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THE IMPORTANCE OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

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Abstract in original langure

The Third United Nations Conference on the Law of the Sea has managed, as a result of complex, sustained and prolonged negotiations, to develop a new Law of the Sea, established into a single convention, called by Tommy T. B. Koh - President of the Third United Nations Conference on the Law of the Sea - ,,A Constitution for the Oceans,,. This article aims are to highlight the significance of this convention which is the most important achievement of the international community after the United Nations Charter, being the first comprehensive treaty dealing with every aspect of the uses of the world's oceans and seas and their resources.

Key words in original language

The Law of the Sea, The third United Nations Conference on the Law of the Sea, The United Nations Convention on the Law of the Sea of 1982, the Agreement regarding the application of the 9th Part of the United Nations Convention on the Law of the Sea of 1982, sea spaces, resources.

1. GENERAL CONSIDERATIONS.

The existence of certain unsuspected resources in the world seas and oceans and the real possibilities to cover an important part of the food and energy requirements of humanity in an exhausting context, in a not too long lapse of time, of the terrestrial resources[1] have made the interest for the world ocean to continuously increase[2]. All these have justified the emphasizing of all the states' concerns for capitalizing these luxuries and in the last decades we have developed not only the sea researches, but it also appeared a real industry of extracting and processing the minerals of the deepness of seas and oceans, of the continental platforms of states or of the areas outside the limits of their national jurisdiction. But this new use of the sea spaces has raised numerous technical, economical and juridical problems that have determined the necessity for an ensemble regulation of all the activities in the sea space. Thus, under UN's auspices, starting from

[1]Some experts estimate that, for the quantities of fossil fuels exploited every year, the nature „had worked" for over a million years. **(M. T. Snarr, D. N. Snarr**, ***Introducing global issues***, Lynne Rienner Publishers, London, 2005, p. 293).

[2]**D. Mazilu,** ***Sea Law – Concepts and Institutions Consecrated by the Montego-Bay Convention***, Lumina Lex Press, Bucharest, 2002, p. 13.

1958, they have organized several conferences considering the sea problems but that represented only the first steps of the long and often hard way crossed to the reinforcement of the administrating and governing system of the world seas and oceans. Even if the importance of the conventions adopted after these conferences cannot be neglected, still the elaboration of several conventions, in different fields of the ocean space, a space reclaiming a unique and ensemble regulation, has made the adopted regulations not to have the expected efficiency. Thus, in 1973, they convoked the third Conference of the United Nations Organisation on the Law of the Sea with an extremely difficult mission, namely the one to elaborate a convention that should regulate and reflect the finding of certain solutions that are mutually beneficial for all the problems raised by the sea spaces across time.

2. THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA– MANDATE AND SHORT HISTORY.

The third United Nations Conference on the Law of the Sea has started its works in 1973, having the mandate to elaborate a unique, complete convention, starting from the premise that different problems of the sea spaces are interdependent and they should be regulated in ensemble[3]. This Conference, unique by its importance, by complexity, by the involvements of the debated subjects, by the number of participants, by time and by the procedural innovations has ignored all the normative traditions and has introduced in frame of the international relations an original process of elaborating juridical norms that had an important political-economical nature. Its development has illustrated the changes interfered in the international life and it has certainly influenced the future of the international society[4]. The conference, where more than 150 states participated, developed its works between 1973-1982, in frame of 11 sessions, by means of certain committees and negotiation groups[5]. Considering the complexity of the problems that were to be approached, the first two sessions of the Conference were entirely consecrated to the organisational problems[6]. In frame of the first session of the

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[3]**S. Peterson**, ***The common heritage of mankind?*** in Environment, vol. 22, issue 1, Jan/Feb 1980, p. 7 - ***www. ebscohost.com.***

[4]**J. P. Levy**, ***La Conference des Nations Unies sur le droit de la mer***, Editions A. Pedone, Paris, 1983, p. 24 – 25;

[5]The combined actions, during the development of the Conference, between the classic multilateral negotiations and the different formulas of negotiations on groups in order to prepare the official texts have determined its consideration as representing an "experimental international workshop" able to inspire in the future other diplomatic conferences convoked in order to adopt the multilateral treaties. (**J. P. Levy**, ***La Conference des Nations Unies…***, p. 13).

[6]**S. Peterson,** op. cit., p. 8. The negotiations proved to be difficult, complicated, due to a strong competition between the national interests and the group ones. (**S. Jayakumar**, ***UNCLOS- two decades on***, Singapore Year Book of International Law, Singapore, vol. 9, 2005, p. 3 - ***www.proquest.com***).

Conference developed in New –York (December 3rd -15th 1973), they elected the Conference Office, they constituted a part of the working organs and they inaugurated the works regarding the procedure rules. At the second session developed in Caracas (June 20th–August 29th 1974) they launched basic debates[7]. Starting with the third session that developed in Geneva (March 17th – May 9th 1975), the works consisted of debating the texts submitted to the negotiations[8], so that the works of the fourth and fifth sessions (1976) ended with a unique text reviewed by the negotiations. They obtained important progresses in certain fields and in others, such as the exploration and the exploitation of the resources of the submarine territories beyond the limits of the national jurisdictions they got into a deadlock[9]. This was generated by the dissensions appeared between the groups of interests existent in frame of the Conference regarding the constitution, the role and the functions of the mechanisms that were to be created for the administration and the management of these spaces, and also due to the way the exploration and the exploitation of this space were thought[10]. Mainly, the 7th and 8th sessions were based on the new aspects regarding the capitalizing manner of the resources of the Area, among which the combating of the tendency of their unilateral capitalization. Wanting to end these tendencies, they called the principle according to which these spaces were not declared as a common patrimony of the humanity by the Resolution of the UNO General Assembly of 1970. After the debates in frame of the ninth session (1980), they disposed the review of the negotiated text that, at the end of the works, was presented as a project of the Convention on the Sea Law, being given to the advertisement together with an explanatory memory of the Conference president.

But this Convention project was also reviewed in frame of the tenth session of the Conference (1981), an occasion when they decided to include in this text the stipulations regarding the International Authority for the Sea and Ocean Bottom and the ones regarding the International Court for the Sea Law. Also, in frame of the same session, they also reanalysed the final clauses of the Convention project, but also other problems.

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[7]Since the session in Caracas, they have seen the fact that the negations would be very difficult because they could not offer practical solutions to any of the litigious problems between the developing states and the industrialized ones. (**T.O. Elias**, ***New horizons in International Law***, Martinius Nijhoff Publishers, Dordrecht, 1992, p.66).

[8]**J. P. Levy**, ***La Conference des Nations Unies …***, p. 62.

[9]***Law of the Sea Conference Convenes in May*** in American Bar Association Journal, vol. 63, Issue 5, May 1977, p. 720 ***- www. ebscohost.com.***

[10]**S. Peterson**, op. cit., p. 11.

At the same time, because Reagan administration took back its delegation, the Conference works were interrupted[11]. The works of the 11th session of the Conference developed in New-York, between March 8th – April 30th 1982, and they were based on the problems of the treatment that had to be granted to the pioneer investors in the international areas of submarine territories, in the lapse of time between signing and validating the Convention, as it is declared the last session consecrated to formulating and adopting decisions.

Despite the efforts laid in order to get to an agreement also regarding the juridical system of the international area of the submarine territories, an agreement that was accomplished in most of the situations, the participants to the debates decided that they achieved the conditions in order to be submitted for approving both the Convention project[12], and the projects of the negotiated resolutions.

Finally, the Conference adopted the following documents:

The United Nations Convention on the Law of the Sea,

The 1st Resolution of the United Nations regarding the settlement of the Preparing Commission of the International Authority of the Submarine Territories and of the International Court for the Law of the Sea,

The 2nd Resolution of the United Nations regarding the preparing investments and the preliminary activities regarding the poly-metallic nodules,

The 3rd Resolution regarding the territories whose peoples have not passed yet to a complete independence or to an autonomy system acknowledged by United Nations,

The 4th Resolution regarding the movements of national release.

The negotiations of the 1982 Convention represented an attempt to redefine the Law of the Sea, they wanted to adjust the past inequities

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[11]As it results from the stipulation transmitted by the American state secretary, Alexannder M. Haing jr., the step back of the American negotiators was made in order to be sure that the negotiations would not end during that session, without the occurrence of a political review given by the American government that considered the stipulations regarding the juridical system of the international area of the submarine territories in contraction with the interests of USA. (**V. Ciuvăţ,** The ***Law of the Sea – Evolution and Consecration***, Universitaria Press, Craiova, 2001, p. 115).

[12]***The United Nations Convention on the Law of the Sea: a chronology***, United Nations Chronicle, New-York, vol.32, Issue 1, Mar. 1995, p. 11 - ***www.proquest.com.***

and to offer a future system of the world oceans and seas released from the domination of only one state or of a group of interests[13].

The United Nations Convention on the Law of the Sea of 1982 – significations. The third United Nations Conference on the Law of the Sea managed, after certain complex negotiations, to elaborate a new sea law, consecrated in only one convention[14]. Considering the importance of the United Nations Convention on the Law of the Sea of 1982, the President of the Conference, Tommy T. B. Koh, named it "The Constitution of the Oceans" and the United Nations General Secretary of that time, Javier Perez de Quéllar stated that, by adopting this Convention, the international law was irrevocably transformed[15].

The United Nations Convention of the Law of the Sea of 1982 regulates all the sea spaces, establishing the specific basic juridical frame, starting with the sovereignty areas and going on with the jurisdiction, the use of the sovereign rights of the states and also their obligations[16].

Among the particularities of this international normative process, we mention the fact that, beside a series of well-known and largely accepted practices and habits, they instituted new sea spaces: the exclusive economical area and the international area of the submarine territories and they formulate new principles and norms that should govern the new sea spaces.

At the same time, another distinctive aspect of the United Nations Convention on the Law of the Sea of 1982 consists of creating two new international institutions, namely: the International Authority of the Submarine Territories[17] and the International Court for the Law of the Sea[18].

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[13]**S. Peterson**, op. cit., p. 11.

[14]**M. Popescu**, ***The Law of the Sea: Areas of National Jurisdiction***, Artprint Press, Bucharest, 2000, p. 38;41. **D. R. Rothwell**, ***Building on the strengths and addressing the challenges: the role of Law of the Sea institutions***, Ocean Development & International Law, vol. 35, Issue 2, Apr-Iun 2004, p. 131.

[15]**D. Popescu, M. Popescu**, ***The Law of the Sea. International Treaties and Conventions***, Artprint Press, Bucharest, 2000, p. 20.

[16]**B. Boutros Ghali**, ***A dream becomes a reality: Sea Law Convention enters into force***, United Nations Chronicle, New-York, vol.32, Issue 1, Mar. 1995, p. 8.

[17]The International Authority of the Submarine Territories represents the organisation by means of which the parties organise and control the activities developed in the international area of the submarine territories in order to administrate and manage its resources. Constituted according to the model of the traditional intergovernmental organisations, actually, the Authority has

Currently, the United Nations Convention on the Law of the Sea of 1982 is acknowledged as a reference juridical frame for any international regulations able to define rights, obligations and responsibilities regarding the sea and ocean space[19].

The text of the Convention containing 320 articles and 9 annexes[20] was adopted by the Conference on April 30th, 1982[21] and it

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the vocation to behave as a supra-state because by report with other international organisations it is invested by the constitutive document with an authentic territorial competence on certain large spaces, and the Authority exerts, in these spaces, prerogatives in the name of the entire humanity. Thus, from this viewpoint, it seems incontestably that the new Convention of 1982 supplies the sketch of a new supra-state juridical order. (**D. Vignes**, ***La participation d'entités non-étatiques a la Convention des Nations Unies sur le droit de la mer*** in, Perspectives du droit de la mer a l'issue de la 3-e Conference des Nations Unies, Editions A. Pedone, Paris, 1984, p. 164).

[18]The International Court for the Sea Law was created in order to constitute, for the activities entering under the incidence of the Convention of 1982, a permanent organ of specialized internationalized jurisdiction and it was actually settled on August 1st, 1996. The headquarters of the International Court was settled in Hamburg, Germany. The status of the International Court is contained in the 6th Annexe at the Convention of 1982. In frame of the International Court, there is also the Chamber for regulating the controversies referring to the submarine territories, and also other special chambers whose constitutions and competences are stipulated by the Convention of 1982 and the 6th Annexe of its. The competence of the International Court is both contentious and consultative. Its competence lies all over the controversies and the requirements submitted to it according to the Convention of 1982, and also on all the stipulated problems, especially in any other agreement conferring competence to the International Court. ***(www.itlos.org).***

[19]See, for example, the Agreement of 1995 for the application of the stipulations of the United Nations Convention on the Law of the Sea of December 10th, 1982 referring to the conservation and the management of the fish stocks whose displacements are accomplished both inside and outside the exclusive economical areas (relative stocks) and of the stocks of big migrating fish.

[20]The Convention of 1982 seems incontestably to represent a real monument of the contemporary international law not only due to its impressive sizes, but also due to the exceptional duration, and also due to the importance with no precedent of the Conference that elaborated it. (**J. P. Levy**, ***La Conference des Nations Unies …***, p. 13).

[21]The Convention was adopted by 130 votes pro, 4 against (Israel, Turkey, USA, Venezuela) and 17 abstentions (among which England, R. F. Germany, Belgium, Holland, Italy, Spain, USSR, other states of the Eastern and Western Europe). (**M. C. Wood**, ***International Seabed Authority: The first four years,*** p. 179 - ***www.mpil.de***/shared/data/pdf). We mention that Romania signed the text of the Convention on April 30th, 1982. (**P. Leitner**, ***A bad treaty returns***, World Affairs, vol. 160, issue 3, winter 1998, p. 135).

was open to be signed on December 10th, 1982, in Montego - Bay, in Jamaica[22].

Before December 9th, 1984, the Convention was signed by 159 states, but in order to be validated, it stipulated a number of 60 ratifications and considering that – certain developed capitalist countries expressed reserves, some of them even very serious (there were states that did not sign the final text of the Convention of 1982 or did not ratify it), to certain stipulations written in the final text, especially to the stipulations of the 9th Part referring to the sea and ocean bottom and their subsoil beyond the limits of the national jurisdiction and to their resources[23], and also to any suggestion able to improve it, in order to create certain larger bases of its acceptance – the accomplishment of this essential requirement was accomplished only in 1993, so that, on November 16th, 1994, the United Nations Convention on the Law of the Sea became valid[24]. The validation of the Convention of 1982 was possible only after adopting on July 28th, 1994, in New -York, the Agreement regarding the application of the 9th Part of the United Nations Convention on the Law of the Sea of 1982, bringing substantial changes to the juridical system of the submarine territories

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[22]The Final Document of the Convention was signed on December 10th, 1982, by 117 states and entities.

[23]The problems of the international area of the submarine territories, considered – the angular stone – of the negotiations of the third UNO Conference on the Sea Law continued also after adopting the Convention, to represent a real apple of Discordia and to generate tensions in the international relations. The adversity of the strongly industrialized states to the way they had established the juridical system regarding the exploration and the exploitation of this Area (in the interest of the entire humanity) as expressed by the refuse of many of them to sign and ratify the Convention, a fact that could endanger the entire normative ensemble of a colossal importance for the entire humanity. The transformations interfered in the international society at the end of the'80s, that marked the end of the cold war and the disappearance of the world bipolarization and they created the conditions necessary for aligning all the states to the principles of the market economy, but also the fear that the validation of the Convention, without being ratified by the industrialized states, would have made impossible the practical application of both the entire institutional edifice and the system of exploration and exploitation established for the Area, were able to determine an ample process of renegotiation of the 11th Part referring to the system of the submarine territories, beyond the limits of the national jurisdiction, of the United Nations Convention on the Law of the Sea.(**Şt. Moţăţăianu**, ***International Submarine Territories – an apple of Discordia or a chance of peace and of the sustainable economical development***, Scientific Communications Sessions Volume, with international participation, ECO-TREND, organized by the Faculty of Economical Sciences, "Constantin Brâncuşi" University of Targu-Jiu, 2004, p. 509-511).

[24]***United Nation Convention on the Law of the Sea: a chronology***, p. 10.

placed beyond the limits of the national jurisdictions established by the Convention of 1982[25].

The Agreement of 1994 marks the moment of ending some long efforts in order to universalize the participation to the United Nations Convention on the Law of the Sea of 1982, having a special contribution in the sense of concretizing the legal and institutional frame of the international sea order, an order that should consider the juridical consecration of the fact that the resources of the international areas of the submarine territories constitute the common patrimony of the humanity and that it should be useful for the wealth of all the peoples.

The validation of the United Nations Convention on the Law of the Sea of Montego -Bay on November 16th,1994, as a consequence of adopting the Agreement of 1994, determined, beside the institution of a juridical system specific to the submarine territories, for the International Authority for the Sea and Ocean Bottom – the resistance piece of this new system – to be born among the other international organisations, by having the certainty that almost all the states and especially the big industrial powers would guarantee its existence.

The United Nations Convention on the Law of the Sea of 1992 marked a new stage in the evolution of coding and progressive development of the international law, and the Convention represents the most important accomplishment of the international community after the United Nations Organization Charter, being the first containing treaty that takes care of every aspect of the uses and of the resources of the seas and oceans[26].

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