity of the provisions of the 1982 Convention, which allows coastal states to restrict freedom of navigation at the level of national legislation, contrary to Article 58. This circumstance does not add coherence of actions of participants in international relations and provokes international conflicts.

The next problematic field in modern international law is associated with the active introduction of robotic technologies into military activity, in particular, unmanned autonomous underwater vehicles. Obviously, unmanned aerial vehicles have a different legal status than a military vessel. So the 1985 UN Convention on the Law of the Sea defines in paragraph 29 among the defining characteristics of a warship it lists being under the command of an officer, as well as having a crew subject to regular military discipline. The drone cannot demonstrate either the crew or the commanding officer. Due to the fact that the unmanned vehicle is not a warship, it is not subject to the immunity of a warship guaranteed in paragraph 95 of the Convention on the Law of the Sea. Thus, deep-sea vehicles can be potentially vulnerable to being kidnapped or detained by the state concerned.

So known is the case of China's detention of an unmanned deep-sea vehicle returning to the American military research vessel *Bowditch* on December 15, 2016 in the water area disputed by China. Despite the fact that the incident can be considered settled at the moment, this event underlines the unresolved issue of the legal status of the unmanned underwater vehicle.

The United States is of the opinion that with respect to robotic technology, it is necessary to apply the custom of international law - the principle of sovereign immunity. In a broad sense, this principle is understood as the liberation of one state from fulfilling the imperative orders of another state. In this vein, the seizure of an unmanned maritime system is viewed as an encroachment on the property of a sovereign state. Professor I.V. Kholikov agrees with the legitimacy of the US position. He defines unmanned maritime systems as the property of the state, sovereign immunity extends. The author comes to the conclusion that

other states can interfere in their work only in exceptional cases (for example, in an international armed conflict) (Kholikov, 2019).

However, it must be borne in mind that the doctrine of sovereign immunity is not a peremptory norm of international law (Churilina, 2018). Attempts to general rules governing the issue of sovereign immunity, adopted in 2004 in the adoption of the UN Convention "On State Immunities of States and Their Property." According to the text of the convention, for the entry into legal force of the document, the thirtieth day after the date of deposit of the thirtieth instrument of ratification or thirtieth instrument of acceptance. To date, only 21 states have ratified the Convention, so the Convention is not in force.

It is noteworthy that the 2004 Convention provided for cases of exceptions to the granting of immunity to a foreign state from enforcement of a judgment. So, among others, paragraph 19 of the 2004 Convention is mentioned, there is another exception from the provision mentions:

"On the territory of the State of the court, provided that enforcement action after a judgment has been issued can only be taken in relation to property that has a connection with the entity against which the legal proceedings were directed" (Par.19).

Thus, in order for the specified exception to apply, it is necessary:

- the use of property for purposes other than state non-commercial;
- the location of property on the territory of the state of the court;
- taking action exclusively against property that has a connection with the entity against which the legal proceedings were directed. Education is understood as education that has signs of statehood.

If this rule were applied in relation to the situation with the glider, then China would have a controversial position, since the territory of the incident cannot be considered indisputably the territory of China, especially after the decision of the arbitration court.

However, China could always make a reservation about the scope of the Convention. Thus, Italy, Norway, Finland made statements regarding the fact that the Convention does not apply to the status of the armed forces and associated personnel.

The reason why the principle of sovereign immunity in relation to military property is likely to remain without the introduction of a mandatory universal rule for a long time lies in the national interests of both coastal countries and countries engaged in military activity. It is obvious that a balance between these interests is practically impossible. For example, China has repeatedly protested the intelligence activity of American vessels such as Bowditch, seeing drones as an effective tool for collecting intelligence.

Beijing has exploited a gap in the legal framework over the status of a robotic underwater vehicle, but China's actions are more like a subtle political game. So the Chinese side claims to have found an ownerless apparatus that interferes with navigation. There is some irony in this explanation, as US military vessels often disguise intelligence activities as scientific research. And since the US is carrying out innocent research missions, why shouldn't China find orphan items in the South China Sea. Given the explanations of the Chinese side, it is still premature to say that China is completely opposed to the principle of sovereign immunity with respect to unmanned underwater vehicles. Thus, China has been the largest developer of

robotic technology since 2013 (US-China economic and security review commission, 2016), and from 2014 to 2022, China has a robotization program for the armed forces (Komissina, 2019).

Thus, the present state of affairs makes it possible to respond to a violation of the national security of a coastal state without violating the principle of sovereign immunity. So in fact, in fact, there is no news of the theft by any state of equipment not related to espionage.

Autonomous unmanned vehicles can also be used as a means of attack, since international law does not contain a direct restriction on such use. In this case, the requirements of international humanitarian law should apply to this type of weapon as well.

Let's list the principles of international humanitarian law that apply to the use of robotic technology. So the doctrine of international humanitarian law is guided by the clause of the Russian jurist F.F. Martens (as cited in Sechin, 2021), which calls for addressing the principles of humanity in any unsettled situation affecting people's lives. In the 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice recognizes this clause as a source of customary international law and cites its modern version, enshrined in paragraph 2 of Article 1 of Additional Protocol 1 to the Geneva Conventions of August 12, 1949, concerning the protection of victims international armed conflicts (Nogoibaeva & Leighton, 2012).

In the same conclusion, the Court deduced another fundamental universal principle: the will of the state in the use of weapons is not unlimited. On this principle, the Court bases two rules. The first rule - the distinction rule - is that civilians should not be attacked, and weapons that are unable to distinguish between combatants and non-combatants should be prohibited. Also, weapons that cause unnecessary suffering and cause more damage than the achievement of military objectives should be subject to the prohibition - this is the rule of proportion.

7. Conclusion

Based on the above analysis, it can be concluded that neither intelligence activities nor the use of weapons (provided that they comply with the principles of humanitarian law) with the help of unmanned underwater vehicles is prohibited by international law. However, the regulation of underwater vehicles is fraught with at least three problems:

First, there are different points of view regarding the status of military activity using robotic technology. Thus, the first point of view is based on the principle of customary international law, according to which sovereign immunity extends to all property of the owner. The second point of view is demonstrated in the actions of the People's Republic of China, when uninhabited autonomous underwater vehicles do not enjoy sovereign immunity and can be withdrawn. There is a third point of view, also demonstrated by China, when the principle of sovereign immunity is respected, but this principle, due to its non-imperativeness, may not be respected due to unwanted military interference in national interests.

Secondly, the legislation of coastal states can restrict freedom of navigation in the exclusive economic zone, which in turn complicates the coordination of actions of participants in international relations.

Third, the issue of military activity is by no means always just a matter of law, since it is closely linked to issues of state interests and security. Therefore, in contrast to the prospective development of

normative regulation of the civilian industry of unmanned robotics (some scientists talk about the formation of special branches and sub-branches of law that regulate human-machine interaction (Mamychev et al., 2018), the normative regulation of the military use of robotic technology will demonstrate a tendency to preserve the current status quo.

The identified tendency stems from the very nature of intelligence activities, the main purpose of which is to remain in the shadows. With regard to the development of offensive technologies, the limitation here is also unlikely, since robotic technologies are effective and at the same time are able to minimize losses among personnel.

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