

30 Years of Lithuania's Restored Independence: A Coastal State's Prescriptive Jurisdiction over Inland Waters

Indrė Isokaitė-Valužė

<https://orcid.org/0000-0003-4596-2695>

Associate Professor, PhD

Law Faculty of Vilnius University

Public Law Department

Saulėtekio Ave. 9, 1st block, LT-10222 Vilnius, Lithuania

Phone: (+370 5) 236 61 75

Email: indre.isokaite@tf.vu.lt

The article aims at comprehensively and systematically revealing the general transition of the regulation of the inland sea waters of the Republic of Lithuania from the restoration of an Independent State of Lithuania in 1990 until now. The basic stages and trends of the legal development are emphasized in light of the International Law of the Sea and the Law of the European Union and general findings on the compliance thereto in the main fields are made.

Keywords: inland sea waters, national maritime legislation, coastal State, implementation of the International Law of the Sea requirements, implementation of obligations under the European Union Law, the law of independent Lithuania.

30 atkurtos Lietuvos nepriklausomybės metų: pakrantės valstybės teisėkūros jurisdikcija dėl jūros vidaus vandenų

Straipsnyje siekiama išsamiai ir sistemaiškai parodyti Lietuvos Respublikos jūros vidaus vandenų teisinio reguliavimo transformaciją nuo Lietuvos nepriklausomybės atkūrimo 1990 metais iki dabar. Išryškinamos pagrindinės teisinio reguliavimo stadijos ir kryptys, atsižvelgiant į tarptautinės jūrų teisės ir Europos Sąjungos teisės reikalavimus, ir pateikiama bendrų išvadų dėl atitikties jiems svarbiausiose srityse.

Pagrindiniai žodžiai: jūrų vidaus vandenys, jūrų klausimų reglamentavimas nacionalinėje teisėje, pakrantės valstybė, tarptautinės jūrų teisės reikalavimų įgyvendinimas, įsipareigojimų pagal Europos Sąjungos teisę įgyvendinimas, nepriklausomos Lietuvos teisė.

Introduction

Throughout the history of the Law of the Sea national practices in many cases used to precede the legal regimes that were created on international level thereafter. The legal regime of seaports and other legal institutes of the inland sea waters, even the formation of this maritime zone, are much based on State practice. Still, the sovereignty, which the coastal State exercises within the inland sea waters, is visibly affected by the International Law (of the Sea) and, to a lesser extent, the Law of the European

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Union (EU). Recent incidents at sea, as e.g. the Kerch Strait incident¹ (dispute between Ukraine and Russia), and older cases, as e.g. the dispute between Finland and Denmark over the Great Belt Bridge², have demonstrated complicated issues, including these related with the coastal State's (and the flag State's) jurisdiction.

The 11th of March 2020 was the 30th anniversary of the restored independence of the Republic of Lithuania, a special occasion which, naturally, inspires legal reviews and researches evaluating different aspects of the three-decade transition. This article is not an exception: it aims at a general systematic analysis of the development of Lithuania's maritime legislation within the thirty-year period, limiting to the main laws (and regulations) concerning inland sea waters. The research is structured so as to draw conclusions on the following tasks: 1) to reveal the extent (scope), need and relevance of national maritime legislation in respect of the inland sea waters; 2) to distinguish the key factors that have influenced the development of that national regulation; 3) to track and comprehensively reveal the transformation of the main issues (legal institutes) of the regime of the inland sea waters; and 4) to generally evaluate the core provisions of the national regulation in respect of their compliance with the main obligations under the International Law of the Sea and the EU Law.

Most common methods for legal research are applied. The historical (chronological) approach allows tracking and perceiving relevant events as key factors which have led to existing legislation. Comparison is inevitable in evaluating different wordings of domestic laws and regulations, also treaties and amendments thereto. The teleological method mainly accommodates the establishment of the scope of national legislation allowed (required) by a particular treaty. The argumentation throughout the research and findings in particular are based on logical and systematic analysis. A comprehensive and systematic approach with a focus on some key issues is the main idea of this research, which does not in any case intend to cover each and every aspect of the regulation of the inland sea waters or to comprehensively evaluate the compliance with all international and EU Law requirements.

The transformation of national legal regulation of the inland sea waters of the Republic of Lithuania (the objective of this article) is mainly based on the analysis of relevant domestic laws and regulations, as well as the main treaties and, partly, the EU legal acts. The author also refers to the works of other scholars and the case law of the international courts (the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS)) related to the coastal State's jurisdiction in maritime matters in respect of the territory under its sovereignty.

As this is an occasional contribution on the 30th anniversary of the law of the re-established independency of Lithuania, no other systematic and comprehensive research on the development of national law on the inland sea waters, focusing on the tasks as they are set herein, has been produced

¹ The ramming, firing at and arrest by Russian authorities of three Ukrainian naval vessels and crew passing through the Kerch Strait on 25 November 2018 to their Seaport Mariupol in Ukraine for the alleged violation of the established order. This incident is related with the acts of Russia widely recognised as the occupation and annexation of the Crimean peninsula. Following the illegal construction of the bridge linking two territories the Russian authorities have been stopping and inspecting vessels passing to Ukrainian ports. Such acts comprise a violation of Ukraine's sovereignty and territorial integrity and the regime of the territorial waters, as was declared e.g. by the European Parliament in its Resolution on the Situation in the Sea of Azov of 25 October 2018 No (2018/2870(RSP)). For case details see further: "National Maritime Legislation: Need, Extent and Relevance".

² The then projected bridge linking two parts of Denmark's territory – the East and West Channels of the Great Belt – could have prevented the passage of the deep draught vessels of over 65 m height of Finland. The States' representatives reached the agreement on the compensation to be paid by Denmark; the case *Finland v. Denmark* instituted on 17 May 1991 before the International Court of Justice has been discontinued the next year (*Passage through the Great Belt...*, 1992).

so far. Still, the research covers many different legal issues of the regime of the maritime zone at issue, each of which separately has been analysed by other scholars, mostly foreign (e.g. sovereignty and jurisdiction of coastal States (Kleemola-Juntunen, 2017, p. 239–269), the implementation of the 1982 United Nations Convention for the Law of the Sea (UNCLOS) in national legislation (Breide, Saunders, 2008); in Lithuania, e.g. certain aspects of the coastal State’s jurisdiction (Katuoka, Klumbytė, 2019, p. 225–243), constitutional concept of the inland (internal) waters (Šileikis, 2019, p. 297–334)). Certain topics have been covered by the author herself in her previous studies produced on the regulation of maritime zones from the coastal State’s perspective; however, these were limited to a shorter period of time, were different in tasks, aims, scope or otherwise (e.g. Isokaitė, 2008, p. 97–107).

1. National Maritime Legislation: Need, Extent and Relevance

The prescriptive jurisdiction³ in respect of the inland sea waters stems from the sovereignty of a State. The constitution of almost each maritime State establishes the principle of sovereignty on its land, seabed and airspace above (Article 2, UNCLOS), in most cases indicating sovereignty (or even, incorrectly – “ownership”) over the internal waters, territorial sea or territorial waters (the latter is usually conceived as encompassing both two previous categories) (Isokaitė, 2016, p. 244). The Constitution of the Republic of Lithuania (1992) has no explicit reference to either of the above categories⁴, but this is without prejudice to the extension of the State’s sovereignty over the land on to the inland sea waters.

The sovereignty exercised by the coastal State over the inland sea waters extends also further seawards to the outer limit of the territorial sea (the maritime zone of (up to) 12 nautical miles next to the inland sea waters) which marks a State border. As the ICJ has ruled, maritime rights derive from the coastal State’s sovereignty over the land, a principle which can be summarized as “the land dominates the sea” (*North Sea Continental Shelf Cases...*, 1969, Para 96; *Maritime Delimitation and Territorial Questions...*, 2001, Para 77). Still, the freedom to regulate maritime issues in the inland sea waters is not absolute: it is confined to the principles and aims of the International Community⁵ and is limited by the rights of other States⁶. Under the contemporary international legal order a State has to carefully identify the legal nature of a particular legal rule in its relation to other international obligations, as in many cases the same legal issue (field) may fall within the ambit of several regulatory levels (international, regional, EU Law, etc.) which imply different implementation requirements (and mechanisms for dispute settlement).

The international regime of the inland sea waters has long been subsumed under the regime of ports; however, coastal States have become bound by international requirements as regards the rescue at sea, response to sea pollution incidents, navigation safety, environmental protection, underwater cultural heritage, also jurisdiction. They have been established in the UNCLOS and other treaties, adopted mainly within the United Nations (UN) or International Maritime Organisation (IMO), bilateral agreements, UN and IMO resolutions⁷. In addition, for the EU States, the legal regime has been materially influenced by the EU Law (in the fields of Port State Control, the investigation of maritime casualties, protection of the marine environment, etc.).

³ Also referred to as a legislative jurisdiction, the right of a State (State’s institutions) to adopt laws and regulations.

⁴ Article 47 declares that the Republic of Lithuania shall have the exclusive rights to the airspace over its territory, its continental shelf and the economic zone in the Baltic Sea.

⁵ These may be the principles enshrined in the UN Charter (1945), which also extend to maritime space and also other issues of international concern, e.g. fighting the illicit traffic in drugs, narcotic substances, etc.

⁶ E.g. access to international seaports, etc.

⁷ Particular treaties and other agreements (and resolutions) are detailed in the further analysis.

In exercising its prescriptive jurisdiction, when international or EU Law allows or obliges to adopt national laws and regulations, a coastal State shall not impede or deny the rights of other States (subjects). In cases where a national legislator acts in a manner exceeding, replacing, misinterpreting or otherwise violating obligations under international or EU Law, issues of State's responsibility may arise⁸. International courts have ruled in compliance of the national legislation on different issues of the sea waters (territory) belonging to the coastal State's sovereignty: misinterpretation of the rules of the UNCLOS or excessive exercise of the coastal State's jurisdiction, etc.

As the ICJ ruled in several cases related with the construction within a State's territory (which is subject to the environmental impact assessment procedure): "it is for each State to determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment required in each case" (*Case concerning Pulp Mills...*, 2010, Para 205); "this reference to domestic law does not relate to the question of whether an environmental impact assessment should be undertaken" (*Certain activities carried out by Nicaragua...*, 2015, Para 157).

One of the most recent examples of excessive exercise of the coastal State's jurisdiction and misinterpretation of the UNCLOS is a dispute between Ukraine and Russia, arising from the arrest and detention of Ukrainian naval vessels and their servicemen passing through the Kerch strait and the subsequent exercise of criminal jurisdiction over them by the Russian Federation. On the 25th of May 2019 the ITLOS has prescribed provisional measures (*Case concerning the detention...*, 2019) ordering the Russian Federation to immediately release the Ukrainian naval vessels *Berdyansk*, *Nikopol* and *Yani Kapu*, and return them to the custody of Ukraine and to immediately release the 24 detained Ukrainian servicemen and allow them to return to Ukraine. The servicemen had been charged with unlawfully crossing the Russian State border and the Russian Federation invoked Article 30 of UNCLOS "Noncompliance by warships with the laws and regulations of the coastal State" to justify its detention of the vessels; however, ITLOS did not consider the dispute to be military (Para 72) and stated that the arrest and detention of ships in passage enjoying immunity violated Ukrainian's rights under the UNCLOS⁹. The dispute between the two States is also pending before the Permanent Court of Arbitration (*Dispute concerning coastal State rights...*, 2017-06).

2. Key Factors That Have Fostered Maritime Regulation

The 1992 Constitution declared the independence of the Republic of Lithuania and sovereignty the limits of exercising whereof then still had to be established: delimitation of maritime zones was still ahead, as well as the creation of maritime legislation.

Lithuania's independence was restored "on the basis of *de jure* continuation of a State" (Žalimas, 2005, p. 284) after 50 years of the Soviet occupation since 1940, which has not been recognised by the International Community. Accordingly, it was not guided by the rules of State succession. The State could have endured its international obligations arising from the treaties signed within the period of its

⁸ Article 4 of the Draft Articles on Responsibility of States (2001): "Conduct of organs of a State: The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises *legislative*, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State." (Emphasis added by the author).

⁹ Para 97: "The Tribunal considers that the rights claimed by Ukraine on the basis of articles 32, 58, 95 and 96 of the Convention are plausible under the circumstances". Para 110: "The Tribunal notes that any action affecting the immunity of warships is capable of causing serious harm to the dignity and sovereignty of a State and has the potential to undermine its national security."

independence of 1918-1940; however, most of them were already irrelevant or outdated due to significant material changes and developments on national and international levels. Still, some have survived. For example, Lithuanian borders with Latvia have been established on the basis of the agreement with Latvia of the year 1921 (Agreement between the Republic of Lithuania and the Republic of Latvia..., 1995). Lithuania was among the signatories of the Convention and Statute on the International Regime of Maritime Ports (1923), however, has not ratified it.

The first decade of Lithuania's restored independence was marked by Lithuania's accession to the UN (17 September 1991), IMO (7 December 1995) and to UN and IMO conventions in maritime field. The State re-joined the International Community, functioning on the basis of the International legal order, guided by the UN principles, including the non-use of force, non-interference into domestic affairs, peaceful settlement of international disputes and other, which extend on to maritime space, and adherence to which is also established in the 1992 Constitution¹⁰. The UN membership has also opened the door to a forum, where the main Law of the Sea conventions have been adopted or are negotiated. The UN Security Council's (SC) resolutions which order certain enforcement measures as, e.g. search of vessels or denial of their entry into ports¹¹ and the UN conventions (e.g. the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, etc.) have impact on the coastal State's right of exercising jurisdiction. On the 1st of March 1992 the Convention on the Territorial Sea and the Contiguous Zone (1958) entered into force in respect of Lithuania, and the State has become bound by conventional rules as regards the inland sea waters (mainly on the drawing of baselines and, partly, jurisdiction).

In 1991 Lithuania has acceded to IMO conventions (Resolution of the Government of the Republic of Lithuania..., 1991)¹², the following of which are relevant for the regime of the inland sea waters: International Convention for the Safety of Life at Sea (SOLAS 1974), as amended, International Convention for the Prevention of Pollution from Ships, as modified by the Protocol (MARPOL 73/78), as amended, International Convention on Maritime Search and Rescue (SAR 1979), as amended, International Convention on Oil Pollution Preparedness, the Response and Co-operation (OPRC 1990) and Protocol 2000; etc. In 2009 the UNESCO Convention on the Protection of the Underwater Cultural Heritage entered into force in respect of Lithuania (UNESCO Convention).

¹⁰ Article 135: "In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice." Legal status of international treaties ratified by the Parliament as a constituent part of the legal system of the Republic of Lithuania is established in Para 3 of Article 138 of the Constitution, the supremacy of such treaties over national regulation in cases of collision (except the the Constitution) was stated by the Constitutional Court of the Republic of Lithuania: "in the cases where a national legal act (obviously, with the exception of the Constitution itself) establishes such legal regulation that competes with the one established in an international treaty, the international treaty must be applied" (Ruling of the Constitutional Court of the Republic of Lithuania of 18 March 2014, Para 5.2, with reference to previous rulings).

¹¹ E.g. The UN SC Resolution SC/13542 as of 16 October 2018 banned entry into ports of three vessels: according to Para 12 of the UN SC resolution 2321 (2016) and Para 6 of Resolution 2371 (2017) all UN Member States shall prohibit entry into their ports vessels which are or have been related to nuclear or ballistic missile-related programmes or activities prohibited by relevant resolutions.

¹² Some related instruments (Protocols to the conventions) have been ratified following certain developments in national law, including these as regards the types of treaties subject to ratification (and other forms of expressing the State's consent to be bound by a treaty). Lithuania shall implement its international obligations arising out of all international treaties.

Lithuania's accession to the EU on the 1st of May 2004 had a significant and specific impact on its maritime legislation: the *sui generis* legal order obliges the EU Member States to duly implement and act in line with respective EU legal instruments the compliance to which is secured by the infringement procedure. The expansion of the competence of the EU (which originally is not characteristic of regulating International Law of the Sea issues) gained maritime dimension and respective directives, regulations and policies have covered a noticeable number of maritime matters, including safety at sea, seaport regime, environment, fisheries, sustainable development, maritime spatial planning and other (most of which are also regulated on international level). Lithuania's accession to the North Atlantic Treaty Organisation (NATO) in the same year (29 March 2004) encouraged the review of the entry of foreign naval vessels into Lithuania's territory (including the State Seaport Klaipėda).

Within *the next two decades* and in general the Lithuanian maritime legislation was mostly affected by its accession to the UNCLOS, which entered into force in respect of Lithuania in 2003; however, the internal sea waters are the only maritime zone the Convention's impact whereon is very modest¹³. As the author concluded in her previous studies, Lithuania has chosen the sectoral approach: no specific law on either maritime zone has been adopted, separate legal institutes have been regulated in separate laws (Isokaitė, 2010, p. 253).

Throughout the period under this research the legal regime of the inland sea waters was also influenced by bilateral treaties (e.g. consular conventions) and regional arrangements. For example, the Paris Memorandum of Understanding on the Port State Control (Paris MoU) (1982), which has created a harmonised mechanism for ship inspections and served as an example for similar regional mechanisms worldwide, as well as the EU regime on the Port State Control.

3. Inland Sea Waters: Main Issues and Some Recent Developments

3.1. Concept and Seaport Regime

Each coastal State shall draw a baseline and define its inland sea waters, the composition whereof depends on the peculiarities of each coastline (indentation, existence of bays, islands, etc.). In absence of laws on any maritime zone, the definition of Lithuania's inland sea waters in the Law on the State Border and the Guard thereof (Law on State Border) is reasonable, still, amendments reveal that the concept at issue has been under a constant development.

The first wordings of the Law on State Border (of the years 1992 and 1994) contained no explicit reference to the inland sea waters. The new wording of the law adopted in 2000 introduced a definition of "the inland waters of the sea area and the border zone of the Republic of Lithuania"¹⁴. This combined approach has remained¹⁵, specified, however, and is currently defined as the waters landwards from the baseline of the territorial sea of the Republic of Lithuania and water bodies within the border zone (Para 3, Article 2 of the Law on the State Border..., 2000). The Law on the Protection of the Marine Environment (2010) contains another definition: "inland waters of the sea area of the

¹³ UNCLOS (Para 1, Article 2) declares the sovereignty of the coastal State: "The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea."

¹⁴ Encompassing the waters landwards from a baseline of the territorial sea connecting the outermost harbour works at sea and the waters of the Curonian Lagoon, rivers, lakes and other water bodies. Para 2, Article 2.

¹⁵ The concept of the sea area is used in Lithuanian legislation as encompassing all maritime zones of the Republic of Lithuania. E.g. Para 17, Article 3 of the Law on the Protection of the Marine Environment.

Republic of Lithuania” are waters landwards from the baseline of the territorial sea extending to the continent; water areas of the seaports of the Republic of Lithuania form part of the inland waters (Para 18, Article 3). The Law on Fisheries of the Republic of Lithuania (2000) defines inland waters as all surface water bodies and transitional waters within the territory of the Republic of Lithuania¹⁶. The concept of the transitional waters appears in the Water Law of the Republic of Lithuania (2019) (Para 20, Article 3)¹⁷, which implements the Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy. Thus, the manner of definition of the inland sea waters is rather complicated, in particular, as regards separation from other inland (internal) waters. However, a systematic analysis of the above presented provisions implies that the concept at issue encompasses the waters landwards from the baseline (including the Curonian Lagoon and the seaport waters) which have a close connection with the land, as required under international law of the sea.

Lithuania has implemented the coastal State’s obligation under the UNCLOS to notify the UN Secretary General (SG) of the lists of geographical coordinates of points, specifying the baselines (as well as the outer limits of the territorial sea and other maritime zones), having deposited the Government Resolution No 1597 of 6 December 2004 (Lithuania’s submission in compliance with the deposit obligations...). Under the UNCLOS (Articles 5, 7) and the ICJ jurisprudence, normal baselines (low-water lines along the coast) should be used and straight baselines (joining appropriate points) may be used restrictedly (for cases where the coastline is deeply indented or cut into) (*Maritime Delimitation and Territorial Questions...*, 2001)¹⁸. Although Lithuania’s coastline seems to be quite even, the Curonian Split, an indentation and a slight shift of the general direction of the coastline create some particularities; still, the whole coastline is rather short¹⁹. The submission to the UN SG and the Government Resolution list seven relevant points of the baseline (including harbour works, relevant points of the Curonian Split, etc.) indicated as a straight baseline²⁰.

UNCLOS does not regulate the core of the legal regime of the inland sea waters – the seaport regime²¹. Convention and Statute on the International Regime of Maritime Ports (1923) has established general principles (of entry, non-discrimination, etc.). The author agrees that “the Port States are playing an increasing and increasingly important role in maritime regulation and enforcement” (Rayfuse, 2016, p. 81), still, the role of regional organisations such as the Paris MoU and the EU should not be underestimated.

The seaport regime has been regulated by the Law on Klaipėda State Seaport since its adoption in 1996. The established general principles of the Seaport’s openness for international shipping and

¹⁶ Para 33, Article 2; Para 29, Article 2: water body is a body of sea waters or inland waters; the definition of sea waters lists maritime zones, however, does not include inland sea waters (Para 10, Article 2).

¹⁷ Transitional waters are defined as the part of the sea at the river mouth where the water is brackish and where salt and fresh water mix. The part of the Curonian Lagoon in the territory of the Republic of Lithuania shall be attributed to the transitional waters.

¹⁸ Para 212: “The Court observes that the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity.”

¹⁹ In total, Lithuania’s sea border (territorial sea border) is 119, 64 km length; sea border with Latvia 22.22 km, Russian Federation 22.22 km and in Curonian Lagoon 18.5 km (Demarcation of State border, 2013).

²⁰ The substantiation of using strait baselines is not self-evident at least from the view of the ICJ’s jurisprudence on the issue and thus could require a more exhaustive research; herein limiting to a short comment only, the author merely notices that this is more likely the issue of the precision of using certain terms.

²¹ Several articles (e.g. Article 218, 219, 220, etc.) regulate the issues of the coastal State’s and the flag State’s jurisdiction in cases of vessel-source sea pollution.

prohibition of entry of nuclear ships (and ships carrying nuclear weapon) (Para 3, Article 8) have been unchanged since then; other provisions have been subject to amendments. The order for navigation at the seaport, entry and departure was made subject to regulations (Rules on navigation at the State Seaport Klaipėda). In 2006 the Parliament has enacted the Law on the Seaport Šventoji of the Republic of Lithuania, and recently (in 2018) a new wording thereof, which also declares openness to international shipping, prohibition of entry for nuclear ships, etc.; however, the Seaport Šventoji is intended for smaller ships and some governmental vessels (rescue, etc.).

The entry of foreign governmental and naval vessels into the State Seaport Klaipėda, initially established in 2006 (Resolution of the Government of the Republic of Lithuania..., 2006), is currently governed by the new wording of the Resolution of the Government of 2018 (as amended in 2020). The entry of foreign governmental vessels is allowed on the basis of the permission of the Ministry of Foreign Affairs of the Republic of Lithuania (to be issued taking into account the position of respective State institutions). Foreign naval vessels are entitled to enter the Seaport if a decision allowing foreign military units to enter the territory of Lithuania has been adopted according to the Law on International Operations, Military Exercises and other Military Events or under the international agreements of the Republic of Lithuania. Accordingly, the decision may be adopted by one of the three designated institutions – the Parliament (upon the Government's proposal), the Government (upon the proposal of the Minister of National Defence) or the Minister of National Defence – mainly depending on the structure (size) of the military unit and other details (EU, NATO membership, etc.) (Article 9 of the Law on Military Operations). Recalling the first years of the restored State's independence, when the permissions for foreign naval vessels to enter the Klaipėda State Seaport were granted on the *ad hoc* basis by Governmental Resolutions (e.g. Resolution of the Government of the Republic of Lithuania..., 2001), the legal order now in force is, undoubtedly, a more advanced and reasonable regime.

3.2. Legal Developments in Other Fields

Lithuania has been contributing to the inspection of foreign vessels under the Paris MoU in order to establish their compliance to numerous international standards for ship safety (MARPOL, SOLAS, etc.) for already 14 years upon its accession to the organisation in 2006. The mechanism has been implemented in the Law on Safe Navigation and the Rules on the control of foreign vessels. In response to a non-binding character of the Paris MoU rules and subsequent possibility of different interpretation and application, the EU has created its own Port State Control mechanism, mainly based on the Port State Control Directive 2009/16/EC (amended by Directive 2013/38/EU). National regulation is based on both mechanisms; foreign ships are inspected by the Lithuanian Transport Safety Administration (Maritime Safety Administration until 2017). The EU provisions, although similar to the Paris MoU, have made the non-compliance subject to the infringement procedure under the EU Law (*European Commission. Press Releases Database...*, 2011). Some studies conclude that the areas of inspection, commitment (information), quality of inspections and training of Port State Control officers still lack harmonisation (Graziano, 2018, p. 65). The Port State Control is not (merely) a set of administrative procedures: this legal institute represents the interaction of the rules on at least three levels (international/regional, EU, national); it also has influenced the balance of powers between the flag States and the port (coastal) States, is one of the elements of the safety net (comprised of the IMO conventions, flag State control, etc.), aims at dealing with the challenges in the International Law of the Sea, including the flag of convenience and international crimes, and reaching the objectives such as the safety at sea and the protection of the marine environment.

Among other fields affected by the EU Law is the investigation of maritime casualties. The Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector was implemented in Lithuania by respective amendments to the Law on Safe Navigation and regulations. The established regime provides for harmonised measures, cooperation with other EU Member States' institutions, etc. Lithuania shall investigate sea casualties if they occur within Lithuania's inland sea waters (also the territorial sea) or are related with Lithuania's substantial interests (also those involving the ships flying the flag of Lithuania). Among the recent amendments of the Law on Safe Navigation the author would like to emphasize those adopted in 2019 (Law Amending Articles 1, 2, 3, 8, 13..., 2019), which define the waters (area) in respect of which the investigation order applies: namely, an explicit reference (Paragraph 2(2) of Article 48 of the Law on Safe Navigation) is made to the inland sea waters as they are defined in the UNCLOS. This is a rather precise approach, possibly encouraged by the need to specify the inland sea waters separating them from other types of inland waters, relatively merged in Lithuanian regulation.

The inland sea waters also form part of the area of Lithuania's responsibility zone in the field of response to sea pollution incidents which is regulated in the Law on the Protection of the Marine Environment (the 5th section) (and detailed in regulations, the Plan for response to sea pollution incidents within the sea area). Already more than the recent 10 years the organisation, coordination and supervision of the response action in the whole sea area has been the responsibility of the Lithuanian Navy (Lithuanian Navy Maritime Rescue Coordination Centre); the operations within the inland sea waters have been entrusted to the institution designated by the Minister of Interior – the State Border Guard Service (in the Curonian Lagoon) and the seaport administration (at the Klaipėda State Seaport) (Isokaitė, 2011, p. 191). The regime is based on the principles and rules established in the UNCLOS, the OPRC Convention and Protocol 2000, also the IMO and Helsinki Commission's rules and detailed in bilateral agreements, although there has been some delay in implementation and a few other pending issues (Isokaitė, 2011, p. 191).

The regulation of human search and rescue at sea in the Law on Safe Navigation (Article 44, also 45–46) (an implementing regulations) is based mainly on SAR 1979, also UNCLOS and SOLAS 1974 and, particularly, after the reform of the system on 1 January 2009, meets their requirements (Isokaitė, 2012, p. 740). The functions of coordination and supervision of search and rescue have been exercised by the Lithuanian Navy (Lithuanian Navy Maritime Rescue Coordination Centre) since then. The conduct of these operations in the inland waters is divided among State institutions in the same manner as for the response to sea pollution incidents.

In 2004, a new wording of the Law on the Protection of Immovable Cultural Heritage established a prohibition, without a permission of a competent authority, to move, extract or research underwater objects, parts thereof or archeologic objects within the inland sea waters (and other maritime zones) (Para 1(4) of Article 17) (among the principles under the UNESCO Convention – preservation of underwater cultural heritage *in situ*). On 27 November 2009 the State Cultural Heritage Commission adopted a decision on the situation of maritime heritage in Lithuania, where numerous gaps and problems have been identified, e.g., the lack of definition of underwater cultural heritage and strategy for its preservation (*State Cultural Heritage Commission. Decision...*, 2009).

The Law on the Protection of the Marine Environment introduced the marine scientific research in 1997 (Article 50, currently, Article 30 (Law Amending the Law on the Protection of the Marine Environment..., 2010)). The Ministry of Environment (or other designated institution) in coordination with the Ministry of Foreign Affairs, in accordance with UNCLOS, establishes conditions and issues permits to foreign natural and legal persons and other organisations or their representative offices to carry out maritime research

in the inland sea waters (and other maritime zones). The amendments of the Law have been fostered by the requirements of international conventions (e.g. discharge of harmful substances is allowed only if under the requirements of MARPOL 73/78 and Helsinki Convention (Article 9). Building of windfarms, other constructions or excavation, drilling or explosion works which may have a negative impact on the environment are subject to the environmental risk assessment procedure²².

The prescriptive jurisdiction of the coastal State would be meaningless if it were not safeguarded by the enforcement provisions, including the liability grounds for violations of the established regime of the inland sea waters. The Criminal Code of the Republic of Lithuania (2000) establishes the territoriality principle (Article 4) and lists crimes for which foreign subjects may be held responsible on the basis of treaties (Article 7), including piracy, human trafficking, environmental pollution (sea pollution in violation of MARPOL and other requirements) (respectively, Article 251(1), Article 147, Article 270(3)), etc. Subjects of foreign States (captains, ship masters, etc.) may also incur administrative liability under the Administrative Code of the Republic of Lithuania (2015) for violations of the requirements for the protection of the marine environment (Article 265), navigation safety (Article 404), etc. Such provisions reflect the requirements under respective treaties, the UNCLOS and the EU Law (e.g. Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements). The exercise of jurisdiction is, however, influenced by consular conventions and other applicable rules (e.g. UNCLOS, Articles 218-220). For example, the coastal State shall not intervene in cases where an incident happens on board a ship at a seaport, causing no effects on the coastal State's safety and public order (unless there is a request or consent of the flag State's captain or the consent of a consular officer (e.g. Consular Convention between the Republic of Lithuania and Georgia, 2001, Article 19).

Conclusions

1. Relevant jurisprudence of the international courts and tribunals reveals that the coastal States sometimes misuse the powers deriving from their sovereignty over inland sea waters. The right to legislate on the issues of this maritime zone is not absolute or unlimited: States are bound by international treaties and the EU Law. Careful and precise implementation of the prescriptive jurisdiction not only safeguards the coastal State's rights and interests, but also contributes to the unanimous application of respective international and EU Law requirements.
2. During the three decades since the restoration of the Lithuania's independence, legal regulation on the internal sea waters has undergone a fundamental transition from some single rules to a comprehensive legal regime. It has evolved in a set of laws and regulations (including the State Border Law, the Law on the State Seaport Klaipėda, the Law on the Protection of the Marine Environment, the Law on Navigation Safety, *etc.*), however, numerous amendments of and supplements to the legal acts not only developed the regime, but also demanded their coherence and unanimous systematic interpretation. The creation of the maritime legislation has been a unique experience, a continuous and comprehensive development, in which Lithuania's accession to the international organisations (UN, IMO, EU) and tenths of conventions have served as the main guidelines.

²² Environmental risk assessment procedure is subject to both, international and national regulation. As the ICJ ruled in its jurisprudence (presented above in Section 1 of this Article), a State is allowed to determine certain issues in its domestic legislation (e.g. the specific content of the environmental impact assessment required in each case), however, national laws and regulations may not replace international requirements (e.g. domestic law does not relate to the question of whether an environmental impact assessment should be undertaken).

3. The evolution of the regulation reveals attempts to identify the inland sea waters, separating them from other types of inland waters and to ensure the unanimous application of certain related concepts used in laws. The inland sea waters are defined in separate laws in a relatively complicated manner (as a part of other concepts, etc.); however, in general, they encompass the waters situated landwards from the baseline and are closely connected with the continent. In some fields a rather confused definition of the concept at issue required amendments of certain domestic provisions (e.g. in order to clarify the waters where EU legal rules on the investigation of maritime casualties apply). The regulation also focuses on the State's security interests: an advanced order for entry into Lithuania's territory of foreign naval vessels to military exercise or other forms of military cooperation is now in place (instead of the initially applied *ad hoc* approach).
4. Although in implementing its prescriptive (legislative) jurisdiction, Lithuania, in general, has not (at least materially) overstepped or (visibly) misinterpreted the extent and manner of national regulation allowed by international treaties and the EU Law, there has been certain delays in drafting and (or) adopting legislation, implementing international requirements, the regulation has been subject to amendments induced by identified legal gaps, inconsistencies or encouraged by practice. Finally, as always, there is a remaining scope for improvement.

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30 Years of Lithuania's Restored Independence: A Coastal State's Prescriptive Jurisdiction over Inland Waters

Indrė Isokaitė-Valužė
(Vilnius University)

S u m m a r y

The Article aims at comprehensively and systematically revealing a general transformation of the national regulation on the inland sea waters of the Republic of Lithuania within the three-decade period of the State's restored independence, highlighting the main trends and stages of the legal development. In particular, the following tasks have been set: 1) to reveal the extent (scope), need and relevance of national maritime legislation in respect of the maritime zone at issue; 2) to distinguish the key factors that have influenced the development of that national regulation; 3) to track and comprehensively reveal the transformation of the main issues (legal institutes) of the regime of the inland sea waters; and 4) to generally evaluate the core provisions of the national regulation in respect of their compliance with the main obligations under the International Law of the Sea and the EU Law. The research reveals that a coastal State's power to regulate inland sea waters is not unlimited: States are bound by international treaties and the EU Law. Careful and precise implementation of the prescriptive jurisdiction not only safeguards the coastal State's rights and interests, but also contributes to the unanimous application of respective international and EU Law requirements. The article concludes that from the re-establishment of the independent State of Lithuania in 1990 until now, the legal regulation on the maritime zone at issue has undergone a fundamental transition from some single rules to a comprehensive legal regime. It has been developed in a set of laws and regulations (including the State Border Law, the Law on the State Seaport Klaipėda, the Law on the Protection of the Marine Environment, the Law on Navigation Safety, etc.). The creation of maritime legislation has been a unique experience, a continuous and comprehensive development, in which Lithuania's accession to the international organisations (UN, IMO, EU) and tenths of conventions have served as the main guidelines. The evolution of the regulation reveals attempts to identify the inland sea waters separating them from other types of inland waters and to ensure the unanimous application of certain related concepts used in laws. The inland sea waters are defined in separate laws in a relatively complicated manner; however, in general, duly encompass the waters situated landwards from the baseline and closely connected with the continent. The regulation also focuses on the State's security interests: an advanced order for the entry to Lithuania's territory of foreign naval vessels to military exercise or other forms of military cooperation is now in place. Although in implementing its prescriptive (legislative) jurisdiction, Lithuania, in general, has not (at least materially) overstepped or (visibly) misinterpreted the extent and manner of national regulation allowed by international treaties and the EU Law, there has been certain delays in drafting and (or) adopting legislation, implementing international requirements, the regulation has been subject to amendments induced by identified legal gaps or encouraged by practice. Finally, as always, there is a remaining scope for improvement.

30 atkurtos Lietuvos nepriklausomybės metų: pakrantės valstybės teisėkūros jurisdikcija dėl jūros vidaus vandenų

Indrė Isokaitė-Valužė

(Vilniaus universitetas)

S a n t r a u k a

Straipsnyje siekiama išsamiai ir sistemškai nagrinėti ir atskleisti bendrą Lietuvos Respublikos jūros vidaus vandenų nacionalinio reguliavimo transformaciją per trijų atkurtos Valstybės nepriklausomybės dešimtmečių laikotarpį, parodyti pagrindines kryptis ir etapus. Iškelti tokie uždaviniai: 1) atskleisti nagrinėjamos jūros erdvės reglamentavimo nacionalinėje teisėje apimtį (mastą), poreikį ir svarbą; 2) nustatyti šio nacionalinio reglamentavimo raidai turėjusius įtakos esminius veiksnius; 3) visapusiškai parodyti jūros vidaus vandenų teisinio režimo pagrindinių klausimų (teisės institutų) vystymąsi; 4) bendrai įvertinti pagrindines nacionalinio reglamentavimo nuostatas jų atitikties esminiams tarptautinės jūrų teisės ir ES teisės reikalavimams požiūriu. Tyrime atskleidžiama, kad pakrantės valstybės teisė reglamentuoti jūrų vidaus vandenį nėra neribota: valstybės įpareigoja tarptautinės sutartys ir ES teisė. Atidus ir tikslus teisėkūros jurisdikcijos įgyvendinimas ne tik apsaugo pakrantės valstybės teises ir interesus, bet ir prisideda prie vienodo atitinkamų tarptautinės ir ES teisės reikalavimų taikymo. Daroma išvada, kad nuo Lietuvos nepriklausomybės atkūrimo 1990 metais iki dabar nagrinėjamos jūros erdvės teisinis reglamentavimas plėtojosi fundamentaliai, nuo pavienių nuostatų iki išsamaus teisinio režimo. Jis įtvirtintas grupėje įstatymų ir kitų teisės aktų (įskaitant Valstybės sienos apsaugos, Klaipėdos valstybinio jūrų uosto, Jūrų aplinkos apsaugos, Laivybos saugumo ir kt.). Įstatymų ir kitų teisės aktų jūros erdvių režimo klausimais kūrimas buvo unikali patirtis, betrunantis ir visa apimantis procesas, o jo gairės – Lietuvos stojimas į tarptautines organizacijas (JT, IMO, ES) ir prisijungimas prie dešimčių konvencijų. Reglamentavimo plėtra rodo pastangas identifikuoti jūrų vidaus vandenį (atskiriant nuo kitų vidaus vandenų) ir užtikrinti vienodą tam tikrų susijusių sąvokų tam tikruose įstatymuose taikymą. Jūrų vidaus vandenys apibrėžti kai kuriuose įstatymuose kiek sudėtingai, tačiau, vertinant apskritai, tinkamai apima į sausumos pusę nuo bazinės linijos esančius vandenį, turinčius glaudų ryšį su sausuma. Reglamentuojant taip pat juntamas dėmesys valstybės saugumo interesams: sukurtas pažangus užsienio karo laivų atvykimo į Lietuvos teritoriją karinių pratybų ar į kitus karinio bendradarbiavimo renginius režimas. Nors, vertinant apskritai, įgyvendinama teisėkūros jurisdikcija Lietuva (bent jau reikšmingai) neperžengė ar (akivaizdžiai) neteisingai neinterpretavo tarptautinių sutarčių ar ES teisės leidžiamų nacionalinio reguliavimo ribų ir jų normų įgyvendinimo būdo, tam tikrais atvejais vėluota parengti ar priimti teisės aktus, įgyvendinti tarptautinius įsipareigojimus, priimti pakeitimus, paskatintų identifikuotų spragų ar praktikos. Galiausiai, kaip visada, lieka erdvės tobulėti.

Indrė Isokaitė-Valužė, socialinių mokslų (teisės) daktarė, Vilniaus universiteto Teisės fakulteto docentė. Pagrindinė mokslinių interesų sritis yra tarptautinė jūrų teisė, kitos sritys – tarptautinė viešoji teisė, tarptautinių sutarčių teisė ir žmogaus teisės.

Indrė Isokaitė-Valužė is a doctor of social sciences and associate professor at the Faculty of Law, Vilnius University. Her main field of research is international law of the sea, other fields of interest – public international law, law of treaties, human rights.