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HARMONIZING THE LEGISLATION ON THE LAW OF THE SEA

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Abstract*: The official codification of the law of the sea is made by States. It has a binding nature (regarding the subject matters of the law of the sea) to the extent that they recognize the codification acts (by becoming parties to the codification of conventions).*
The UN General Assembly plays an important role in the codification of the law of the sea, through its conferences and resolutions. Through the codification of the law of the sea, there is performed the systematization of rules.
Key-words*: Codification of the law, Conference on the Law of the Sea.*

1. INTRODUCTORY CONCEPTS

The codification of the law of the sea was made after the negotiations of the States' interests in different maritime areas and after the achievement of a balance, on the one hand, of the sovereignty claims and the national jurisdiction of coastal States, and, on the other hand, of the rights and freedoms arising for all States in line with the principle of the freedom of seas.

The codification of the law of the sea was made, generally, at the first Conference on the Law of the Sea in Geneva (24 February - 27 April 1958) [1].

The second UN Conference on the Law of the Sea, convened during 16 March – 26 April 1960, failed to reconcile the positions of the participating States on some uncovered or controversial issues of the 1958 conventions.

The vital interests of the majority of States in the riches of world seas and oceans and of their soil and subsoil have quickened the preparation and convening of the third UN Conference on the Law of the Sea, whose organizationally and procedurally prepared papers were completed in late 1973 and were conducted during 1974-1982.

2. NEGOTIATIONS ON THE LAW OF THE SEA IN 1975

The first informal negotiation text on the Law of the Sea was published after the third session of the Third UN Conference on the Law of the Sea, held in 1975, in Geneva. This text was improved after the fourth session held during the period 15 March -7 May 1976, in New York, and the form that we are going to present below was even much more improved.

Part I

Part I of the text refers to "USE OF TERMS AND SCOPE"; we are going to quote a few, taking into account the definitions within the Text:

"Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

According to some authors the term "area" should also include "the sea surface (or the ocean's surface), the water column, its bed and its subsoil". This is necessary because, in this way, the concept "area" would be broader defined and more rigorously and scientifically limited. It is also considered within the doctrine that there should also have been defined all the expressions used in the Text and, in particular, the ones with a specific nature, such as: "resources" – "hydrological", "biological", "mineral", "energetic" etc.

"Authority" means the International Seabed Authority.

"Activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area.

"Pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

Part II

Part II – "TERRITORIAL SEA AND CONTIGUOUS ZONE". In this part of the Text, there is set the sovereignty of the coastal State, the breadth of the territorial sea up to maximum 12 nautical miles, the delimitation of the territorial sea between States with adjacent or opposite coasts, the innocent passage in the territorial sea, the contiguous zone rules, which may not extend beyond 24 nautical miles from the baselines used to measure the breadth of the territorial sea.

Part III

Part III – "STRAITS USED FOR INTERNATIONAL NAVIGATION". It includes legal status, scope, routes, transit passage, research and hydrographic sampling, laws and regulations of States bordering straits, security systems and equipment, ensuring navigation, prevention, reduction and control of pollution and innocent passage.

Part IV

Part IV – "ARCHIPELAGIC STATES". After defining several specific expressions, it provides that the length of the baselines shall not exceed 100 nautical miles and, with some exceptions, 125 nautical miles; it also includes the measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf, the legal status, the delimitation of internal waters, existing agreements, traditional fishing rights, existing submarine cables and the right to innocent passage.

Part V

Part V – "EXCLUSIVE ECONOMIC ZONE". It is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. This zone does not extend beyond 200 nautical miles measured starting from the baselines from which the breadth of the territorial sea is measured. In this zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters super-adjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. In exercising its rights and performing its duties in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States, such as the freedom of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines.

The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements, give other States access to the surplus of the allowable catch. The coastal State giving access to other States to its exclusive

economic zone shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the requirements of developing States in the subregion or region in harvesting pact of the surplus.

Part VI

Part VI – "CONTINENTAL SHELF" – which comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Here there are provided for the rights of the coastal State over the continental shelf, the legal status of the superjacent waters and air space and the rights and freedoms of other States, the delimitation of the continental shelf between States with opposite or adjacent coasts. It is also stated that, for the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles, the coastal State shall make payments or contributions in kind to the International Authority.

Part VII

Part VII – "HIGH SEAS" includes "all parts of the sea (or ocean) that are not included in the exclusive economic zone or in the internal waters of a State or in the archipelagic waters of an archipelagic State" (Art. 86 of the Convention). Here, the "freedom of the high seas" principle is fully applicable; the high sea is open to all States, whether coastal or land-locked, regarding: navigation, over flight, laying submarine cables and pipelines, constructing artificial islands and other installations permitted under the international law, fisheries and scientific research. It is expressly provided that the high seas will be used exclusively for peaceful purposes and that no State may validly purport to subject any part of the high seas to its sovereignty.

An important part is played by the management and conservation of living resources in the high seas; in this sense, it is stated that all States have the right for their national citizens to engage in fishing, provided that they comply with their conventional obligations and rights, and, at the same time, States, are required to adopt or to cooperate with other States in order to adopt such measures to ensure the conservation of living resources in the high seas.

Regarding these principles of jurisdiction, we consider that the issue of the natural and artificial reproduction of living resources, especially valuable fish and mammals, is not stipulated, leading us to conclude that this part should be improved.

Part VIII

Part VIII – "REGIME OF ISLANDS" – The island is defined as a naturally formed area of land, surrounded by water, which is above water at high tide. The territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the already mentioned provisions of this Convention (Parts II, V and VI).

Part IX

Part IX – "ENCLOSED OR SEMI-ENCLOSED SEAS". They are like "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely *or* primarily of the territorial seas and exclusive economic zones of two or more coastal States" (Art. 122 of the Convention). The main objective stipulated here is the cooperation of States bordering enclosed or semi-enclosed seas for the management, exploration and exploitation of marine living resources.

Part X

Part X – "RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT" – this right raises from bilateral, subregional or regional agreements. There is provided for custom duties, taxes and other charges; there is also provided for the cooperation in the construction and improvement of means of transport and the equal treatment in maritime ports.

Part XI

Part XI – "AREA" includes the sea beds beyond the exclusive economic zone, those of the high seas, also called international area. Both the area and its resources are the common heritage of mankind for which there are set the legal status and the general conduct of States. This area is administered by the International Authority of Sea beds and is open for use by all States under contracts with the International Authority, and, by this organization, by the enterprise that there will be created.

For the enhancement of the resources of the area, the International Authority is governed by the principles governing the activities carried out, in such a manner as to foster the harmonious development of world economy and the balanced growth of the international trade, and to promote the international cooperation for the overall development of all countries, especially of developing States. The International Authority shall avoid discrimination in the exercise of its functions, especially when it grants the opportunity to carry out activities in the area. Activities will be organized, directed and controlled by the Authority, on behalf of all humanity. The conditions of exploration and exploitation of the area resources are subject to specific annexes.

Part XII

Part XII – "PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT" – States have the sovereign right to exploit their natural resources in accordance with their environmental policy and with their duty to protect and defend the marine environment.

There are stipulated measures aimed at preventing, reducing and limiting marine pollution. For this purpose, there is provided, in detail, for the global and regional cooperation in the preparation and implementation of emergency plans against pollution, promotion of studies and research programs, development of regulations on scientific criteria, providing technical assistance to developing countries in this field, the preferential treatment for developing countries, and the ecological monitoring and assessment. An important place is reserved to the international rules and the national legislation to prevent, reduce and control the pollution of the marine environment; there is also provided for their application in case of pollution from: land-based sources, seabed activities, waste immersion, dumping, maritime accidents and atmosphere. There are also included several provisions on pollution detection, responsibility and security.

Part XIII

Part XIII – "MARINE SCIENTIFIC RESEARCH**"**. All States, irrespective of their geographical location, and competent international organizations, have the right to conduct marine scientific research subject to the rights and duties of other States.

It is provided that the research should be exclusively for peaceful purposes, shall not unjustifiably interfere with other legitimate uses of the sea and the research in the territorial sea, the economic zone and the international zone shall be conducted in compliance with the jurisdiction of the respective zone.

Part XIV

Part XIV – "DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY" essentially aims to promote the development and transfer of technologies. There are included the fundamental objectives, the international cooperation framework, the cooperation organizations for sea beds, the establishment of national and regional centers of Marine Scientific and Technical Research.

Part XV

Part XV – "SETTLEMENT OF DISPUTES" refers to the application of the principle of settling disputes peacefully, by the means chosen by the parties, with assumption of reconciliation (the International Tribunal for the Law of the Sea, the International Court of Justice, other

arbitral tribunals or the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea etc.).

Part XVI

Part XVI – "FINAL PROVISIONS" refers to the ratification, accession, entry into force and the status of the seven annexes: I Migratory seas; II Basic provisions on conditions for prospecting, exploration and exploitation; III The status of the enterprise; IV Conciliation; V The Statute of the Tribunal of the Law of the Sea; VI Arbitration; VII Special arbitration procedures – which are mandatory parts of the Text.

This part has been negotiated in the last part of the Conference, the solutions to be retained in this part depending on the contents of the Convention as a whole.

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