

The concurrent jurisdiction generated by the collisions between two vessels in the open waters."

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Abstract. The UN Convention on the Law of the Sea(UNCLOS), which was established in 1982, prescribes that the flag state has a compulsory jurisdiction to the vessel which he owns in the open water. This idea internationally has been established as the general rule. On the other hand, in case two vessels of different flag states collide in the open waters, a problem that flag states have the concurrent jurisdiction has been occurred. The problem means that which countries' law, the vessel which collided or was collided, should be applied to the collision in the open waters. I research on judicial precedents about the changes of judgements.

Keywords: Concurrent jurisdiction; collisions; open waters; flag state.

Chapter 1 Introduction

What kinds of legal problems will arise when vessels of different flags conflict with each other on the high seas? I will work offshore as a seafarer from next year. Therefore, I have been interested in the international rules on collision accidents and the existence of problems and chose this theme.

Chapter 2 Dispute settlement by flag state doctrine

In this chapter, I introduce precedents of crash cases and injuries cases on the high seas.

(1) Principles of flag state doctrine

Article 97 of UNCLOS regulates that flag states shall deal with criminal procedures for crew members for collision accidents on vessels on the high seas. In other words, (1) the criminal jurisdiction over crew members of foreign vessels, which have collided with the Japanese vessel on the high seas and damaged it, is exercised by the flag state of the foreign vessel or the country to which the crew belongs, (2) Japan can not exercise criminal jurisdiction over crews who are foreigners with criminal responsibility for the crash case concerned.

(2) The case of the Roots Incident

In 1926, a crash of a Turkish vessel and a French vessel occurred in the public waters. The International Court of Justice (ICJ) granted Turkey's criminal jurisdiction as having no international law prohibiting the flag state of the vessel where the outcome of the crime has occurred in the domestic territory and prohibiting it from prosecuting it.¹ However, the maritime industry repeated strong criticism against this ruling, and now the idea of this ruling has been denied.

(3) Texaca incident

In 1966, the Texaca of the Liberian flag vessel on the high seas collided with the Japanese flag vessel, and the crew was injured. The court stated that as long as the conduct occurred outside the country, as long as the outbreaks occurred in the country, the Japanese Criminal Law is applied as domestic offenses.²

(4) “Daiichi Horyomaru” Incident

In 1985, a tanker with a Liberian flag vessel collided with a fishing boat of our country on the high seas, the fishing boat sunk, and five crew members have been missing. The Japan Coast Guard concluded the investigation by concluding that Japan has no jurisdiction for criminal jurisdiction, according to the provisions of the High Seas Treaty regulating flag state doctrine.³

¹ Takeuchi, Mari (2011) “国際法判例百選[100 international law cases selected]”, 42-43, Tokyo : Yushindo.

² Japan Ocean Association(1993)“公海上での衝突Ⅱ [Collision in high seas]”, 98-98, Tokyo: Japan Ocean Association.

³ Japan Ocean Association(1993)“公海上での衝突Ⅲ [Collision in high seas]”, 98-100, Tokyo: Japan Ocean

(5) TAJIMA incident

In 2002, a Japanese navigator was killed by a Filipino crew in a tanker registered in Panama. At that time the Japanese Criminal Law did not prescribe punishment provisions in cases where Japanese were murdered by foreigners on foreign vessels on the high seas. As such, Panama which is the flag state exercised criminal jurisdiction and the innocence of the defendant was finalized in Panama. With this incident, Japan revised the Japanese Criminal Law, foreign criminal provisions of non-citizens were added to criminal law.

Chapter 3 Problems and Solutions of Flag Nationalism

UNCLOS regulates that a "genuine relationship" must exist between a flag state and a vessel, but there is no definite definition. If the harmful vessel has a weak relationship with the flag state, it seems that there is no problem even if it is claimed that the damaged vessel refuses punishment by the Flag State Act of the harmful vessel, because of the absence of its genuine relationship. However, in the interpretation and precedents of the Convention, the lack of a genuine relationship between a vessel and a flag state justifies that other countries deny the nationality and flag of the vessel and interfere with the vessel at public offshore or port etc. It is supposed not to be a reason. ⁴Also, there are problems with sub-standard vessels which are not sufficiently managed by the flag states such as the structure and equipment of the vessel, management of labor, etc., and do not conform to international treaties. In case of collision with these vessels, damaged vessels are not relieved in many cases. Even if it collides with such vessels and suffered damage, it is impossible to punish a harmful vessel by the Flag State Act of the damaged vessel. Isn't this too preferential treatment for harmful vessel?

Chapter 4 Proposal and verification for applying national law of victimizing vessels

Based on the discussion from Chapters 1 to 3, in this chapter, when a collision accident occurs on the high seas, I will consider the measures to apply the case by applying the Flag State

Association

⁴ Chiyuki, Mizukami(1994)『船舶の国籍と便宜置籍[*Nationality and convenience of vessel*]』, 198-227, Tokyo-Kobunsha.

Law of the damaged vessel.

(1) Strengthening of criminal law for punishment of foreign crime

The 2003 criminal law amendment stipulates the provision of foreign criminal punishment that the Japanese Criminal Law can be applied when Japanese people suffer damage in a foreign country. However, if the flag state of the collision vessel is a country that ratifies the treaty, Japan can not punish foreign burglars without the consent of the flag state.

(2) Request cooperation to flag state of harmful vessel to seek surrogate punishment and arrest of criminal

In theory, it is possible to punish foreigners with the Japanese Criminal Law, but in fact it is not allowed to punish unless the flag state of the harmful vessel permits and does not deliver the accused to the flag state of the damaged vessel. Although it is possible for Japan to seek surrogate punishment and cleansing in the flag state of the harmful vessel, this method also depends on the action of the flag state, and it can not protect the crew of the damaged vessel after all.

(3) Concluding criminal delivering treaties between two countries

Japan is an extremely few country that has concluded a criminal delivering treaty worldwide. If we conclude this Convention, which has only been concluded with the US and South Korea, with major flags of convenience (FOC) in the world, it will be possible to request the handover of the offender.

Chapter 5 Conclusion

First, the Japanese Criminal Law can not punish overseas offenders without the cooperation of the flag state. Second, not only Japan but also FOC are members of the treaty. Third, it is difficult to revise the agreed flag state doctrine which many countries support due to the shipping practices and economic policy. From these three points, Japan should conclude a criminal delivering treaty with major FOC in order to make it possible to punish a perpetrator based on the Flag State Act of the damaged vessel in the case of a collision between different vessel's vessels on the high seas.

Chapter 6 Bibliographic references

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