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**TÍTULO:** Diferenciación entre los conceptos “Protección” y “Preservación” en el Derecho Internacional del Mar.

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**RESUMEN:** A la luz del uso intensivo de los espacios y recursos de los grandes océanos, su rápida contaminación se encuentra entre los nuevos desafíos y amenazas para la seguridad de los estados. El sistema de medidas para la protección del Océano Mundial es clave, ya que este último desempeña un papel excepcional para garantizar la vida de nuestro planeta. En función de lo anterior, el derecho internacional juega el papel de designar las acciones a cumplir por los estados necesarias para garantizar la protección y preservación de los océanos. El derecho internacional desempeña dos funciones importantes: reglamentación y protección, donde esta última se define tanto en la ciencia como en la legislación a través de categorías adyacentes como "protección", "defensa" y "preservación".

**PALABRAS CLAVES:** preservación y protección del océano mundial, fuentes de contaminación, cooperación, seguridad ambiental.

**TITLE:** Differentiation between the concepts “Protection” and “Preservation” in the International Law of the Sea.

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**ABSTRACT:** In light of the intensive use of the spaces and resources of the great oceans, its rapid contamination is among the new challenges and threats to the security of the states. The system of measures for the protection of the World Ocean is key aspect, since the latter plays an exceptional role to guarantee the life of our planet. Based on the foregoing, international law plays the role of designating the actions to be carried out by the states necessary to guarantee the protection and preservation of the oceans. International law performs two important functions: regulation and protection, where the latter is defined both in science and in legislation through adjacent categories such as "protection", "defense" and "preservation".

**KEY WORDS:** preservation and protection of the global ocean, sources of pollution, cooperation, environmental security.

**INTRODUCTION.**

The scientific and technological revolution and the intensification of international shipping have been conducive to the emergence of acute problems of a marked global character associated with pollution of the World Ocean.

The aftermath of major environmental disasters in the modern history of international shipping (the accident of the Greek tanker “Prestige” on November 13, 2002, the oil spill in the Gulf of Mexico in 2010) particularly vividly demonstrates the increased pressure on the marine environment. A source of concern is the various manifestations of this international legal problem: from disrupting the balance of the entire ecosystem of the great oceans, including the deterioration of marine biological diversity and the reduction of fish stocks, to the use of “convenient” flags on ships in order to evade compliance with environmental protection measures [Kolodkin A.L. 2007].

In the year 2006, the Probo Coala ship, chartered by Trafigura, delivered several hundred cubic meters of toxic waste from Amsterdam to Africa, which was landfilled in the Abidjan. These actions eventually led to the poisoning of several thousand residents in the Côte d’Ivoire. The vessel was detained only due to the intervention of the environmental organization Greenpeace, which prevented it from getting rid of the remaining toxic waste in the port of Paldiski (Estonia) [See: Papers prove Trafigura ship dumped toxic waste in Ivory Coast. 2009].

## **DEVELOPMENT.**

The studies by French scientist J. Y. Cousteau clearly demonstrated that under the influence of oil settling on the bottom of the great oceans, life under water over the past 20 years has decreased by 40%. Thus, more than 100 thousand seabirds perish annually from oil pollution off the coast of Great Britain; as a result of pollution with chemical substances, organic life is completely absent in the Baltic Sea from the depths of 125 m to the bottom [Nadzimir Pilpel, 1967]; in January 1971, during a collision of tankers “Oregon Standard” and “Arizona Standard” in the San Francisco Bay, the 100 km section of the famous Golden Beach was polluted with oil, resulting in the death of tens of thousands of seals, birds, big fish [Maybourn R. 1971].

Famous Norwegian scientist and researcher Thor Heyerdahl in his work “Journey to Kon-Tiki” in 1947 narrated about the transparency and purity of the Pacific Ocean throughout the entire journey of the Kon-Tiki balsa raft, which was about 8 thousand km. While traveling by a papyrus boat “Ra” in 1969, the researcher was shocked with the contamination level of the Atlantic Ocean. “Even off the coast of Africa, in the middle of the ocean in the area of the West Indies,” - Heyerdahl says, - “we spent days watching the picture that resembled the waters of a large port most of all. The surface of the sea to the very horizon was desecrated with black oil lumps size of a pinhead, of a pea, and even of a potato. A year later, following approximately the same route by “Ra-2”, we were drawing fuel oil lumps out with a network for 43 days out of 57 days during which the drift lasted” [Ulitsky Y. A. 1983].

All the benefits that World Ocean brings to humanity entail at the same time its pollution. Currently, this pollution rate has culminated in the limit of the possibility of self-purification of its waters in many areas of the great oceans, and humanity is faced with the need to urgently repair the damage, restore imbalance and prevent its violation in the future. “To ignore the ocean, - Thor Heyerdahl wrote, means to ignore two-thirds of our planet. To destroy the ocean is to kill our planet”.

The World Ocean is the main component of the Earth’s biosphere, a key element of the hydrosphere, containing 95% of all water on the planet, the most important element of the ecological system, a source of mineral, biological and strategic resources.

The ocean is the main supplier of the planet’s oxygen; it is rightly called “The Lungs of the Earth”. Nevertheless, the rapid expanding population, the development of new territories, the rapid economic growth, and in this regard, an increasingly intensive use of the spaces and resources of the oceans have led to serious and sometimes irreversible consequences that negatively affect its state.

Humanity has faced with a complex problem of contradictions between its growing needs and the inability of the biosphere to provide them. Creating such problems, mankind should take decisive and coordinated steps to solve them, which implies interaction between countries on the issues of preventing of pollution of the World Ocean, preserving its biodiversity, reducing the extent of pollutant discharges. Even before the adoption of the UN Convention on the Law of the Sea in 1982, UN Secretary-General K. Waldheim, speaking at a meeting of the Committee on the peaceful uses of the Seabed and the Ocean bottom beyond the limits of national jurisdiction, said that the norms of international maritime law should, in particular, “protect the maritime environment from degradation, because it is this environment that we depend on, not only in terms of obtaining a significant part of the food we eat but also of the air we breathe” [The Third United Nations Law of the Sea Conference, 1982]. A significant part of the World Ocean is in providing the world’s population with valuable proteins. However, a colossal quantity of fish, crabs, shrimp and other inhabitants of the seas and oceans are dying as a result of its pollution.

On the entry into force of the most important international legal act – the UN Convention on the Law of the Sea of 1982, the main focus of the scientific and practical approach to the study and use of the seas and oceans is the study and practical implementation of its provisions [Tarkhanov I. E., 1997]. Considering the fact that, despite the efforts of individual states and international organizations, the deterioration of the state of the great oceans continues, the UN General Assembly at its 55th session in October 2000 expressed concern about the continuing degradation of the marine environment as a result of land-based activities, pollution from ships, sea dumping of oil and other hazardous substances, hazardous wastes, including nuclear wastes and hazardous chemicals. In this regard, Resolution A/55/L/10 “Oceans and the law of the sea” [General Assembly] has been adopted, which calls on all states that are not parties to the United Nations Convention of 1982 on the Law of the Sea to accede to it, and also to agree on their national legislation with the provisions

of this Convention and ensure their consistent application in practice. In addition, the resolution calls on the international community to assist developing countries and small island developing states, as appropriate, in combating pollution of the oceans.

### **Methods.**

As a methodological basis of the study, the method of system-structural analysis is used, which helps to reveal the importance of the distinction between similar concepts but not identical ones, which are “protection” and “preservation” of the World Ocean from pollution? For the purpose of modern interpretation of convention norms, the combination of historical and political science methods and international legal analysis is the most promising methodology. In addition to the general scientific methods, the specific scientific as well as the formal logical methods, the method of comparative jurisprudence and legal modeling, some logical techniques, such as induction and deduction, generalization and comparison that contribute to quality and a detailed study of the prepositional topic are used.

### **Results and Discussions.**

It is possible to protect and preserve the World Ocean from pollution only on the basis of scientific research conducted jointly by representatives of various branches of science: geography and physics, chemistry and ecology, oceanography and geology, and many others. However, it is only within the framework of international law that it is possible to designate the actions of states necessary to ensure the protection and preservation of the ocean, and above all, provide for international standards binding on all states [Speranskaya L.V., 1978].

It is important to emphasize the fact that international law, in the context of the above relations, performs two important functions: regulatory and protective, where the latter is defined within the scope of science and legislation by such adjacent categories as “protection”, “preservation” and

“conservation”. Understanding the content and further differentiation of the concepts of “protection” and “preservation” in relation to ensuring the safety of the oceans, will further ensure the effective international legal protection and preservation of this most important object of the earth’s hydrosphere from pollution.

Today, we have to admit the fact that there is no single point of view on the differentiation between these related but not identical concepts. The terms protection and preservation are used, for the most part, arbitrarily without regard for their internal lexical content. The legislator in some cases uses these terms as equivalent concepts, or as general and particular, where “preservation” is understood as part or whole of protection and vice versa, which is completely unacceptable in lawmaking. An analysis of modern legal literature shows that there are several points of view on the categories under study which are sometimes completely opposite.

Thus, law dictionaries interpret the term “preservation”, as a rule, as protection of an object, protection from encroachment, from hostile actions, from danger, and “protection” is considered as a preservation of integrity, respect for the object [Ozhegov S. I.]. So Z.V. Makarov views these concepts as general and specific, guided by the understanding that to protect rights means to prevent violation of them, while defending them means not only preventing violation of them but also protecting them from encroachment [Makarova Z.V. 2000]. A.M. Larin, in turn, notes that preservation is a more voluminous phenomenon compared to protection and consists in protecting the object from unlawful violations and restrictions, as well as in compensating for the harm caused, if it has not been possible to prevent or repel the offense [Larina A.M. Melnikova E.B. Savitsky E.M. 1997].

A special group of researchers is formed by those who generally negate the expediency of using one or another term. So, T. B. Shubin believes that the term “protection” has no legal meaning and is not practically used in legislation [Shubina T.B. 1997]. In turn, A.S. Mordovets expresses the

opinion that protection is a state of lawful realization of the right under the control of state structures, but without their intervention. But protective measures are taken in the case when the implementation of the right is difficult but not violated. In the case when the rights are violated - they should no longer be defended and protected but restored [Mordovets A.S. 1996].

In summary, in our opinion, the concepts of protection and preservation in relation to the World Ocean are different in content and nature of the tasks assigned to each of them. They are not identical and do not correlate by volume as more and less. The ocean is always protected, while it is defended only when its waters or resources have been damaged. Protection is the establishment of a general legal regime, and preservation is the measures established by law and taken per presence of a wrongful act, a system of means aimed at preventing offenses and at eliminating their consequences [Smirnov A. P. 2010].

The World Ocean is always protected and preserved only when there is a pollution fact. Thus, in relation to the oceans, the concept of “protection” is broader in relation to “preservation”. However, the UN Convention of 1982 on the Law of the Sea does not distinguish between these two concepts, and the term “preservation under control” is used to denote the obligation of states to implement protective measures to prevent pollution of the World Ocean. Thus, in accordance with Article 194 of the Convention, states should take all necessary measures to prevent, reduce or maintain under control the pollution of the marine environment from all sorts of sources. To implement this task, states cooperate on a worldwide or regional basis, independently and in cooperation with competent international organizations in order to defend the marine environment from pollution [United Nations Convention on the Law of the Sea 1982].

In other international conventions, the concepts “protection” and “preservation” are used at their own choosing, without differentiating and specifying their lexical content. Thus, the Helsinki Convention on the protection of the marine environment of the Baltic Sea region indicate the need

“to preserve the balance” of the Baltic Sea area [Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992], while the Convention on the Protection of the Mediterranean Sea from pollution emphasizes the importance of ensuring “the protection and improvement of the state” of the marine environment of this area [The Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean 1995]. The analysis of other universal agreements on ensuring the safety of the World Ocean shows that the concept “protection” is practically not present anywhere.

In our opinion, the concept “protection” is more expanded compared to the term “preserving under control”. The protection of the World Ocean is a dynamic process, a complex of international and regional, political and public measures to ensure the physical, chemical and biological properties of the functioning of the oceans, in the framework necessary for the existence and development of marine aquatic organisms, as well as for human health and well-being [Maslyaev V. N., 2009]. It includes activities in the following areas: prevention of testing of weapons of mass destruction in the World Ocean; reduction of the use of pesticides and herbicides in agriculture, etc.; reduction of the discharge of pollutants into rivers; the establishment of a more stringent system of maximum permissible concentration of harmful impurities in the marine environment; equipment of ports with special receivers for collecting and treating polluted water; construction of vessels with double bottom; installation on the ships of the new modernized equipment for treating of polluted water, as well as tanks for collecting wastewater and other debris, and some others.

Consequently, the concept of “protection of the oceans of the world” contains a more extensive list of the obligations of states to take preventive measures than the concept of “preserving under control”.

## CONCLUSIONS.

In general, the distinction between such concepts as “protection”, “defence” and “preservation” of the World Ocean is very important for the correct placing of priority directions in the activities of states in providing safety of this, the most important natural object.

“Today, - says V.I. Vernadsky, - nature is increasingly serving the humanity on the one hand, and at the same time, it demands even greater support and protection from it. With enhancing profundity and organic connection of society with nature, human history increasingly coincides with the history of nature, and conversely, the history of nature coincides in all with the history of humanity, primarily experiencing its rising pressure” [Vernadsky V.I., 1988].

In the modern world, it is necessary to establish a more advanced system of environmental relations, the achievement of which is possible only when considering environmental problems in the context of national and international security, since despite all the efforts, with the existing state of international relations, the process of environmental degradation does not slow down.

As M.M. Brinchuk rightfully notes: “The function of nature in relation to man is legally significant, which forms the basis for protecting the environment from the harmful, destructive effects of human activity” [Brinchuk M.M., 2009]. In order to resolve international and national environmental problems, society needs to develop a new system of environmental relations, in which the transformation of international relations will be made in order to give the highest priority to the problem of environmental safety.

Mankind is interested in the fact that the impact on the environment to be less destructive, sparing. Modern law of the environment should contain the requirements of primary importance concerning the rational use of all natural objects: land, water, forests, etc., in order to ensure the optimal possibility of implementing the ecological function of nature. Nevertheless, despite the existence in international law of a rule disclosing the content of the concept of “environmental safety”, the

question of the true nature of this concept is still under discussion, and the existing regulatory framework in this area is disordered and fragmentary. In spite of considerable financial and organizational investments in this area, the issue of ensuring environmental safety is not solved, and in our opinion, can be implemented only in the process of implementing universal safety, which includes not only ecological but also social and economic components.

The results of human activity indicate the need to move to a modern type of development which involves the formation of a new world view, changes in values and stereotypes of thinking, in which security is seen as a collective good.

In June 1992, the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro, during which it was decided to change the course of development of the world community from the path being unsustainable, from crises and catastrophes, towards sustainable development, where opportunities open up for the absolutely harmonious existence of society and nature, and at the same time, the transition to sustainable development must be comprehensive, the change in the course only by some countries and only in relation to individual components of the environment will not solve the problem. Collaboration of states to the core in solving any environmental problem is necessary, taking into account globalization and integration of people's living conditions.

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