



Eximia Journal
(ISSN 2784-0735)

Vol. 12
2023

41 years since the adoption of the United Nations Convention on the Law of the Sea

Constantin Anechitoae

Ovidius University of Constanta, Romania – Faculty of Law and Administrative Sciences

anechitoae@yahoo.com

Abstract. The United Nations Convention on the Law of the Sea signed on 10.12.1981 – Montego-Bay, Jamaica, made an important contribution to the universally accepted delimitation of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf which led to a significant contribution on human well-being, in terms of commercial and non-commercial resources. The codification of the law of the sea is one of the most significant achievements of the Montego Bay Convention. Also, an important role was the protection of the economic interests of all landlocked or landlocked countries, with a particular concern for the protection and preservation of the marine environment and marine fauna but also the protection of biological resources. The provisions of the Convention led to the start of many international debates - for the elaboration of a specific legal status, on the maritime spaces but also on the spaces adjacent to the territorial sea.

Keywords. Law of the sea, United Nations Convention on the Law of the Sea

1. Introduction

All the states of the world make permanent efforts to establish appropriate legal norms in the process of international cooperation, to resolve any dispute peacefully, through negotiations in mutual interest on the basis of legal equality according to art. 2 paragraph 3 of the Charter of the United Nations .

Social and economic life is dependent, in different stages and stages of its development, on the maritime domain, where through the joint efforts of all humanity we are called to respect some fundamental demands regarding: a) the rights and duties of each state in the use of the seas and oceans Lands and b) specifying the forms and practical –methods of their collaboration in the direction of capitalizing on the wealth they contain.

2. The evolution of the codification of the law of the sea

Concerns in the codification of legal norms in the maritime field were submitted by the most important international forum: "The United Nations (UN)".

During the first U.N. Conference on the law of the sea from 1958, concrete rules were developed for the first time, in all areas of the law of the sea, namely: on the territorial sea, the continental shelf, the high seas and on fishing, including in this way - all maritime spaces in - a

general concept, which aims both at the problem of national areas, with the rights and obligations of the riparian states, as well as of the other states in these areas, as well as all the problems of the open sea, in which the freedom of navigation, the freedom of fishing, the freedom to lay cables and pipes, freedom of flight.

After the adoption of these regulations, some important issues such as those related to the limit of the territorial sea¹ and the regime of the submarine territories² were resumed, in order to develop new legal solutions.

Thus, following the debates held in the years 1967 - 1970 regarding the legal regime of the submarine territories, located beyond the limits of national jurisdiction, the General Assembly of the United Nations adopted, in 1970, the Declaration of Principles, by which the international area was consecrated as "Common Heritage of all humanity". Gradually, the issue of this heritage raised more and more interest; the ways and practical methods of developing and exploiting the wealth contained in these territories were addressed, reaching the conclusion that the exploitation of mineral wealth must be done fairly, the respective resources "cannot be appropriated by states or individuals"³.

The subsequent evolutions of maritime relations, under the influence of important changes in the world economy, as a result of the contemporary scientific-technical revolution, under the conditions of the discovery of new resources, simultaneously with the accentuation of the increasingly harmful effects caused by pollution for marine flora and fauna, determined the convening - in 1970 - of the 3rd UN Conference on the Law of the sea⁴.

3. National legal regulation

The Convention on the Law of the Sea, dated December 12, 1982, signed in Montego Bay - Jamaica, provides, right in its preamble, the desire of the states-parties to regulate, in a spirit of mutual understanding and cooperation, all issues regarding the law of the sea, so as to ensure a legal order for the seas and oceans, which facilitates international communications and favors the peaceful use of the seas and oceans, the fair and effective use of the biological and mineral resources of the marine environment, as well as its protection and preservation⁵.

It is stated, at the same time, that the area of the bottom of the sea and oceans, as well as their subsoil, beyond the limits of national jurisdiction, and the resources of this area are and

¹ II U.N. Conference on the law of the sea was held in Geneva in 1960, with the object of establishing a uniform limit for the extent of the territorial sea, without reaching an agreement.

² In 1967, the U.N. General Assembly created a special Committee composed of 35 member states, with the task of studying the peaceful use of the seabed and oceans beyond the limits of national jurisdiction. This body was replaced by the Committee for the Peaceful Use of the Bottom of the Seas and Oceans beyond the Limit of National Jurisdiction, which dealt with the development of legal principles and norms to favor international cooperation in the field of exploiting the resources of these territories for the benefit of all humanity. The number of member states in this committee increased from 42 in 1968 to 91 in 1971. Romania has been part of this committee since 1967.

³ Declaration des principes regissant le fond des mers et des oceans, ainsi que leur sous-sol, ou-dela des limites de la jurisdiction nationale (Resolution 2749/XXV).

⁴ În 1970, prin rezoluția 2750 C/XXV, Adunarea Generală a O.N.U. a hotărât convocarea celei de-a III-a Conferințe O.N.U. asupra dreptului mării, cu scopul de a examina regimul aplicabil noii instituții, a zonei internaționale a teritoriilor submarine, și o gamă largă de chestiuni conexe, adică toate problemele privind dreptul mării, finalizându-se la New York, în 1982. Sesunile Conferinței au avut loc la New York în 1973; la Caracas în 1974, la Geneva în 1975, la New York în 1976 și 1977, la Geneva și New York în 1978, la Geneva și New York în 1979, la Geneva și New York în 1980, la Geneva și New York în 1981 și la New York și Montego Bay în 1982.

⁵ Constantin Anecitoae, *The principle of freedom of the seas*, Bren Publishing House, Bucharest, 2004, page 19.

must be considered the common heritage of humanity, its exploration and exploitation to be done in the interest of all humanity, independently by the geographical situation of the states. The convention enshrines the full sovereignty of the riparian state over the territorial sea, over the airspace located above it, as well as over the seabed and its subsoil⁶.

Romania was among the 160 states participating in the 3rd UN Conference on the Law of the Sea, in the negotiation process to identify generally applicable solutions towards the fair exploitation of the wealth of the Earth's seas and oceans.

Also, through its desire to align with international provisions, Romania ratified and acceded to the Convention on the Law of the Sea, through Law no. 110 of October 10, 1996⁷, and also acceded to the Agreement regarding the application of Part XI of the United Nations Convention on the Law of the Sea, concluded in New York on July 28, 1994.

By Law no. 98 of 04/16/2007 Romania implemented the Agreement for the application of the provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 in relation to the conservation and management of anadromous fish stocks and large migratory fish stocks, concluded in New York on August 4, 1995.

4. 41 years since the adoption of the United Nations Convention on Law

This year, 10/12/2023, 41 years have passed since the adoption of the United Nations Convention on the Law of the Sea, signed in Montego Bay - Jamaica, on December 10, 1982.

At the time of the adoption of the Convention on the Law of the Sea, everyone expected the establishment of an order in relation to issues related to the sea and, at the same time, a uniform exploitation of the wealth of the Planetary Ocean in the interest of all peoples.

However, the reference period was littered with a lot of misunderstandings in solving problems in accordance with the provisions of this Convention.

During this period, all the institutions mentioned in the Convention were designated to deal with solving these problems, which made efforts in this regard.

However, the problem of the delimitation of some maritime areas between the countries bordering the seas and oceans of the world, have not been finalized, as a result, we appreciate that this may generate a potential conflict.

As a novelty, we can mention a new area generating a potential conflict, determined by climate change, which, by thawing the glacial glottis, may reveal new possibilities for the exploitation and exploration of some resources, with restricted access, in relation to the economic potential of certain states.

However, this problem is also a present reality, since the objectives of the Convention regarding the exploitation and exploration of the seas and oceans of the world, divide in an unconventional way, the economically developed states, in relation to the expectations of the developing countries, which practically did not benefit from the advantages these international provisions.

A reality that continues to contravene the provisions of the Convention on the Law of the Sea, is materialized in illegal fishing, poaching and maritime crimes, which continue to take place in certain maritime areas, without real possibilities of prevention or severe sanctions through the application of the coercive force of the world's maritime powers.

⁶Constantin Anecitoae, *Introduction to Maritime Law*, Bren Publishing House, Bucharest, 2008, p. 21.

⁷Law no. 110/1996 was adopted by the Senate and the Chamber of Deputies in the meetings of June 27, 1996 and, respectively, September 23, 1996 and was promulgated by Decree no. 492 of October 10, 1996.

Some clarifications regarding military and security actions are expected, which would clearly stipulate rules regarding foreign military operations and for their counterintelligence actions carried out in exclusive economic zones.

Also, the measures for maintaining security at sea are not clearly defined, which means that the threats of international land and air terrorism also extend to the sea.

Many states do not possess the logistics to control, enforce measures and maintain a state of security regarding the navigation of oil tankers in areas adjacent to the contiguous sea and the territorial sea respectively.

A threat to the freedom of navigation in safety, in the areas restricted to certain rules, under the control of the riparian states, through the political and economic pressures on these states, in the interest of the countries that possess oil tanks with drafts above the maximum allowed limits, is foreshadowed.

Also, the problem of "harmless passage" and the situation of mines on the bottom of the seas that have not yet been detected and destroyed, support discussions in terms of maritime safety and the international authorities must have a realistic view in this field.

If until the adoption of the Convention on the Law of the Sea, academic groups of experts played an important role in promoting negotiation processes regarding maritime issues between states, after 41 years, their role has diminished, their role being taken over by the states of the world, which have acceded or ratified this convention up to the present date. With the exception of the US, all major industrialized countries have ratified the Convention⁸; 20 signatory states have not ratified it⁹, and 17 states have not yet signed it¹⁰.

The process of incorporating the provisions of the Convention on the Law of the Sea into domestic law is inextricably linked to the act of ratification by each state. In this sense, we appreciate that most of the provisions of the Convention contain legal norms that to some extent support the initiatives of underdeveloped countries, but they remain without effect due to the limited economic potential held.

The legal norms dictated by the Convention required all states to accept the obligations on an equal footing, for the development of maritime activities, which are not in accordance with the economic and political realities of highly industrialized countries. In this sense we can highlight the States.

5. Conclusion

The Montego Bay Convention is the most important legal instrument that outlines the general framework of maritime laws, the protection of the marine environment¹¹, and establishes the rules for the use of the Planetary Ocean and the principles and guidelines that guide the activity of states in this area of the law of the sea.

⁸ Marin Voicu. The law of the sea today: 40 years since the adoption of the United Nations Convention on the Law of the Sea - UNCLOS (1982-2022), ratified by Romania through Law no. 110/10.10.1996. <https://www.juridice.ro/essentials/6285/dreptul-marii-in-actualitate-40-de-ani-de-la-adoptarea-conventiei-natiunilor-unite-asupra-dreptului-marii-cnudm-1982-2022-ratificata-de-romania-prin-legea-nr-110-10-10-1996>

⁹ Marin Voicu. Op. cit.: Afganistan, Bhontan, Burundi, Cambogia, Republica Centra-africană, Ciad, Columbia, Salvador, Etiopia, Iran, Coreea de Nord, Thailanda, Lichtenstein, Malawi Niger, Ruanda, Swaziland, Emiratele Arabe Unite, SUA.

¹⁰ Marin Voicu. Op. cit.: Andora, Azerbaigian, Ecuador, Eritreea, Israel, Kazahstan, Kirghistan, Peru, Saint-Marin, Siria, Tadjikistan, Timor oriental, Turcia, Turkistan, Uzbekistan, Vatican și Venezuela.

¹¹ Florica Brașoveanu. Considerations regarding legal protection and preservation of the marine environment. In the Annals of the University "Constantin Brâncuși" from Târgu Jiu, Series of Legal Sciences, No. 4/2015, p. 18.

The Convention on the Law of the Sea took into account the interests of all peoples. Thus, Ambassador Alain Besley (Canada), who was the president of the Drafting Committee of the new Convention, declared, in 1982, after the adoption of the text, that "mankind has a real Constitution for the Planetary Ocean". This appreciation may be considered exaggerated. However, for the first time in a World Diplomatic Conference, a comprehensive regulation was agreed upon¹².

¹² Constantin Anechitoae. The law of the sea. Third Edition, Revised and Added. Craiova, Ed. Sitech, 2019, p. 88, quoted on: Dumitru Mazilu in dialogue with Vasile Popa, Calvarul virtuții, Timișoara Aura Publishing House, 2002, pp. 64 – 65.