

CODIFYING THE LAW OF THE SEA

Constantin ANECHITOAE¹

Alina BUZARNA-TIHENEA (GALBEAZA)²

¹ Col. (r) Associate prof. PhD, Ovidius University of Constanta.

² PhD, Ovidius University of Constanta.

Abstract: *The law of seas and oceans is an issue continuously debated in international meetings, in international forums, including at the level of the United Nations, which, in 1982, at the Third UN Conference, adopted the Convention on the Law of the Sea. Unlike the first two conferences, one in 1958 and the other in 1960, the third conference was not based anymore on previously developed projects or documents but its works were placed in the UN, namely in the First (Political and Security) Committee and not in the sixth Committee, i.e. the legal Committee.*

Key-words: *Convention on the Law of the Sea, Romania, Montego Bay Convention on the Law of the Sea*

1. THE MONTEGO BAY CONVENTION (1982) ON THE LAW OF THE SEA

On 10 December 1982, there was adopted the Montego Bay Convention on the Law of the Sea. The participating countries, represented by more than 400 delegates, wanted to clarify, in the very preamble of the Convention, that they wish to develop - through the Convention - the principles contained in Resolution 2749 (XXV) of 17 December 1970, in which the UN solemnly declared that the seabed and subsoil thereof, beyond the limits of national jurisdiction, and the resources of this area are the “common heritage of mankind”, so that the exploration and exploitation of this area will be made in the interest of all humanity. They are convinced that the progressive development and codification of the law of the sea, made by the said Convention, will contribute to strengthening peace and security, cooperation and friendly relations among all nations, in accordance with the principles of justice and equality that will foster the economic and social progress of all peoples of the world, according to the purposes and principles of the UN, as Stated in the UN Charter.

Article 2 specifies that State sovereignty extends beyond its land territory and internal waters, on an adjacent sea area designated as the territorial sea. This sovereignty also extends to the airspace above the territorial sea and to the sea bed and its subsoil.

Article 3 States that every State has the right to fix its territorial sea breadth; this breadth shall not exceed 12 nautical miles, measured from the baselines, determined in accordance with this Convention (*The Montego Bay Convention (1982) on the Law of the Sea*).

Therefore, this multilateral convention finally established, not without many discussions and contradictions (determined primarily by economic interests), the territorial sea limit, stating also that each State is able to adopt the breadth of its territorial sea, without exceeding this limit of 12 miles [1].

1.1 Achievements and compromises

The Convention on the Law of the Sea took into account the interests of all peoples. Thus, Ambassador Alain Besley (Canada), who was Chairman of the Committee for drafting the new Convention, Stated, in 1982, after the adoption of the text, that humanity had a real Constitution for the World Ocean. This assessment may be considered excessive. However, for the first time in a global diplomatic conference, it was agreed on a comprehensive regulation [2].

As part of the Third UN Conference, there were shown a series of coalitions and groups of States with different interests. Such groups were, for example, the “Group of 77”, which consists of over 100 developing Western and socialist countries. In addition, there were smaller groups of countries with special interests, such as the countries without coastal areas and geographically

disadvantaged countries, archipelagic States and several riparian States.

The heterogeneity of interests of States belonging to different groups has influenced the content of works and documents that were to be developed, leading to the application of the “package deal” concept for the final project.

Under such an approach, for example, developing States have accepted the passage through straits and the extension of rights over the continental shelf beyond the limit of 200 nautical miles, measured from the baselines, from which the breadth of the territorial sea is measured; instead, they obtained the internationalization of soil and underground mining in the international area. In other words, developing countries have made two important compromises: the passage through the straits used for international navigation and the extension of rights over the continental shelf beyond the limit of 200 nautical miles, getting the proclamation of the area and of its resources as the common heritage of mankind and the establishment of an international exploitation status.

The 1982 Convention contains 320 articles and 9 annexes and it was adopted with 130 votes in favor, 4 against and 17 abstentions and it entered into force in November 1994, entailing the establishment of a new law of the sea.

2. ROMANIA'S PARTICIPATION IN CODIFYING THE LAW OF THE SEA

As it is known, Romania has actively participated in the coding of the law of the sea in all its stages, advancing proposals and formulating ways that met the adhesion of many countries.

Our country became party to the **Convention on the Law of the Sea** in 1996, ratifying it, but it maintained, however, **The declaration of principles** formulated on 10 December 1982, when signing the Convention.

There are currently party to the Convention on the Law of the Sea a total of 152 countries – Thailand is the last country joining it (15 May 2011) – of the total of 193 independent sovereign States (plus the Vatican State) existing in the world today. There are 192 UN member States (without the Vatican State which has an observer status).

In the referred Statement, Romania reaffirmed – as a geographically disadvantaged country, bordering a sea with poor fishery resources - the need to develop the international cooperation on fisheries exploitation of the economic zones, based on a fair and equitable agreement that will ensure countries in this category the fishery resources of the economic zones of other regions or subregions.

Romania also reaffirmed by the referred Statement the right of coastal States to take appropriate measures to protect their security interests, including the right to adopt national rules on the passage of foreign warships through the territorial sea.

3. RATIFICATIONS OF THE CONVENTION AND OF THE AGREEMENT WITH RESPECT TO PART XI

In resolution 53/32, the UN General Assembly called again the availability of all States which have not fallen yet parties to the Convention and to the Agreement in relation to the implementation of Part XI of the Convention, in order to achieve the objective of universal participation. After the last report (A/53/456), five new States have presented their instruments of ratification: Nepal, Belgium, Poland, Ukraine and Vanuatu. Thus, five years after its entry into force (16 November 1994), a total of 132 States have become parties to the Convention, including an international entity (the European Community). Of the 151 coastal States, 117 (77.4%) are parties, and of the 42 landlocked countries, 15 are parties to the Convention.

Romania ratified the Convention and the Agreement in relation to the implementation of Part XI, by Law no. 110/1996, published in Official Gazette no. 300 of 21 November 1996. Pursuant to Art. 287, when signing the Convention, Romania has made the following Statement:

“1. As a geographically disadvantaged country bordering a sea poor in living resources, Romania reaffirms the necessity to develop international cooperation for the exploitation of the living resources of the economic zones, on the basis of just and equitable agreements that should ensure the access of the countries from this category to the fishing resources in the economic zones of other regions or subregions.

2. Romania reaffirms the right of coastal States to adopt measures to safeguard their security interests, including the right to adopt national laws and regulations relating to the passage of foreign warships through their territorial sea.

The right to adopt such measures is in full conformity with articles 19 and 25 of the Convention, as it is also specified in the Statement by the President of the United Nations Conference on the Law of the Sea in the plenary meeting of the Conference on 26 April 1982.

3. Romania States that according to the requirements of equity - as it results from articles 74 and 83 of the Convention on the Law of the Sea - the uninhabited islands without economic life can in no way affect the delimitation of the maritime spaces belonging to the mainland coasts of the coastal States” [3].

In respect to the Agreement applying to Part XI of the Convention, adopted on 28 July 1994, (Resolution 48/263 of the General Assembly) and entered into force on 28 July 1996, it has been interpreted and applied in conjunction with the Convention as a single instrument; in case of incompatibility between the Agreement and Part XI of the Convention, the Agreement shall prevail. Any ratification or accession to the Convention after 28 July 1994 connects the parties to the Agreement. On 30 September 1999, 96 States Parties to the Convention, including the European Community, were bound to the Agreement; 36 States have become parties to the Convention after the adoption of the Agreement and continued its de facto application in last year without stating their consent to be bound by it. In its current status, the States party to the Convention before the adoption of the Agreement must indicate their consent to be bound by it, submitting the instrument of ratification or accession.

The institutions created by the Convention

The International Seabed Authority is an organization through which States organize and control the activities in the area, particularly in its resource management purposes and in accordance with the established regime for the seabed and subsoil thereof, within the limits of the national jurisdiction set out in Part XI of the Convention and in the Agreement with respect to its application. The Authority began operating in Kingston (Jamaica) on 16 November 1994, the date of the entry into force of the Convention, according to art. 308, par. 3 and under Art. 156 par. 2 iii 11 of the Convention; all States Parties are ipso facto

members of the Authority (on 15 September 1999, a total of 132 countries were parties to the Convention).

The International Tribunal of the Law of the Sea went into operation in August 1996, after the election of the 21 members.

During 1998, the court held three sessions. The sixth session was held from 21 September to 9 October 1998, and was dedicated to the issues of organization and exam measures taken to implement the judgment in the SAIGA ship case; the seventh session was held from 25 February to 16 April 1999, and the eighth session was held during September-October 1999, dealing, inter alia, cases 3 and 4 (affaires du thon à nageoire hiene) and with the appointment of the Commission on the freedom of transit through the territories of the Republics of Croatia and Bosnia and Herzegovina.

The Commission on the limits of the continental shelf (consisting of 21 members) adopted the final version of the scientific and technical Directives (CLCS/11) whose object is to help coastal States to determine the parameters of information and technical details which must be subject to it, the simplified diagrams and the procedure in the various sections of the Directives; they state the geodetic methods and the other ones mentioned in art. 76 for setting the outer limits of the continental shelf.

4. ROMANIA'S ACCESSION TO OR RATIFICATION OF INTERNATIONAL MARITIME CONVENTIONS

Romania was co-author or signatory to several international maritime conventions concluded and adopted mainly in two chapters of the international maritime law - London and Brussels.

Also, our country has promptly ratified or acceded to many of these conventions, especially in the interwar period.

This work, very important in relation to Romania's interests, reveals its active role in the development and implementation of international maritime laws, especially in its key areas such as: limiting the liability of ship owners, the immunity of State-owned ships, the safety of life at sea, assistance and rescue, civil and criminal jurisdiction in case of ship collision, the bill of lading, pollution, privileges and mortgages, seizure of merchant vessels, load lines etc.

However, not only did the ratification or accession process slow down after 1950, but, as we shall see, in 1959, Romania denounced a “package” of international maritime conventions, mainly due to “the inalienable property of the socialist State” and, therefore, to its incompatibility with the Convention.

The same was done with the International Convention for the Unification of Certain Rules on the immunity of state-owned ships, Brussels, 10 April 1926, ratified on 4 August 1937 and denounced on 12 August 1959 or with the International Convention on maritime liens and mortgages, Brussels, 10 April 1926, ratified in 1929 and denounced in 1959.

Generally, in the interwar period, Romania has ratified or acceded to international maritime conventions without any reservations, but later, especially after 1959, such reservations were made. This is applicable to the International Convention on the High Seas, Geneva, 1958, ratified by Decree no. 253/1961, with the reservation that “the principles of international law applied to ships on the high seas apply to all state-owned ships, irrespective of the order in which they are used”. However, Romania joined the Convention on Load Lines, London, 1968, by Decree no. 80 of 16 March 1971, without reservations, and the international Rules on Preventing Collisions at Sea (RPAM), London 1960, were adopted on 1 November 1965, without reserve, as the Convention on the International Regulations for Preventing Collisions at Sea 1972, concluded in London, on 10 October 1972 (Decree no. 239/1974).

After the entry into force of the Constitution of 8 December 1991, there were also ratified several conventions; some particularly important conventions are: the 1973 International Convention for the Prevention of Pollution from Ships and its Additional Protocol of 1978, with the 5 appendices (Law no. 6 of 8 March 1993 - except that Annexes III and IV were not accepted), and the International Convention for the Unification of Certain

Rules on the seizure of ships, Brussels, 1952 (Law no. 1 of 1 November 1995).

A milestone in the process of assimilation of the international law is represented by the ratification of the UN Convention on the Law of the Sea - Jamaica, 10 December 1982 – and by the accession to the Agreement on the implementation of Part XI of the Convention - New York, 28 July 1994 (Law no of 10 October 1996).

REFERENCES

- [1] Florian Coman, *Drept internațional public*, Vol. 1, Editura SYLVI, București, 2001, p. 164
- [2] Dumitru Mazilu in dialogue with Vasile Popa, *Calvarul virtuții*, Timișoara Editura Aura, 2002, pp. 64 – 65
- [3] Retrieved on 15th April 2013,
http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#Romania%20Declarations%20made%20upon%20signature%20%2810%20December%201982%29%20and%20confirmed%20upon%20ratification
- [4] Anechitoae, Constantin. *Dreptul mării*. București: Pro Universitaria, 2013
- [5] Anechitoae Constantin. *Maritime and inland water law. Selectiv bibliography*. Germania: Lambert Academic Publishing, 2013
- [6] Anechitoae, Constantin. *Introducere în drept portuar*. Ediția a 2-a. București: Editura BREN, 2009
- [7] Anechitoae, Constantin. *Introducere în drept maritim internațional*. Ediția a IV-a. București: Editura BREN, 2011
- [8] Anechitoae, Constantin. *Noțiuni generale de drept. Drept maritim*. București: Editura BREN, 2010
- [9] Anechitoae, Constantin. *Introducere în drept maritim*, Ed. BREN, București, 2007
- [10] Dumitru Mazilu. *Dreptul Mării - concepte și instituții consacrate de Convenția de la Montego-Bay*. București : Editura Lumina Lex, 2002.