ІСТОРИЧНІ АСПЕКТИ

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PARIS DECLARATION ON MARITIME WARS 1856 AND ABOLITION OF PRIVATEERING

The list and the function of international conferences of XIX century regulating legal institutes in the times of capitalism development, in particular slavery and piracy, have been determined. Conceptual and terminological framework and legal nature of privateering, which is piracy under letters of marque, have been investigated. The necessity to abolish privateering has been shown by the example of Paris Declaration Respecting Maritime Law of 1856. Under conditions of industrial revolutions termination, privateering failed to compete with powerful marine forces in the struggle between European countries for international dominance in oceanic spaces.

Keywords: international conferences; piracy; privateering; maritime wars; oceanic spaces; international customs.

Визначено перелік міжнародних конференцій XIX ст. та їх роль у регулюванні правових інститутів доби підйому капіталізму, зокрема рабства та піратства. Досліджено понятійно-термінологічний апарат і правову природу каперства – піратства за державними ліцензіями. На прикладі Паризької декларації «Про морські війни» 1856 р. висвітлено необхідність заборони каперського промислу. Обґрунтовано, що в умовах завершення промислових революцій каперство не мало змоги конкурувати з потужними військовими флотами в боротьбі за світове панування європейських держав на океанських просторах.

Ключові слова: міжнародні конференції; піратство; каперський промисел; морські війни; океанські простори; міжнародні звичаї.

Определен перечень международных конференций XIX в., обозначена их роль в регулировании правовых институтов периода становления капитализма, в частности, рабства и пиратства. Исследованы понятийно-терминологический аппарат и правовая природа каперства – пиратства по лицензиям государств. На примере Парижской декларации «О морских войнах» 1856 г. показана необходимость запрета каперского промысла. Обосновано, что в условиях завершения промышленных революций каперство не смогло конкурировать с мощными военными флотами в борьбе за мировое превосходство европейских государств на океанических просторах.

Ключевые слова: международные конференции; пиратство; каперский промысел; морские войны; океанические просторы; международные обычаи.

As it is generally known a great number of International Maritime Law Institutes started their life in the period of Rise of Capitalism. Rules regulating public-law relations of different states in seas and oceans have been created and accumulated during several centuries in particular in form of international customs. In the 19th century the International Law was significantly developed by means of international conferences. Congress of Vienna 1814–1815 tabooed transporting slaves by sea and that significantly promoted the final abolition of using slavery. Diplomatic Law was further developed at this congress. A significant contribution was made to the process of international rivers legal status formation and permanent neutrality of Switzerland was recognized. The Paris Declaration 1856 abolished privateering (attacking, plundering and sinking vessels of belligerent or neutral powers) and proclaimed neutrality of the Black Sea.

International customs in the sphere of using seas and oceans were created during a prolonged historic period. These customs were accepted just by several states and were denied by other ones. And because of this disputes and controversies arose between states concerning the question whether this or that international legal norm should be standard compulsory for all. As a result a great necessity arose to perform codification of norms of the International Maritime Law. Attempts of such codification were made yet in the 18th and

19th centuries but as a rule they were not successful. There are just few cases known when these attempts were successful. The Paris Declaration on Maritime Wars 1856 connected with results of the Crimean War was one of these few international legal acts.

As it is generally known in the middle of the 19th century the so called Eastern Question was one of the most important problems in the sphere of international relations. World Powers were worried about the question who is going to possess Turkish inheritance as far as a quick decay of the Ottoman Empire was started. The pretext for future war was formulated as «Palestinian question» i.e. found itself in form of a conflict connected with Palestinian Sanctities. The question was to define who was going to be the defender of the most honored temples in Jerusalim and Bethlehem. Palestine in that time was a part of the Ottoman Empire and being forced by the president of France Louis Napoleon Bonaparte the sultan took the decision in favor of catholics. And that provoked dissatisfaction in St Petersburg. Nickolay the 1st decided to reinforce the strategic position of his empire. First of all he wanted to solve the problem of Black Sea Straits. According to agreements effective in that period the Russian Navy were not permitted to pass through these Straits. And Turkey during the war period had a right to let its allies to the Black Sea. In addition to this Nickolay the 1st wanted to reinforce influence of Russia on the Balkan Peninsula. Getting ready to the war he relied on hostile attitude of British Government towards the French Emperor but he was wrong. The traditional British policy was to prevent possibility predominant position of any single state on the European continent. And that was the very reason why it was at the head of struggle of the three empires (British Empire, French Empire and Ottoman Empire) against Russia during the Crimean War [1, p. 357].

Hostilities were stopped at the end of 1855 and on the 18th of October 1856 the Paris Peace Treaty was signed which was very onerous for Russia. It restricted Russian influence in the Black Sea Region but its role as a great power was preserved. Nevertheless during the following fourteen years Russia refused to follow the rules set by the Paris Peace Treaty [2, p. 419]. Anticipating such changes in Russian foreign policy governments of England and France became firm about their decision about the necessity to bring radical changes into the fundamental principles of the International Maritime

Law [3, p. 5–7]. At the same time they considered it necessary to forbid privateering providing that in conditions of Industrial Revolutions finalization in Great Powers couldn't substitute powerful navy forces able to take part in struggle for world domination in ocean expanses. The «Paris Declaration on Maritime Law» was intended just for this purpose [4].

On the proposal by count Valevsky a French authorized representative in Paris this declaration became the result of modus vivendi signed between France and Great Britain in 1854. First it was intended for Crimean war legal basis reorganization. Then the two great powers decided that they wouldn't grab enemy goods from neutral vessels and neutral goods from enemy vessels. The both parties agreed that they wouldn't issue letters of marque which had been a legal ground for piracy of private enterprises in the Global Ocean yet since the 11th century.

As it is known domestic textbooks of international law represent just a general description of the problem concerning organizational and legal basis of privateering which used to be a firm ground for primary capital accumulation. And just the tutorial book by I. M. Zharovska represents a general description of peculiarities of international legal regulations in the sphere of Sea Powers armed struggle in ocean expanses on the basis of the Paris Maritime Declaration [5, p. 87–95].

In order to understand the essence of privateering abolition process we should first define its legal ground. It arose on the ground of Great Powers struggle for their geopolitical position in the Global Ocean started in the 16th century. England, Holland, France, Spain and Portugal took part in this struggle. And in order to win all these Powers used a method proved by centuries and namely piracy. It was a compound of the state mechanism and a significant element of the world trade. Specific features of the sea brigandage during the period of the transition to capitalism was defined by territorial and legal factors. As for the first factor in different regions sea brigandage was represented in different forms. But alongside with the geographic factor the legal factor is not less important for classification of this international crime. Its essence is revealed by relations between pirates and governmental authorities of those countries which took part in the process of creating the world colonial system. In

accordance with the Maritime Law of the 16th-19th centuries piracy was defined as «a sea robbery performed by private parties guided by their private will for lucrative purposes against alien property» 141].

The notion of piracy in the international legal science has always been amorphous. As for definition of this notion International law specialists concur just in fact that in the world juridical practice it is identified with murders, robberies and other illegal and violent actions. But in accordance with the historical legal science roots of piracy had always been on land and was defined by socio-economic and socio-political processes taking place in lives of definite states. This phenomenon was definitely described in the «Great Encyclopedic Juridical Dictionary» being an authoritative Ukrainian reference edition in various fields and institutes of domestic and international law. There the following information is presented: Piracy from Greek «peirates» meaning «brigand» is sea-brigandage, illegal and violent actions in terms of the international law (attacking, sinking or plundering) performed against merchant vessels in the open sea by private or state vessels» [7, p. 632].

Among various forms of piratical actions Privateering was especially significant concerning its conformity with the foreign policy course taken by great European powers where capitalism was developed. In this case sea brigandage is meant performed in accordance with licenses issued by states at war. The word «caper» defining a person dealing in privateering in many languages is of German origin but its essence was the most brightly expressed through criminal actions performed by English sea rubbers called «privateers» [8, p. 34–38]. Privateering didn't have any special prospects for development during the period when the world colonial system was controlled by Spain and Portugal. But the rapid development of capitalism in England which due to its geopolitical position had to become a great sea power created favorable conditions for development of privateering almost all over the world [9, p. 202]. The alliance of the British Monarchy and pirates became a guarantee for robbers' actions success. Robbers were also called «bounty hunters» when they received licenses for privateering from kings. And that's why geopolitical brigandage became the main method for constructing the British Empire [9, p. 22], and its concrete examples stimulated the same

processes in competitive countries. Among these countries there were Holland and France[10, p. 22].

Privateering became an important form of solving international conflicts starting from 1648 It was confirmed by the international law after the Thirty Years' War. After the end of the War some European states concluded Peace of Westphalia. On the 24th of October 1648 Westphalia Treaty was signed containing new international legal principles which were dominant up to the middle of the 19th century. These principles are: political equilibrium, independence of secular authorities from clerical authorities and equal position of states on the global stage. But among the important features of international relations in that period even despite the formally accepted international law democratization there were colonialism and war as a legal method of solving international conflicts.

According to the norms of the International Law of that period privateering vessels and their equipment were private property. They acted on the ground of governmental licenses with a purpose of capturing property belonging to citizens of enemy powers and selling this property at auction. English and American researchers indicate that privateers hunted on merchant shipping communications of enemy powers and played an important role in the history of naval theory during many centuries [11, p. 99–103]. But the essence of privateering has always been the same: aiming brigand ships at getting money of a private person or a group of persons and receiving a license from the native government for protection in case of meeting friendly ships. Otherwise such license protected sea robbers from capital punishment as far as availability of these legal acts provided them with position of prisoners of war. Hollanders, Britishers, French people, Swedes. Danes and subjects of the Russian Empire agreed to accept privateering just in case of getting a governmental normative act – «letters of marque» (the French variant «lettres de marque») [12].

That enormous damage brought by privateering to the world trade initiated movement for its abolition yet in the middle of the 18th century. The first one among publicists who rebelled against privateering was abbot Mably (1761). The treaty with Prussia of 1785 signed by B. Franklin in the name of the USA ostensibly contributed to abolition of privateering. But the further international

events especially the British-American War 1812–1815 led to its recovery. In France 1792 the Legislative Assembly on the initiative of deputy Kers made an attempt to initiate a general European agreement as for abolition of privateering but this step wasn't supported by other states. The attempt to destroy privateering made by France in 1823 during the war with Spain was also unsuccessful mainly due to counteraction of Britain.

The start of the Crimean War significantly changed views as for privateering. Governments of France and Britain were afraid of privateering war with Russia and considered that warships owned by Allies were sufficient for destruction of Russian trade. Britain and France refused issuing letters of marque by means of declarations of the 28th and 29th of March against Russia. They motivated their decision by the will to lower the negative impact of war. Probably these actions were directed against Russia because in this case Russian privateers would find themselves in a difficult position especially as far as Russian ports were blocked. Under these circumstances Russia refused to issue letters of marque.

At Paris Congress the question about abolition of privateering was approved by England. This state now defined these actions as a «organized and legalized sea robbery» although previously it had opposed any attempts to abolish privateering. England recognized that abolition of privateering was a necessary condition for its freedom of neutral trading [13, p. 101]. This agreement was accepted by Austria, France, Great Britain, Prussia, Russia, Sardinia and Turkey. It was also decided that general invitation to join this agreement should be sent to all nations providing that they should follow «the four principles stated in the mentioned declaration».

Paris «Declaration Respecting Maritime Law» dated the 16th of April 1856 proclaimed abolition of privateering. According to this declaration privateers were proclaimed international criminals who were not really different from pirates who also carried out private war for personal purposes. This declaration regulated relations between states at war and neutral states. In result of that new prize rules were brought into action in the sphere of shipping in the open sea. The main positions of this declaration were as follows: privateering is and remains abolished, neutral flag should cover enemies' goods except for contraband of war; neutral goods except

for contraband of war are not to be captured under the flag of an enemy; blockades are going to be valid just in case of effective actions of the respective state supported by its powerful navy sufficient for preventing enemies' access to the coast.

The Declaration also contained information that it wasn't obligatory for any state which didn't join to it but during a short period of time almost all sea nations of the world announced their official joining to the Paris Declaration. And just the United States refused to do so [14, p. 75]. The international community learned about this American position by the US Secretary of State Mercy in June of 1856. He noted that the United States were ready to join the Declaration if it was going to be supplemented with an additional fifth article about the sea protection of all private property i.e. including contraband as far as for this country contraband goods were the main source of capital accumulation alongside with piracy, privateering and slave trading. Mercy stated that if the above mentioned rule wasn't going to be added to the Paris Declaration then «the United States wouldn't be able to refuse the right to send private vessels who had previously been the most effective American sea arms during wars as far as the USA didn't have a strong naval fleet which was of a great importance for combat power» [15, p. 200].

Of course the principle of protecting any seafarers property should have complied with the basic principles of «civilized nations» with their sanctimony of private property but England opposed to approval of this «Mercy's Amendment» [16]. This opposition was of exclusively commercial nature and that is proved by the debates in the Upper Chamber of the British Parliament concerning the essence of Paris Declaration which lasted in London for a long period. In this way, one of British Conservatives leaders and namely earl of Harrouby noted that England wouldn't accept any requests of the USA to give them «a certain equivalent for cancellation of privateering». And that was a wise decision from the point of view of great British entrepreneurs who still dominated in the Global Ocean and couldn't agree to pass their firm position to the USA. He was supported by earl of Albemarle who stated his firmness that it wasn't a good idea to make concessions for American smugglers.

A certain misunderstanding among British lords concerning the above mentioned problem was about the question why the

English Government expressed views of the Great Britain as for the essence of the Paris Declaration without discussing this matter in the Parliament. Earl of Derby announced as follows: «We must recognize negotiations with other states concerning conclusion of this Declaration as prerogative powers of the Crown... But I should denote that this is a rude and egregious abuse of the prerogative. I say that our plenipotentiary representatives went to Paris with a certain aim and the Parliament and the county expressed their trust to them but these representatives violated the trust... They entered into the agreement concerning this matter having not fulfilled certain provisions complying with our interests». But earl of Clarendon expressed his thought that this agreement comply with the maritime customs known as «Consolato Del Mare» (The Code of Maritime Law) as well as with Legal principles of the maritime war formulated by H. Grotius.

These debates were stopped by earl of Genvill a representative of a well- known family of British aristocrats who carried out an aggressive external policy of Great Britain for a long period. He emphasized that this Declaration complied with the Law of the British Empire and is a wise decision for solving the problem of British domination in the Global Ocean [17, Vol. 142, p. 521–529].

But during that period English people could not make the USA to abolish privateering. And that's why during the Civil War between the North and the South of the USA using privateers was a common practice for the both parties of this military conflict [18, p. 301].

In 1861 the navy fleet of the Slave-holding Confederation relied upon the support of privateers and that's why the USA Government had to start negotiation with European states concerning the matter of USA joining the Paris Declaration in order to stop privateering actions of the confederate entrepreneurs. But these negotiations didn't bring any results as far as because of various reasons president A. didn't use his powers concerning abolition of privateering. After a certain period of time the USA abolished privateering but this institution gradually turned into cruiser warfare and then into raiding with a help of which the USA performed brigandage in the Global Ocean on the statist basis. This step was determined by financial and technical inefficiency of privateering in the period of industrial capitalism.

While England tried to join the USA to the Paris Maritime Declaration it was ratified by fifty five states of the world. This agreement became the first multilateral attempt to codify during peacetime rules which had to be used in case of war. Of course this agreement was obligatory only for those its participants who were not at war between each other. Under such conditions the transition of developed states to the new stage of capitalism development based on industrial revolutions in the middle of the 19th century combined efforts of many European States in their struggle against privateering in all oceans. As a result of this after the Crimean war under the pressure of numerous factors England once and for all decided to abolish any legal and organizational elements of privateering [19], but in conditions of the First World War privateering was substituted by raiding.

Nowadays sea-brigandage is again a method for solving geopolitical problems of developed states of the world. That's why attempts of the world community to protect maritime commerce from illegal piratic infringements are still futile although handling the history of the up-to-date piracy can give certain possibilities as for using previous methods of fighting piracy for solving similar up-to-date problems.

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