

**THE PRINCIPLE OF FREEDOM OF INTERNATIONAL RIVER
NAVIGATION AND PROBLEMS OF REGIME OF NAVIGATIONAL
USAGE OF INTERNATIONAL RIVERS, WHICH FLOW THROUGH THE
TERRITORY OF UKRAINIAN STATE**

Стаття присвячена аналізу принципу свободи судноплавства по міжнародних ріках, а також проблемам утвердження режиму навігаційного використання тих із них, що протікають по території України.

Статья посвящена анализу принципа свободы судоходства по международным рекам, а также проблемам становления режима навигационного использования тех из них, которые протекают по территории Украины.

This article is dedicated to analysis of the principle of freedom of international river navigation and to problems of regime of navigational usage of international rivers, which flow through the territory of Ukraine.

The only legal basis for navigational usage of international rivers is relevant treaties or norms of customary international law. These facts are confirmed by the centuries-old practice of regulation of river navigation, and numerous current agreements that set the legal regime of navigation on inland waterways of international importance. Freedom of navigation on international rivers for riparian states is usually prescribed in special agreements, devoted to these rivers. At the same time, in the process of repeated, prolonged and uninterrupted application of similar rules in international practice the customary-legal norms with the same content were formed in this sphere. This customary rule gives to riparian states the right of free navigation throughout the length of the flow of international river.

As noted by Professor Sergey Gureyev, the principle of freedom of commercial navigation is used on the vast majority of international rivers of all the continents on the basis of relevant agreements or local customary-legal norms of international law. At the same time, fixing this principle in universal convention will not exclude the necessity of regulation the concrete conditions of its application in treaties about regime of concrete rivers [1, c. 50].

All international agreements that contain the principle of freedom of navigation on international rivers can be divided into several groups: 1) agreements that intended for universal application (Barcelona Convention on the Regime of Navigable Waterways of International Concern of 1921); 2) regional agreements (The Paris Peace Treaty of 1814, The Final Act of the Congress of Vienna of 1815, The Paris Peace Treaty of 1856, etc.); 3) local agreements, related to particular river or river system (for example, Convention Regarding the Regime of Navigation on the Danube of 1948).

Notably, and the principle of freedom of navigation on international rivers has several meanings in doctrine of international law. So, Professor Camille Bekyashev considers that this principle can be interpreted in the broad and narrow sense. In the broad sense, freedom of navigation on international rivers means that ships of all states can float on these rivers without any restrictions. In the narrow sense, freedom of navigation means that particular river is opened for floating of ships of riparian states only [2, c. 559].

In our opinion, question about spreading the principle of freedom of navigation on international rivers on all states, including non-riparian countries, is open. Attempt of universalization this principle with such content on the level of international treaties (thanks to adoption the Barcelona Convention of 1921) was unsuccessful. And unified approach to recognizing this principle as a customary norm of international river law hasn't formed yet in international-legal theory and practice. Some authors say that contractual fixing the freedom of navigation on the most important international rivers for all states *de lege ferenda* would be advisable for creation a favorable and uniform conditions for international cooperation in the area

of river navigation [1, c. 50–51]. We think that this approach may be acceptable only in the future and only in the case, when the principles of sovereignty and equality of riparian states (which are already formed in international law) will be not violated. At the present stage of development of international law a specific content of the principle of freedom of river navigation must be determined in special international agreements devoted to regime of usage of concrete international river: 1) states must provide in their own sections of the river equal conditions of navigation for ships of other riparian states (because of necessity of voluntary restriction of the territorial sovereignty of these states); 2) freedom of navigation on international rivers may be provided for non-riparian states exclusively on the basis of consent, given from all interested riparian countries (expression of realization of sovereign right of states to participate in foreign relationships).

There are two international navigable rivers, which flow through the territory of Ukraine: the Danube and Dnieper Rivers. International-legal regime of navigation on the Danube River is set on the basis of Belgrade Convention of 1948. Interstate agreement about regime of the Dnieper River is not signed yet. Granting the international-legal status *de jure* to the Dnieper River became important after collapse of the USSR. At the same time, stopping of existence of the Soviet Union, Yugoslavia's disappearance from the political map, appearance and enlargement of the European Union (EU), problems in realization by the Danube Commission (DC) its functions, growing necessity of harmonization of acts of different organizations caused the need to improve international-legal regulation of the Danube Navigation.

Constant enhancing of the EU role in regulation the usage of the Danube water resources leads to a proportional reduction of the role not only of individual states, but also of the DC. Despite the very active cooperation between the EU and DC, exactly the DC has to adapt their rules to the rules of the EU. The Danube Commission is also devoid of real power in maintaining navigation in good order. If the riparian states don't give their proposals to the plans of such works to the Commission or don't carry out pre-approved plans, the DC has no rights to adopt binding decisions on relevant issues. In particular, this problem manifested itself

during and after conflicts in former Yugoslavia, when the DC has demonstrated its inability neither to influence on relevant riparian states to ensure river navigation, nor to decide to carry out hydrotechnical works under its direction. Another important problem is hydrotechnical works on the Danube. Some states don't execute their obligations under art. 3 of the Convention of 1948 about improvement of navigation. Such works (especially dredging) will increase traffic on the Danube, because not all ships can pass on some sectors of the River now [3, c. 514–515, 518]. Given the above, there is a need to revise the Belgrade Convention of 1948 to: introduce significant adjustments in regulation the Danube River navigation; increase the authority of the Danube Commission; expand its powers in maintaining navigation safety; granting the binding force of its resolutions.

The Dnieper River is deep transboundary artery that flows through the territory of Russia, Belorussia and all Ukraine. Maritime and river fleet may float along the Dnieper to the ports of the Black and Mediterranean Seas, of the Danube River, and through the Volga-Don channel – to the ports of the Volga River, of the Caspian and Baltic Seas [4, c. 606]. Given the favorable hydrological characteristics and advantageous geographical location of the Dnieper River, this navigable river has a key geopolitical importance for our country. Unfortunately, adequate mechanism of contractual regulation of navigational usage of the Dnieper waters is not developed by riparian states nowadays. There are only a few intergovernmental agreements about navigation on inland waterways, signed by Ukraine – with Germany (entered into force for Ukraine since 01.06.1994) and with Belorussia (entered into force for Ukraine since 09.05.1998). Agreement on Coordinated Development of International Transport Corridors, Passing the Territory of the CIS Member States of 2009 didn't enter into force yet. Thus, it cannot be defined by us as effective document in regulation the usage of transboundary waterways of these countries, because it has constituent character, very general and abstract provisions.

On the other hand, Ukraine joined the process of unification of regulation of European inland waterways, organized by the European Community. Unification began in November 1992, when was adopted resolution №30 by Working Party of

the UNECE Inland Transport Committee. A new system of classification of European inland waterways was provided by this document. This system is based on standard parameters of separate ships. This system replaced a system that was functioned since the 60-ies of XX century and was based on the carrying capacity of ships. Modern classification system is taken into account during the projection, reconstruction and construction of new ways on the territory of almost the whole continent and includes inland waterways of all levels. It served as the basis for preparation the European Agreement on Main Inland Waterways of International Importance of 1996 [4, c. 606–607]. Ukraine joined to this agreement in 2009 (entered into force for State since 05.04.2010). However, Agreement of 1996 is only a coordinated plan of development and construction of network of such inland waterways. The aim of the Agreement is exceptionally defining unified technical and operational parameters in construction, modernization and exploitation waterways intended for international river transportations.

So, question about forming the contemporary and effective international-legal regime of the Dnieper River navigation on the basis of special agreement of riparian states is also still very important. This problem arises especially acute because of the political factor – strategic goal of Ukraine to join the European Union. Ukraine's EU membership can slightly complicate signing by our state a mutually-beneficial agreement about regime of the Dnieper River with others Dnieper countries – non-EU states.

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