СЕКЦИЯ 2

Проблемы конституционного, административного, международного права в условиях совершенствования правовой системы и модернизации юридического образования

Құқықтық жүйені жетілдіру және заң білімін беруді жаңғырту жағдайында конституциялық, әкімшілік, халықаралық құқықтың мәселелері

MODERN PRACTICE OF RESOLVING TERRITORIAL DISPUTES IN INTERNATIONAL LAW

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The term "territorial diputes" is used to describe a wide range of topics, including territorial delimitation and territorial regimes. Territorial delimitation includes territorial discussions, national and peoples' self-determination, the inviolability and unity of the State of the Earth, and the establishment of the continental shelf and financial zone limits in accordance with international law and under an agreement between neighboring countries [1; 36]. Territorial regimes can cover a wide range of topics, including territorial sovereignty and jurisdiction, transit across overseas land, unique territorial regimes formed through bilateral agreements, and other topics.

The classification of international territorial disputes is crucial to the process of resolving them. The test of territorial conflicts enables us to see that one or more peaceful measures, material and legal reasons, and, as a result, the configuration of the resolution are strongly influenced by any of the forms.

The inconsistency of territorial disputes now occupies a significant space in international law, and it is linked, above all, to issues such as national and peoples' self-determination, the prohibition of forcible land seizure, and the peaceful modification of existing municipal limits in accordance with generally recognized international law standards. The reality that practically all territorial disputes, both evident and likely, are loaded with dangerous armed episodes causes a vast society's intense worry for the provided duty.

The likelihood of an armed conflict is directly proportionate to the severity of the territorial dispute, which is influenced by the value of the territory allocated to each side. The availability of important natural resources in the offered location, as well as the strategic importance of the land, are the true causes in this respect, as modern practice reveals. In the latter situation, we're talking about areas of the territory's geography that determine the likelihood of control over the area (dominating heights, islands, etc.).

Armed events in territorial disputes have distinct characteristics that set them apart from international conflicts and national liberation movements including armed conflict. Locality is the most common sign of these occurrences [2; 16]. It does, however, follow in the footsteps of others to suggest that the localization of an armed event can be easily breached by the spread of military activity and the involvement of other governments. Armed occurrences in territorial disputes are occasionally followed by a formal declaration of war between the contesting nations, which is really regarded another distinction between the episodes under examination and wars, due to the lack of inclusivity in time and location.

A categorization of territorial disputes is frequently found in scientific literature, with the criteria serving as the direct topic of proof in the case. At the same time, many authors concentrate on two sorts of disagreements: those over the location of the boundary line and those over who owns a specific piece of land.The distinction is demonstrated in the fact that in

conflicts over state territorial ownership, the debate usually revolves around the status of a specific region with well defined physical boundaries. The boundary line itself is not a source of contention. We are also talking about the reliability of a part of the territory to a particular State when we argue about the position of the border line, but it is the determination of the place of passage of the state border caused by the absence of delimitation or the existence of concurring delimitations that is crucial.

The present practice of settling territorial disputes allows this categorization to be greatly expanded by identifying various sorts of direct topic of proof in the dispute. There are conflicts that have the identification of a geographical object as a subject of proof in connection to any legal source as a separate category.

Different viewpoints of the parties (disagreements) over the presence or operation of international law, contractual or customary, regulating the legal affiliation of a particular piece of territory give rise to a territorial dispute. A legally justifiable stance of one party about a certain border location or any rights to the contested region is required in such a dispute. It might take the form of a protest by one party against the other's conduct in respect to the disputed region.

Not all disagreements, however, result in territorial disputes. The National Assembly will form a territorial complaint, a one-sided territorial complaint, in which the government making the claim does not object to internationally recognized measures defining the boundary line or an accessory of a particular land, but believes that this accessory must be changed for some reason. Similar conflicts of interest that are not followed by official complaints from friends to friends (though they might be manifested in border incidents, troop concentrations on the border, etc.) are termed contentious circumstances.

There are three basic parts to the notion of peaceful settlement of international disputes:

1) States must resolve their mutual disputes exclusively through peaceful means;

2) States must resolve all of their mutual disputes in this manner, both those that threaten and those that do not threaten international peace and security;

3) states must resolve their mutual disputes in a timely manner, not leaving them unresolved.

The most successful ways are bilateral examination of territorial tasks in talks and consultations, which have every opportunity of being performed both formally and informally. These are the talks between the Russian Federation and Japan over the adaptation of the Iturup, Kunashir, Shikotan, and Habomai islands. The settlement of issues on the pretext of designated lands has the potential to be found with the help of discussions, taking historical and legal precedents into consideration, as stated in the General Tokyo Declaration on Japanese-Russian Relations of October 13, 1993 [3; 221].

Negotiations are by far the most effective method of settling international issues, yet they can have both positive and bad outcomes. The following are examples of positive outcomes:

1) direct settlement of the conflict;

2) agreement on the adoption of another peaceful method of resolving the dispute.

The failure of the discussions is the bad outcome. In the scientific literature, there are a variety of viewpoints on why negotiations fail. Some scholars think that if discussions fail, military confrontation will eventually ensue.Other scholars concur with this viewpoint only if discussions are disrupted as a result of diplomatic ties breaking down. Even if diplomatic relations between contesting States are severed, a neutral State, a group of States, or an international organization might provide its good offices and mediation to continue the search for a mutually acceptable settlement of problems.

Negotiations must be done taking into account a variety of variables in order to complete the specified duties and prevent adverse consequences. In particular, the parties' willingness to find an agreement on a contentious subject is required for the turbulence of virtually every negotiation. This necessitates a high level of mutual trust between the parties, as well as the capacity to act in the best interests of a friend of a friend. The countries' goal to preserve friendly relations with one another makes a lot of sense.

"Nearly all participants in the UN Special Committee on the Fundamentals of International Law's discussion of peaceful means of resolving international disputes noticed, in fact, that the luck of each negotiation is usually accompanied by the parties' attraction to honest cooperation, which would exclude various kinds of pressure, the desire to infringe on the legitimate interests of the first of the dispute members." The demands of the concept of sovereign equality of all countries underpin the equal position of conflicting parties in negotiations. This idea must be followed during all talks[4; 78].

The settlement of a territorial dispute through negotiations differs from arbitration and judicial decision in that it is based on the disputing parties' agreement, that is, they can make any compromise and mutual concessions they deem acceptable without violating the basic principles of international law. This feature makes a negotiation-based conclusion the most stable and viable. It is the consequence of the contesting parties' joint declaration of their desire, which allows discussions to take precedence over other international legal ways of settling territory disputes.

Good offices and mediation. Good offices and mediation are two methods for resolving international conflicts peacefully. They are employed when conflicting parties are unable to establish the essential connections among themselves for a peaceful resolution of the problem. Good offices are defined as a collection of acts taken by States or international organizations that are not engaged in this dispute and are intended at establishing or restarting direct discussions between the disputing parties. Mediation entails a third party's active involvement in discussions, and in this situation, the third party might provide its own solution to the conflict or other issues. However, if the parties do not accept this suggestion as a viable solution, it will stay just that.

In this approach, good-natured offers and mediation do not solve the disagreement on their own, but rather assist the opposing parties in their talks, which they eventually accept on their own. However, it should be noted that the third party in the discussions has the potential to give important commercial assistance to the contending nations, as well as to represent the function of a key social idea to some level [5; 16].

The goal of good offices is to make it easier for opposing parties to enter into discussions for a peaceful resolution of their differences. In discussions between the parties, good offices have no bearing on the paths to a peaceful conclusion or even the resolution of the issue. The outcome of such conversations might be the disputing parties' appeal to alternative peaceful way of resolving their differences.

International arbitration. International arbitration is a voluntary agreement between disputing parties to submit their disagreement to a third party (arbitration), whose judgment is binding on them. It is one of the oldest forms of peaceful settlement of international disputes.

If the conclusion of a dispute during negotiations or mediation is based on the agreement of the parties, then the consideration of a third party plays a key role in arbitration. If the votes of the judges are equal from each side, the voice of the chairman of the arbitration is considered decisive. In the course of negotiations and mediation, the parties have every chance to come to any agreement, if only it does not contradict the main foundations and generally recognized standards of international law.

In arbitration, a no-fault decision is made only within this framework, a conclusion that goes beyond this area of responsibility has the opportunity to be annulled, with the exception of disputes "ex aequo et bono" - out of loyalty and good-natured conscience. So, during negotiations and mediation, the parties have every chance to eventually renounce the principle conclusion of a territorial dispute on a specific site and decide to introduce a fresh boundary on the basis of the exchange of certain plots of land or on some other base. In arbitration, these options are excluded, because the conclusion of the arbitration only answers the question that has been raised, and this conclusion is considered irrevocable for the parties [6].

The United Nations' International Court of Justice. Following arbitration, the International Court of Justice of the United Nations takes its position in the system of peaceful ways of settling international conflicts. The International Court of Justice and arbitration are comparable

in that the ultimate result is not contingent on the will of the opposing parties, as is the case with discussions, mediation, and good offices.Although there may be some complexities here, the essential element of the court and arbitration is the finality of the judgment given and its binding on the parties. In all circumstances, the parties' appeals to the court and arbitration are voluntary, with the exception of conflicts in which the parties have agreed to these organizations' mandatory authority.

At the conclusion of a territorial dispute, as well as at the conclusion of any dispute, there is a discrepancy in revealing the present state of things. An impeccable case is considered when, by studying and examining all the confirmations and statements of the parties, it is possible to conduct a fundamental mistake and qualify the guilty party. However, in practice, this does not happen every time, and territorial discussions in this regard highlight a large number of examples of very difficult and confusing situations, where serious political difficulties are added to legal tasks, and initial actions go far into the situation. In these difficult criteria for the conclusion of territorial disputes, all kinds of generally recognized measures and concepts of international law are used, which contribute to both the definition of the boundary, for example, and the establishment of the adaptation of lands.

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ПРАВОВЫЕ ОСНОВЫ ДЕЯТЕЛЬНОСТИ В ЕВРАЗИЙСКОМ ЭКОНОМИЧЕСКОМ СОЮЗЕ УПОЛНОМОЧЕННОГО ЭКОНОМИЧЕСКОГО ОПЕРАТОРА

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В настоящее время на новый уровень выходит понимание необходимости совершенствования правовых норм, регулирующих внешнеэкономическую деятельность государств-членов Таможенного союза, а также разработки теоретических положений, обеспечивающих научное сопровождение нормотворческой деятельности Евразийской экономической комиссии. Специалистам, вовлеченным в этот процесс, приходится исследовать зарубежную правоприменительную практику таможенного администрирования. Не стал исключение правой институт уполномоченного экономического оператора, развитие которого связано, прежде всего, с Рамочными стандартами по безопасности и упрощению мировой торговли, а также в рамках Таможенного кодекса Таможенного союза. В соответствии со ст. 38 Таможенного кодекса Таможенного союза под уполномоченным экономическим оператором понимают юридическое лицо отвечающее условиям, указанным в статье 39 Таможенного кодекса