APPLICABLE LAW TO ENVIRONMENTAL POLLUTION OCCURRING ON THE HIGH SEAS UNDER PRIVATE INTERNATIONAL LAW

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Absract: *The importance of the issue has increased as environmental problems have a global importance and environmental pollution is no longer limited to causing damage only within the borders of a single state, but also harms people living in other states. While the act of „pollution" may occur in the country of more than one state, the damage that occurs may also have effects in the country of one or more states. In such cross-border environmental pollution, the problem of which country's law will be applied arises, which necessitates the use of conflict of laws rules. In this study, disputes arising from environmental problems related to the high seas will be analysed in terms of international private law.*

Keywords*: environmental pollution, high seas, applicable law.*

ПРИЛОЖИМО ПРАВО КЪМ ЗАМЪРСЯВАНЕТО НА ОКОЛНАТА СРЕДА В ОТКРИТО МОРЕ СЪГЛАСНО МЕЖДУНАРОДНОТО ЧАСТНО ПРАВО

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Резюме: *Значението на темата се увеличи поради факта, че екологичните проблеми имат глобално значение и замърсяването на околната среда вече не се ограничава само до причиняване на вреди в границите на една държава, а вреди и в други държави. Актът на „замърсяване" може да се извърши на територията на повече от една държава, а вредите могат да имат последици и на територията на една или повече държави. При такова трансгранично замърсяване на околната среда възниква проблемът правото на коя държава ще се прилага, което налага да се прибегне до стълкновителните норми. В това изследване споровете, произтичащи от екологични проблеми, свързани с открито море, ще бъдат анализирани от гледна точка на международното частно право.*

Ключови думи: *замърсяване на околната среда, открито море, приложимо право.*

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INTRODUCTION

The importance of the issue has increased due to the fact that environmental problems have a global importance and environmental pollution is no longer limited to causing damage within the borders of a single state, but also harms people living in other states. The act of „pollution“ may occur in the territory of more than one state, and the damage may also have effects in the territory of one or more states. In such cross-border environmental pollution, the problem of which country's law will be applied arises, which makes it necessary to resort to conflict of laws rules.

In this study, disputes arising from environmental problems related to the high seas will be analysed in terms of international private law.

The importance of the seas stems from the fact that they cover two thirds of the earth's surface. The seas provide most of the food we need. Changes in the seas greatly affect the earth's temperature, climate and seasons. However, threats to the ocean environment are threats to both humanity and all life on the planet[1].

Pollution of the seas is based on two main reasons. The first one is the substances and hydrocarbons discharged from ships and aeroplanes, and the second one is land-based pollutants. Today, the number of agreements made to prevent pollution of both types is quite high.

Problems relating to the marine environment give rise to special problems. The most difficult problem is that of jurisdiction. This problem arises not only as to whether polluting activities should be restricted or not, but also as to which country should be authorised to regulate and control them. Since the oceans and seas are beyond the territorial jurisdiction of any one country, they are open to the use of all countries as part of international practice and in accordance with the principle of freedom of the seas.

The Law of the Sea in general, the law of marine pollution and dispute settlements are constantly changing. Current developments are considered to have led to major changes in the agreements regulating the international seas and the principle of freedom of the seas by enhancing the authority of the coastal State[2].

I. AGREEMENTS ON THE PROTECTION OF THE MARINE ENVIRONMENT

When we look at the recent developments regarding the protection of the marine environment, the first of these is the introduction of the principle of the responsibility of States to protect the marine environment, which is among the customary rules. This principle also recognises the more general principle of environmental responsibility set out in Article 21 of the Stockholm Declaration. Article 7 of the Stockholm Declaration makes this more explicit:

„States are required to take all measures to prevent pollution of the sea, including all measures which are injurious to human life and harmful to marine life and living resources“[3].

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[1] **Bilder, R. B.**, „The Settlement of Disputes in the Field of the International Law of the Environment”, 144 Rec. des Cours (1975/I), p. 184.

[2] **Bilder**, p. 186.

[3] Stockholm Declaration on the Human Environment, Principle 7, Report of the United Nations Conference on the Human Environment, A/Conf. 48/14, (1972). Furthermore, the Plan of Action of the Stockholm Conference contains many recommendations on the control of marine pollution and the protection of the marine environment. **Bilder**, p. 187.

In addition to the development of law in this field, many international agreements on marine pollution have also been concluded.

Some of the important global agreements are the Convention for the Prevention of Marine Pollution by Oil of 1954, the Geneva Convention on the Law of the Sea of 1958, the International Convention on Civil Liability for Oil Pollution Damage of 1969 and the Convention for the Prevention of Pollution from Ships of 1973 (London)[4].

Torrey Canyon accident shows the importance of regulating oil pollution by international agreements. On 18 March 1967, the Liberian-flagged tanker *Torrey Canyon*, carrying 117 thousand tonnes of crude oil, ran aground in the *Seven Stones* area off the coast of Carnwall, England, in a sea area beyond the territorial waters (3 miles at that time), causing a large amount of oil to enter the sea, causing significant pollution on the coasts of England and France. In the first two days, 30 thousand tonnes of crude oil spread into the sea from the hole formed as a result of the grounding. In order to prevent the remaining oil loaded on board from entering the sea and to minimise this pollution in the sea area adjacent to the shore, the ship owner agreed with a rescue and assistance company to refloat the tanker, take it under tow and take it out of this rocky area, but as a result of the tanker breaking into three parts on 26 and 27 March, another 30 thousand tonnes of oil entered the sea. The salvage company then abandoned the operation. The British Government decided to bomb the tanker from the air to destroy the remaining oil by burning it. The bombing began on 28 March and almost all the oil was burnt. This action was not protested either by the private parties involved or by their governments, including the ship's flag State, Liberia[5].

In 1969, the owners of the Torrey Canyon tanker agreed to pay £3 million to France and the United Kingdom for the settlement of claims in this matter and also to pay the private claimants voluntarily in addition to this £3 million, taking into account the private claims (*private claims*) related to the damage. Following the incident, the Governments of the United Kingdom and France, the shipowners and the time charterers reached an agreement to settle the claims for damages, losses and expenses incurred as a result of the oil spillage from the ship into the sea. These claims were the subject matter of the lawsuits brought by France and the United Kingdom. The UK and French Governments have co-operated enormously throughout the proceedings, consulting at every stage. The shipowners refused to pay the Governments' estimated damages of £6 million. The £3 million which the shipowners and the time charterers agreed to pay was shared equally between the two governments. Throughout the negotiations, the British Government emphasised that it had endeavoured to protect the rights of private claimants in respect of damage to their property caused directly by the pollution. As a result of these endeavours,

[4] The 1954 International Convention for the Prevention of Pollution of the Sea by Oil (12 May 1954), http://www.admiralty lawguide.com/conven/oilpol1954.html; The 1958 Geneva Conventions on the Law of The High Seas (29 April 1958), http://www.fletcher.tufts.edu/multi/texts/BH364.txt; The 1969 (Brussels) International Convention on Civil Liability for Oil Pollution Damage (29 November 1969), http://www.admiraltylawguide.com/conven/civilpol1969.html; The 1973 (London) International Convention for the Prevention of Pollution from Ships (2 November 1973), http://sedac.ciesin.org/entri/texts/pol lution.from.ships.1973.html, (18.05.2024); **Bilder**, p. 188-189.

[5] The British Government gave no legal justification for its action, but emphasised on several occasions that the situation presented an extreme danger and that the decision to bomb had been taken after all other means of rescue had failed.

the shipowners agreed to pay ex gratia compensation to private claimants in addition to public claims. In this context, people with special requirements:

- The property is damaged
- or who incurs expenses to protect their assets
- persons and firms whose losses and expenses are not covered by insurance or other financial assurance.

Until the Torrey Canyon accident, there was no international regulation to protect against damages caused by oil pollution. When an accident occurred outside a country's jurisdiction, international law was inadequate to explain the problems of liability and compensation. National legal systems, on the other hand, had an approach that envisaged compensation for pollution damage within the framework of general legal liability rules, which were based on liability for the fault that caused the damage, rather than objectively. Therefore, when an accident occurred in which the ship owner was not at fault, there was no legal remedy available to those who were harmed in the accident. Even if the ship that caused the pollution was identified and the causal link between the damage resulting from the pollution was established, proving the fault of the ship owner in a lawsuit was very difficult in many legal systems. In addition, another important problem was the determination of the international competent court in cases involving foreign elements and the determination of the applicable law by this court. Even if all these problems have been overcome and the pollution victim has made a decision to compensate for his damage, this time the decision must be enforced and the ship owner must have sufficient financial resources.

As the *Torrey Canyon* accident showed its effects in the international arena, it became necessary for the International Maritime Organisation (IMO) to take measures to reduce and eliminate the danger of pollution caused by the accident on the high seas. Two multilateral conventions were prepared to regulate this authority.

The first of the conventions adopted in 1969 was the International Convention on Oil Pollution Accidents on the High Seas[6], which gave the coastal state the right to intervene in case its coasts were in danger of pollution in accidents and similar events resulting in oil pollution, and the other is the International Convention on Civil Liability for Oil Pollution of 1969, which concerns civil liability for damages resulting from oil pollution accidents[7]. The International Convention on Civil Liability for Oil Pollution provides for a strict liability and compulsory insurance scheme for tanker accidents. The Convention covers public or private pollution damage caused by crude or other stable oil spilled from tankers.

Some of the regional agreements on the protection of the marine environment are the Oslo Convention for the Prevention of Marine Pollution by Storage from Ships and Aircraft of 1972, the Convention for the Protection of the Environment of the Baltic Sea Area of 1974 and the Nordic Convention for the Protection of the Environment of 1974[8].

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[6] International Convention Relating to Intervention on The High Seas in Cases of Oil Pollution Casulities, http:// sedac.ciesin.org/entri/texts/intervention.high.seas.casualties.1969.html, (26.05.2024).

[7] International Convention on Civil Liability for Oil Pollution Damage, http://www.imo.org/Conventions/con tents.asp?doc id=660&topic id=256, (26.05.2024).

[8] The 1972 (Oslo) Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (15 February 1972), http://sedac.ciesin.org/entri/texts/marine.pollution. land.based.sources.1974.html, (18.06.2024); The 1974 Convention on the Protection of the Marine

Some of these agreements include mandatory dispute settlement procedures, but they only specify the dispute resolution techniques[9].

In 1974, the Committee for the Protection of Marine Life was established by IMCO (Intergovernmental Maritime Consultative Organisation). The United Nations Environment Programme (UNEP) has attached great importance to efforts to prevent marine pollution. In 1975, UNEP, in cooperation with other international organisations, prepared the Barcelona Convention for the protection of the Mediterranean Sea against pollution[10].The 1976 Convention on the Protection of the Mediterranean Sea against Pollution and its Protocols entered into force on 12 February 1978[11]. Subsequently, the Kuwait Regional Convention on Cooperation in the Protection of the Marine Environment from Pollution of 1978, the Convention on Cooperation in the Protection and Development of the Marine and Coastal Environment of West and Central Africa of 1981, the Convention on the Protection of the Marine Environment and Coastal Area of the Southeast Pacific of 1981, the Convention on the Protection of the Marine Environment of the Red Sea and Gulf of Aden of 1982, The 1983 Convention on the Protection and Development of the Marine Environment of the Wider Caribbean, the 1985 Convention on the Protection, Management and Development of the Marine and Coastal Environment of the East African Region, and the 1986 Convention on the Protection of the Environment and Natural Resources of the South Pacific Region were concluded by the United Nations Environment Programme (UNEP)[12].

The United Nations Convention On The Law Of The Sea (UNCLOS)[13] dated 1982, which emerged after the Third Law Of The Sea Conference, was opened for signature on 10 December 1982 and signed by 167 States and some international organisations. Bulgaria has signed this Convention[14].

Environmentof the Baltic Sea Area (21 February 1974), http://www.oceanlaw.net/texts/helcom.htm; The 1974 (Nordic) Convention on Environmental Protection (19 February 1974), http://sedac.ciesin.org/entri/texts/acrc/Nordic.txt.html, (18.06.2024); **Bilder**, p. 188-189.

[9] Consultative Committee) Article 10 of the Pollution Convention and Article 21 of the Paris Convention of 1974 provide for this requirement. In the annexes of most of these agreements, arbitration procedures are regulated in detail. The arbitral tribunal consists of three persons, each party selects its own arbitrator, and the third arbitrator is selected by agreement of the two parties. When we look at other treaties, we see that these treaties regulate voluntary conciliation procedures. For example, in the Baltic Convention of 1974, „mutual agreement“ is required in order to submit a dispute to an ad hoc arbitral tribunal, a permanent arbitral tribunal or the International Court. In some treaties, there are provisions on avoidance of disputes. For example, the Nordic Convention provides for notice and negotiation procedures. **Bilder**, p. 188-189.

[10] **Bilder**, p. 189.

[11] Convention for the Protection of the Mediterranean Sea against Pollution, http://fletcher.tufts.edu/multi/texts/ BH681.txt, (20.06.2024).

[12] https://www.unep.org/topics/climateXaction?gad_source=1&gclid=CjwKCAjw4f6zBhBVEiwATEHFVlCUE dqYeJ-YP_ZD16zLcxaFCBHuoqSJ_b5olAadKl0MoTD75JaBwhoCEDkQAvDBwE, (28.05.2024).

[13] United Nations Convention on the Law of the Sea of 10 December 1982, http://www.un.org/Depts/los/ convention agreements/convention overview convention. Htm, (28.05.2024).

[14] The convention has been ratified by 168 parties, which includes 167 states (164 United Nations member states plus the UN Observer state Palestine, as well as the Cook Islands and Niue) and the European Union. An additional 14 UN member states have signed, but not ratified the convention.

The high seas are not under the sovereignty of any State and international law does not authorise the allocation of any part of the high seas to any State. However, long-term freedoms have been allowed, for example, freedom of navigation of ships and aircraft, freedom of fishing, freedom of laying cables and oil pipelines under the sea. Article 87 of the United Nations Convention on the Law of the Sea authorises the construction of artificial islands and other installations under international law and recognises the freedom of scientific research[15].

According to the United Nations Convention on the Law of the Sea, the „Area" comprising the seabed, the ocean bottom and the sandy zone and its resources constitute the limit of the sovereign rights of States and these areas are recognised as the „common heritage of mankind". Article 140, paragraph 1, states that work may be carried out in this Area only for the benefit of humanity; Article 141 states that this Area may be opened to all States for peaceful purposes[16].

II. JURISDICTION OF THE STATE IN ENVIRONMENTAL POLLUTION IN THE HIGH SEAS

A. IN GENERAL

In an incident occurring on the high seas, States may try their own nationals and the ships flying their flag. Ships have the nationality of the State whose flag they are authorised to fly[17]. There must be a real link between the State and the ship (Art. 5 of the 1958 Geneva Convention on the High Seas, Art. 91 of the United Nations Convention on the Law of the Sea). Ships on the high seas may sail under the flag of only one State. Ships on the high seas shall be subject to the exclusive jurisdiction of that State, with the exceptions expressly provided for in international treaties (Article 6/1 of the 1958 Geneva Convention on the High Seas, Article 92 of the United Nations Convention on the Law of the Sea). In order to avoid any gap in the jurisdiction of ships on the high seas, it has been accepted that each State has jurisdiction over the ships under its national jurisdiction on the high seas. This rule, which has been derived from customary law, was formalised by the 1958 Geneva Convention on the High Seas and adopted by the 1982 United Nations Convention on the Law of the Sea.

A ship may not change its flag during the voyage or in a port, except in cases of actual transfer of ownership or change in the ship's register. A ship sailing under the flags of two or more States and using them as it sees fit cannot assert any of these nationalities against other States. Such ships shall be treated as a ship without nationality (Article 6 of the 1958 Geneva Convention on the High Seas, Article 92 of the United Nations Convention on the Law of the Sea).

Ratified by a law adopted by the 37th National Assembly on 04.24.1996 - SG No. 38 of 3.05.1996. Issued by the Ministry of Foreign Affairs, promulgated, SG No. 73 of 27.08.1996 and no. 74 of 30.08.1996, in force for Bulgaria from 14.06.1996., http://www.un.org/ Depts/ los/reference files/chronological lists of ratifications.htm#The%20United%20Nations%20Convention% 20on% 20the% 20Law %20of%20the%20Sea, (05.06.2024).

[15] **Barboza, J.**, „International Liability for the Injurious Consequences of Acts not Prohibited by International Law and Protection of the Environment", 247 Rec. des Cours (1994/III), p. 392.

[16] **Barboza**, p. 392-393.

[17] **Barboza**, p. 392.

As for unnationalised ships on the high seas, they are subject to the jurisdiction of all states. A ship without nationality would not be entitled to protection and it would be possible for any state to exercise jurisdiction over such ships.

As a rule, the jurisdiction of the lawsuits filed in respect of the ship causing environmental pollution occurring on the high seas shall belong to the flag State. In addition, according to the United Nations Convention on the Law of the Sea, the right to bring a civil liability action for losses and damages arising from pollution of the marine environment shall not be precluded by any provision of this Convention (Art. 229).

Warships on the high seas enjoy absolute immunity from jurisdiction with respect to other states, except the state whose flag they fly (Article 8 of the 1958 Geneva Convention on the High Seas, Article 95 of the United Nations Convention on the Law of the Sea).

Ships owned or operated by a State and used exclusively for non-commercial public service enjoy absolute immunity from jurisdiction on the high seas with respect to other States, except the State whose flag they fly (Art. 9 of the 1958 Geneva Convention on the High Seas, Art. 96 of the United Nations Convention on the Law of the Sea).

The jurisdiction for the lawsuits filed in respect of the aircraft causing environmental pollution occurring on the high seas shall belong to the State of registration. According to the International Air Code adopted by the International Aviation Law Committee in 1924, if the aircraft is flying on the high seas, the jurisdiction of the state of nationality of the aircraft is in question for the incidents occurring in the aircraft. Again, according to the draft prepared by the International Law Association at its Stockholm meeting in 1924, an aircraft on the high seas is subject to the jurisdiction of the country of nationality.

B. INTERNATIONAL JURISDICTION OF BULGARIAN COURTS

Bulgaria is a party to the 1958 Geneva Convention on the High Seas and the United Nations Convention on the Law of the Sea and the rules of those conventions apply.

III. THE LAW APPLICABLE TO ENVIRONMENTAL POLLUTION IN THE HIGH SEAS

Disputes arising out of pollution on the high seas are nowadays generally settled in accordance with international conventions. However, in cases where the ships or installations causing pollution are one of the states which have not acceded to the conventions in question, the problem of determining the applicable law becomes important again. In these cases, different systems for the determination of the applicable law have been put forward for collisions occurring on the high seas, but no system has been put forward for the determination of the applicable law for disputes arising from environmental pollution. From this point of view, it may be possible to apply the discussions on the law applicable to collisions occurring on the high seas to environmental pollution occurring on the high seas. These views:

A. „GENERAL MARITIME LAW“ OPINION

The „General Maritime Law“ view is accepted especially by the English doctrine. According to the jurists who accept this view, the high seas are not under the sovereignty of any state. Therefore, it is not correct to apply the law of a certain state in the pollution occurring on the high seas. The right thing to do is to be subject to a „supranational“ legal order adopted by all states of the world. Such a supranational legal order is the principles of „general maritime law“. This is because the principles of the general law of the sea are

„a legal system which takes its source from the ancient common behaviour of seafaring nations and whose binding force has been accepted by all states of the world". When this is the case, it would be in accordance with the nature of the institution that pollution occurring on the high seas should be subjected to the „general law of the sea", which is a supranational legal order, instead of being subjected to the law of a particular state[18].

This view did not find supporters outside of Anglo-American law and was strongly criticised. The most important criticism against this view is that the „general law of the sea" is not included in the „supranational law" as claimed. Therefore, it becomes very difficult to determine the principles of general maritime law. Consequently, due to these difficulties, the English courts started to apply their own laws. From the judgements of the English courts, we see that English law has been applied to the torts committed on the high seas[19].

B. „THE SYSTEM OF THE JUDGE'S LAW"

Another system that can be proposed to be applied in pollution occurring on the high seas is the „judge's law system". This view has found support especially by French jurists and has been supported by jurists of various nationalities. According to this view, the law of the judge should be applied to environmental pollution occurring on the high seas. According to some jurists, subjecting torts occurring on the high seas to the law of the judge is a requirement of public order intervention.

If the law of the place of origin could be established in the case of pollution on the high seas and if that law was found to be contrary to the public order of the judge, the application of that law would be overridden in favour of the judge's law. In this case, since the law of the place of origin does not exist at all, the interference of public order must be prima facie present and the judge's law must be applied to environmental pollution occurring on the high seas. Another argument in favour of the judge's law system is the claim that the plaintiff, by filing his lawsuit in a particular court, accepts in advance the application of the laws of the state to which that court is subject.

The system which subordinates the conflict of laws arising from marine pollution to the law of the judge may cause difficulties in practice. First of all, the judge's law is a law that will be determined after the pollution, when the plaintiff files a lawsuit. Therefore, if this system is adopted, the defendant party will not know which law to act according to until the plaintiff files its lawsuit. However, if the number of plaintiffs is more than one and each plaintiff files its case in different state courts, it is certain that the law of the judge will also be more than one and this will lead to confusion. Moreover, if the law of the judge system is adopted, the plaintiff will bring his case before the courts of the state whose internal rules of substantive law are most favourable to him (forum shopping). If such an opportunity is granted to the plaintiff, the plaintiff will be unfairly protected.

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[18] **Collier, J. G.**, Conflict of Laws, Cambridge 2001, p. 238-239; **Dicey, A. V./Morris, J. H. C.**, The Conflict of Laws, London 1993, p. 1538-1539;

[19] For example, in The Esso Malaysia case, Panamanian and Russian ships collided on the high seas. This was caused by the fault of the master and crew. A member of the crew of the Russian ship drowned and died. The representatives of this person were entitled to recover damages from the owners of the Panamanian ship in England under English law (the Fatal Accidents Act 1976). Similarly, in the case of Chartered Mercantile Banof India v. Netherlands India Steam Navigation Co., English law was applied in the collision of two Dutch ships on the high seas. **Collier**, p. 238-239.

C. „FLAG LAW SYSTEM“

Another system that can be applied in the field of conflict of laws arising from environmental pollution occurring on the high seas is the „flag law system“. However, this system can be applied in cases where the pollution is caused by a ship or in environmental pollution caused by the collision of two ships. This system, which is based on the nationality of ships, has found favour especially among Continental European jurists and US jurists. According to this system, in environmental pollution occurring on the high seas, the act causing pollution is committed on board a ship, which is considered as a floating part of the state territory. Therefore, liability should be determined in accordance with the laws of the state whose flag the polluting vessel flies. The solution provided here adheres to the rule of place of performance[20].

The most important criticism that can be levelled against this system is that the assertion that ships are a floating part of the territory of the State is a hypothetical put forward in order to ensure that the social order of the State, which is valid on land, continues to be valid on the high seas. As a matter of fact, this assumption is used especially in areas of public law such as criminal law, tax law and labour law.

D. „PLACE OF REGISTRATION SYSTEM“

If the environmental pollution on the high seas is caused by an aircraft, another system that can be applied is the „place of registration system“. In the case of environmental pollution occurring during the flight of aircraft over the high seas, the law of the place of registration of the aircraft may be applicable.

The draft prepared by the International Law Association at its Stockholm meeting in 1924 stipulates that an aircraft on the high seas shall be subject to the jurisdiction and law of the country of nationality.

The draft prepared by the International Law Association at its Stockholm meeting in 1924 stipulates that an aircraft on the high seas shall be subject to the jurisdiction and law of the country of nationality.

Anglo-American legal systems have argued that the law of the judge should be applied for torts occurring while aircraft are flying over the high seas. Collier stated that the English courts would apply English law to torts occurring while aircraft are on the high seas[21].

The system to be followed during the determination of the law to be applied to pollution occurring on the high seas is highly controversial. It is unthinkable to apply the rule of place of occurrence in environmental pollutions that occur on the high seas and continue their effects on the high seas. In such a case, the application of the „most closely connected law“ rule would be the most favourable way.

CONCLUSION

Since the high seas are areas which are not under the sovereignty of any state, very special problems may arise in case of pollution of these areas. The first of these problems is related to jurisdiction. The first problem that arises is which state will be subject to the jurisdiction of the polluter causing environmental pollution. The 1958 Geneva Convention

[20] **Collier**, p. 239; **Dicey/Morris**, p. 1535-1536; **Kahn-Freund, O.**, „Delictual Liability and the Conflict of Laws, 124 Rec. des Cours (1968/II), p. 81-82.
[21] **Collier**, p. 239.

on the High Seas and the United Nations Convention on the Law of the Sea have clarified this issue in terms of ships. According to these Conventions, ships on the high seas shall be subject to the exclusive jurisdiction of the state whose flag they fly.

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