

# THE ELEMENTAL AND NON-ELEMENTAL FEATURES OF INTERNATIONAL BORDER DISPUTES

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**Abstract.** The article is devoted to the disclosure of the essence and legal significance of the international border dispute. It is determined that the specific nature of the international border dispute manifests itself in the elemental features (object, subjects) and non-elemental features (system of legal regulators, legal means of peaceful dispute settlement, set of legal procedures for dispute settlement, legal consequences of the dispute). It is proved that the international border dispute is a complex polyfunctional phenomenon in the international law, organically associated with various system-structural units of the international law. We revealed the significance and tendencies of the law enforcement practice of the UN International Court of Border Disputes.

**Key words:** international border dispute, elemental features, non-elemental features, legal regulator, legal procedure.

## 1 INTRODUCTION

International border disputes pose a serious threat to world security and law and order. The tasks of peaceful settlement of the international border disputes faced by the science and practice of international law predetermine the importance of resolving the issue of their essence and legal nature. The multiplicity of legal relations connected with border disputes stipulates an understanding of them as complex polystructural phenomena in the international law. A theoretical understanding of the legal structure of an international border dispute will reveal the specific nature and significance of the corresponding phenomenon in the international law, and the typification of essential features and patterns of development of border disputes will provide the basis for developing an effective tool for their peaceful settlement.

## 2 METHODS

The methodological base of research is represented by general scientific and private scientific methods. The dialectical method allowed considering the international dispute structurally, with inherent elemental and non-element features. Using the analysis, we revealed the individual components of the border dispute, as well as we established the systemic links between them using the synthesis. The formal legal method helped to establish the essence and significance of the international legal norms governing relations in the field of international border disputes. The method of interdisciplinary legal research was expressed in the fact that when describing an international border dispute, the intersectoral links of international law were taken into account. Finally, the disclosure of the theoretical construction of an international border dispute through its elemental and non-elemental features is in itself a valuable instrumental and methodological technique applicable in the study of any international legal phenomena, since it allows making a complex disclosure of their legal nature, uniqueness and place in the system of international law.

## 3 RESULTS AND DISCUSSION

In the international law, the term “international dispute” is commonly used to denote the presence of unresolved issues, tensions, and disagreements between the states on various issues of international life [1, p. 226], including those that may threaten the international peace and security. In 1962, the International Court of Justice added the concept of international dispute, firstly introduced by the Permanent Chamber of International Justice in the decision on the *Mavrommatis case in South West Africa* [2]: «...it was not sufficient for one party to a contentious case to assert that a dispute existed with the other party. It must be shown that the claim of one party was positively opposed by the other». According to the amendment, the qualification of an international border dispute was associated with the condition of claim rejection made by the second party.

An international border dispute as a type of international dispute is a **disagreement expressed in mutual claims of the states related to defining, changing, specifying the borders, establishing the fact of passing borders, performing or terminating certain actions affecting the legal border regime, as well as other legal relations in the field of border security.**

With regard to each international border dispute, we can distinguish two large blocks of features that characterize it as an independent international legal phenomenon:

**elemental features** (forming the structure of an international border dispute): object, subject, subject composition [3, p. 20, 22-23];

**non-elemental features** (external components that determine the dynamics of legal relations connected with a dispute): legal regulators establishing prescriptions for the dispute subjects, legal means of peaceful dispute settlement, legal procedures fixing the procedure for carrying out legal significant actions, nature of the international legal consequences of the dispute and its own mechanism of international legal regulation.

The **subject** of an international border dispute is the requirement related to delimitation or its modification, demarcation, ensuring the legal border regime, violation of borders, as well as other legal relations arising on borders. The requirement nature is determined by the dispute **object**. In particular, it may be the border location, legal norms enshrining border regime, international delimitation agreements in case of a dispute on the interpretation of the terms and conditions of the relevant treaty, etc. In turn, the specific nature of the subject of a border dispute determines a

property of the **subjects**: as a rule, they are bordering states. However, if the dispute subject, for example, is a violation of the border regime, then any state may be the dispute subject.

The primary non-elemental feature of an international border dispute is the **system of regulators**, by means of which a set of prescriptions applicable in all types of border disputes is established. The term "legal regulators" is new to the science of international law, although, it should be noted that it has established itself as an effective methodological tool in other scientific areas of the industry [4] [5]. Legal regulators express a functional relationship between the norms of law and other forms of legal influence, as well as the provisions and means contained in them. With regard to the international border disputes, the following organically related levels of regulators can be distinguished: **common (universal), regional and local (individual legal)**. The basic international legal norms and principles are formed at the general level, some of which determine the foundations of the inviolability of state territory and its borders, while others reinforce the means of peaceful settlement of border disputes. The first leading importance is given to the UN Charter (adopted in San Francisco on June 26, 1945); Geneva Conventions "On the Territorial Sea and the Adjacent Area" (adopted on April 29, 1958), "On the Continental Shelf" (adopted on April 29, 1958), UN Convention "On the Law of the Sea" of 1982 (adopted on December 10, 1982). Among the universal international legal regulators of the dispute prevention should be called the Convention "On the Peaceful Resolution of International Conflicts" (in the first edition adopted in 1899, in the next edition adopted on October 18, 1907), the UN Manila Declaration "On the Peaceful Settlement of International Disputes" (adopted on November 15, 1982 by the Resolution 37/10 of the UN General Assembly), the UN Declaration "On the Prevention and Elimination of Disputes and Situations that may Threaten the International Peace and Security, and on the UN Role in this Field" (adopted on December 5, 1988 by the Resolution 43/51 of the UN General Assembly).

The principles developed in the practice of the UN Court were fixed as special regulators of international border disputes: *uti possidetis* [6], *effectivités* [7]. The "own what you own" formula was initially used as a rule of customary law in defining the borders of former colonies (the border disputes of Burkina Faso/Mali [8], Benin/Niger [9], Nicaragua/Honduras [10]), after which it was established as a general international legal principle of ensuring the stability of borders and state legal personality. Due to the activities of the UN Court, it was developed some criteria to determine the effective management of territories to resolve the border issue (border disputes of Libya/Chad [11], Nicaragua/Colombia) [12].

The **regional level** of regulators of the international border disputes expresses the differentiation of legal regulation, taking into account the regional features of border relations. The European rule-making, in particular, the European Convention "On the Peaceful Settlement of Disputes" (adopted by the Council of Europe on April 29, 1957 in Strasbourg) is of decisive importance. The European law is characterized by the dual legal nature of regulators, since they have laid the legal foundations for ensuring the border regime and security on a global scale. For example, the OSCE Final Act (adopted on August 1, 1975 in Helsinki) obtained the legitimacy of the principles of border inviolability being fundamental to the entire system of the international law.

The development of regional legal regulation of relations in the field of ensuring the border regime and preventing the border disputes should be carried out taking into account the high potential of the integrational international regional relations [13], the differentiation of contractual legal means and the introduction of advanced cooperation tools [14].

The main **individual legal (local) regulators** of the international border disputes are bilateral agreements, which define the grounds, conditions, parameters for border determination and the applicable law, requirements for compliance with the legal border regime, measures of responsibility for the violations, etc. In contrast to the contractual multilateral regulators of a general level, the individual legal treaties concluded between two or several states on the borders allow settling border issues more specifically and flexibly and taking into account the mutual interests of the parties, which are not even always related to the legal domain. In this regard, it is worth noting the successful example of bilateral international cooperation of Russia with a number of bordering states [15], including comprehensively covering border and economic issues [16].

The **international legal means** of settling border disputes can be grouped according to their functional orientation, by allocating legal, contractual, and organizational legal means.

The **legal means** are expressed in conferring the rights and obligations of the parties to the dispute and third parties who can contribute to the peaceful dispute settlement or resolve the dispute directly. The most effective legal means for resolving the international border disputes and ensuring legal stability of borders is the International Court of Justice, which has settled about 26 cases, relate to the border disputes. The cases on delimitation of the continental shelf between Nicaragua and Colombia; on maritime delimitation in the Indian Ocean between Somalia and Kenya are pending. The UN International Court of Justice is not only the guarantor of world security, but also a powerful impetus to the development of international law today. Thus, the practice of the UN Court on maritime delimitation has made a tremendous contribution to the development of the law of sea, having developed a number of rules for the Convention "On the Territorial Sea and the Adjacent Area" of 1958, the UN Convention "On the Law of the Sea" of 1982, and the key delimitation methods.

The **contractual international legal means** are applied both at the pre-trial stage of a border dispute, and at the judicial stage and even in the execution of a court decision. Functionally, the treaties ensure the dynamics of relations in determining the legal status of the borders, create grounds for referring a dispute to the UN Court, act as a method and a result of dispute resolution (including in the form of a settlement agreement, and an agreement on the procedure for

executing the UN Court decision). In its decisions, the UN Court repeatedly emphasizes the priority of the relevant treaties, regardless of the term of imprisonment [12].

The **organizational legal means** in the field of border dispute settlement are responsible for the implementation of legally significant actions by the parties to the dispute and other entities. These tools are mainly manifested in the framework of the proceedings, since it is at this stage that the procedures for resolving an international border dispute become formalized. According to R.E. Martirosyants, a researcher of the rules and procedures in the international law, the specific nature of the procedures is represented by their purely organizational nature [17, p. 6], since they are aimed at organizing (streamlining) material legal relations. **Legal procedures** are carried out at all stages of the international border disputes and, because of the special significance of the procedure, they can be recognized as a separate non-elemental feature of the relevant disputes. Legal procedures mediate the processing of mutual claims regarding the border position in order to qualify the situation as an international border dispute. The contractual dispute settlement is also associated with the operation of legal procedures establishing, inter alia, the procedure of delimitation, demarcation, a set of measures to monitor compliance with the terms and conditions of the treaty, etc. At the stage of judicial review of an international border dispute, the evidentiary procedures in border disputes, for example, on delimitation, are arranged taking into account geographical, topographical, and historical factors. In the context of analyzing the procedural aspects, the key role of the International Court of Justice in the development of special legal procedures and delimitation methods should be noted (equal distance, consideration of special circumstances, verification of the delimitation results according to the criteria of justice, etc. [18, 19].

The international border disputes have certain **legal consequences**, in which another non-elemental feature is manifested. Depending on the type of border dispute, the legal consequences may be different. Thus, for example, if a dispute is connected with delimitation, then the consequence of its occurrence is the formation of legal uncertainty in the position of the border lines, and as a result, it occurs a legally formalized change/preservation of the border lines and a change in jurisdiction of the states. The legal consequences of disputes that are not related to delimitation are differentiated depending on the stated requirements. In particular, in case of satisfaction of the state's requirement to stop violating the border regime, its sovereign rights are restored.

#### **4 SUMMARY**

The specific nature of any international border dispute is determined by its elemental and non-elemental features, which may be interrelated and interdependent. The border area as a delimitation dispute object predetermines the nature of claims of the subjects with regard to its legal regime, the applicable law and the appropriate means, and the dispute settlement procedures. Depending on the results of its resolution, certain legal consequences are manifested. In turn, the legal entities chosen by the subjects for dispute resolution and the system of legal regulators affecting the relations affect the legal regime of the object and subject of the dispute (the border legal regime is changed) and the legal status of the subjects themselves (the jurisdiction is changed).

#### **5 CONCLUSIONS**

The international border disputes as a field of complex international legal regulation interact with various system-structural units of the international law: law of international treaties, international economic law, international security law; law of international organizations, international law of the sea; law of the UN Court, etc. The result of intersectoral interaction at the law enforcement practice level in the international border disputes is the transformation of various groups of international legal relations. A vivid example of this, in particular, is the development of the tendency to ensure international environmental legal relations in the framework of border dispute settlement. In this regard, the decision on the border dispute between Nicaragua and Costa Rica [20], which was complicated by many legal relations on the delimitation, determination of sovereignty and compensation for environmental damage as a result of construction activities in the border area, acquired a precedential value. By deciding in favor of Costa Rica to award appropriate compensation, the UN Court actually reached a new level of law enforcement activity in the border disputes. Today, in the conditions of limited resources, increasing environmental threats and political instability, the strengthening of preventive function of the UN International Court of Justice in ensuring border and related economic and environmental relations is especially significant. To this end, the most important task of judicial practice is to develop new forms and methodological tools for resolving border disputes in the context of their inseparable relationship with a complex of various relations of the international legal reality.

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