



# Technium.

## 52/2023

2023

A new decade for social changes

**Technium**

**Social Sciences**

Powered by

**PLUS**  
**COMMUNICATION**



**International**  
Communication & PR



## Codification of the law of the sea

**Constantin Anechitoae**

Faculty of Law and Administrative Sciences, Ovidius University of Constanța,  
Romania

[anechitoae@yahoo.com](mailto:anechitoae@yahoo.com)

**Abstract.** By codifying the law of the sea, its rules are systematized. From the point of view of how the codification of the law of the sea is carried out, it can be: unofficial codification and official codification. The unofficial codification of the law of the sea is carried out in the form of numerous codification projects developed by some doctrinaires. Unofficial coding is not mandatory for its subjects. The official codification of the law of the sea is carried out by the states. It has a binding character for the subjects of the law of the sea, insofar as they recognize the codification acts (becoming parties to the codification conventions).

**Keywords.** Law of the sea, Montego Bay Convention

### 1. Introduction

The official codification of the law of the sea is carried out by the states . It has a binding character for the subjects of the law of the sea , insofar as they recognize the codification acts ( becoming parties to the codification conventions).

In achieving the codification of the law of the sea , an important role belongs to the UN General Assembly , through the United Nations conferences and Resolutions .

Certain international bodies also contribute to the codification activity , such as:

- ✓ International Maritime Organization;
- ✓ International Law Association;
- ✓ Institute of International Law, etc.

### 2. The Hague Codification Conference (1930)

An attempt at codification in the issues of citizenship, territorial sea and responsibility of states , within a diplomatic conference convened in The Hague in 1930, under the auspices of the League of Nations.

The extent of the territory pigskin represented a generating topic deep divergences between states, revealed including in the answers given by some states to a questionnaire sent by the Preparatory Committee of the first Codification Conference in The Hague.

Thus, in their answers, 18 states spoke in favor of a 3-mile width of the territory sea, 2 states for a width of 4 miles, one state - for 6 miles , another - for 18 miles , 5 states give answers imprecise, and 2 states indicated the system practiced in their domestic legislation .

From the answers given, two general guidelines emerged: the states that supported the width of 3 miles considered that it is fixed by international law, and the others defended the point of view, according to which, establishing the width of the territory pigskin is a matter of internal law of each state.

In the framework of the Second Commission of the Hague Conference of 1930, the commission tasked with elaborating a new draft convention for territory pigskin issues, an agreement could not be reached on the width of the territory sea, which proved to be a failure. The French jurist Gilbert Gidel noted that "the three -mile rule was the great loser, the overturned idol of the Conference".

After the creation of the UN, the process of codification of International Law enters a more fertile stage, through the creation of an appropriate legal and organizational framework.

### **3. Codification of the law of the sea under the auspices of the League of Nations (1919-1945)**

**The League of Nations** or **League of Nations** was an international organization established in June 1919 following the Treaty of Versailles that ended World War I.<sup>1</sup>

In art. 23 of the Covenant of the League of Nations provides that "subject to and in accordance with the provisions of existing international conventions or those that will be subsequently concluded, the members of the league will also take the necessary measures to ensure the guarantee and maintenance of freedom of communications and transit, as well as fair treatment of trade to all members of the league"<sup>2</sup>.

In accordance with this clause, a conference was convened in Barcelona in 1921 which adopted two Conventions and statutes relating to " *freedom of transit* " <sup>3</sup> and "the regime of navigable waterways of international interest".

We mention that, as far as the freedom of transit is concerned, the adopted documents do not definitively and satisfactorily regulate the right of transit of landlocked states to the sea.

In 1923, in Geneva, under the auspices of the League of Nations, the Codification Conference on: "The International Regime of Seaports" took place.

Later, based on a report drawn up by a Committee of experts tasked with drawing up a list of international law problems, the General Assembly of the League of Nations decided in 1927 to convene a conference for the codification of three subjects, one of which referred to the *legal regime of the territorial sea*.

Thus, the first Conference for the "progressive codification of international law" met in The Hague (March 13 - April 12, 1930)<sup>4</sup>. It could not reach an agreement on the subject of territorial waters, but drafted a draft convention on the legal regime of these waters called "The Legal Status of the Territorial Sea", in order to be examined later.

<sup>1</sup> It was the first permanent international organization whose main mission was to preserve world peace. Its main objectives, as set out in the Convention, included the prevention of war through collective security and disarmament, the settlement of international disputes through negotiations. Other issues mentioned by the treaty are related to working conditions, fair treatment of indigenous people, human and drug trafficking, arms trade, global health, prisoners of war and protecting minorities in Europe.

<sup>2</sup> Marian Mosneagu . Op. quote pp. 46-47.

<sup>3</sup> We mention that, as far as the freedom of transit is concerned, the adopted documents do not definitively and satisfactorily regulate the right of transit of landlocked states to the sea. Constantin Manea, Marian Mosneagu . Op. quote p. 46.

<sup>4</sup> Publication de la Société des Nations, Annexe 10 aux Actes de la Conférence pour la codification du droit international, vol. I, séances plénières , V. *Questions juridiques* , 1930.V.14 (document C.351.M.145.1930.V), pp. 123 et suiv . publicly separately in V. *Questions juridiques* , 1930. V.9 (document C.230.M.117.1930.V)

According to paragraph 2 of Article I of the Regulation approved by the Committee of the Second Codification Conference of 1930 "Sovereignty of this area is exercised under the conditions established by this convention and other norms of international law".

In 1945, at the end of the war, the Society/League of Nations was replaced by the United Nations, still inheriting a number of agencies and organizations founded by the Society.

#### **4. The international law commission of the UN General Assembly regarding the width of the territorial sea**

According to the provisions of art. 1 of the Statute of the international law commission from 1947<sup>5</sup>, the object of this commission is to promote the progressive development of international law and its codification. The commission will have competences primarily in the field of public international law, but it is not excluded to extend its competences in the field of private international law as well.

During the work of the International Law Commission of the UN General Assembly<sup>6</sup>, dedicated to the codification of the regime of international law of the sea, the most controversial issue, in the field of regulating the legal status of the territorial sea, remained the issue of its width.

At its first session, in 1949, the Commission submitted to discussion the regime of the territorial sea, for a future codification, without, however, establishing a specific term as a priority<sup>7</sup>, limiting itself only to recommendations.

At the third session, in 1951, based on a recommendation contained in General Assembly resolution 374 (IV) of 6 (E, F, S, R, C), December 1949, the Commission decided to initiate work on the territorial sea regime and Mr. François was appointed as special rapporteur. During this session, it was decided to use the term " *territorial sea* " <sup>8</sup> instead of *territorial waters* or the English name of *marginal sea*, etc.

In a first report on the territorial sea regime, the Commission's rapporteur, JPA François, proposed that the width of the territorial sea be fixed by the riparian state, "but it will not be able to exceed 6 miles". In the commentary to this report, he emphasized that, if the states had absolute freedom in fixing their territorial width, the principle of the freedom of the seas would be affected to an inadmissible extent<sup>9</sup>.

The Commission resumed the subject of the delimitation of the territorial sea in the fourth Session 1952, in the fifth Session 1953<sup>10</sup>. At the Sixth and Seventh Sessions, 1954 and 1955,

<sup>5</sup>[http://untreaty.un.org/ilc/texts/instruments/english/statute/statute\\_e.pdf](http://untreaty.un.org/ilc/texts/instruments/english/statute/statute_e.pdf)

<sup>6</sup>The International Law Commission was established by Resolution 174 (II) of the General Assembly and is part of the Organs of the UN General Assembly (There are seven commissions). Starting from 1970, the International Law Commission of the UN General Assembly was concerned with the elaboration of some regulations regarding the "Use of international watercourses for purposes other than navigation". It is considered the use of these waters for the production of electricity, for irrigation, for other economic and commercial purposes.

<sup>7</sup><http://www.un.org/law/ilc/index.html>

<sup>8</sup> Rapport de la Commission du droit international sur les travaux de sa troisième session, *Documents officiels de l'Assemblée générale, sixième session, Supplément n° 9* (A/1858), p. 23.

<sup>9</sup>JPA François. Regime of the territory the sea Document A/CN.4/53. (4/04/1952). *Documents of the fourth session including the report of the Commission to the General Assembly*. Yearbook of the International law Commission 1952, Volume II, United Nations: New York, 1958, pp. 26-48.

<sup>10</sup> Yearbook of the International law Commission 1953, Volume II, *Documents of the fifth session including the report of the Commission to the General Assembly*. United Nations New York, 1959:

[http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes%28e%29/ILC\\_1953\\_v2\\_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes%28e%29/ILC_1953_v2_e.pdf)



provisional articles on the regime of the territorial sea were adopted, with commentaries, and governments were invited to submit their observations on the articles.

During the works of this Commission, the American jurist Manley O. Hudson specified that there is no maximum limit of the territorial sea, precisely established, and proposed that it be fixed at 12 miles. At the Eighth Session from 23 April to 7 July 1956 the Commission drew up its final report on the territorial sea, which incorporated a number of changes arising from proposals by governments and which was retained by the Commission in its draft synthesis on the law of the sea <sup>11</sup> composed of 73 articles and comments. The commission failed to establish a certain width of the territorial sea, it was proposed that it be fixed by an international conference.

In accordance with the Commission's recommendation, the General Assembly, by Resolution 1105 (XI) of February 21, 1957 (E, F, S, R, C, A), decided to convene an international conference of plenipotentiaries "to examine the draft on the law of the sea, taking into account both the legal framework, but also the technical, biological, economic and political aspects, and to finalize the results of its activity in one or more international conventions".

### **5. First Conference on the Law of the Sea - Geneva 1958**

At the first Geneva Conference, Commission I debated art. 1-25 of the draft of the UN International Law Commission, regarding the legal regime of the territorial sea.

The codification of the law of the sea was achieved, in general, on the occasion of the first Conference on the law of the sea in Geneva (February 24 - April 27, 1958) <sup>12</sup>, which adopted the following conventions:

- 1) *Convention on the territorial sea and the contiguous zone*, Geneva, April 29, 1958;
- 2) *Convention on the Continental Shelf*, Geneva, April 29, 1958;
- 3) *Convention on the high seas*, Geneva, April 20, 1958;
- 4) *Convention on Fishing and the Conservation of Biological Resources on the High Seas*, Geneva, April 29, 1958 and
- 5) *The optional protocol regarding the mandatory settlement of disputes*.

The legal norms contained in these conventions represent the main content of the law of the sea, until its new regulation, given by the 11th UN Conference on this law.

### **6. Second Conference on the Law of the Sea - Geneva 1960**

The Second UN Conference on the Law of the Sea, convened between March 16 and April 26, 1960, failed to reconcile the positions of the participating states regarding some unregulated or already controversial aspects of the 1958 conventions.

The second Conference, dedicated specifically to the width of the territorial sea, debated - in 28 meetings - this issue, as well as others, regarding the territorial sea. Rejecting categorically the 3-mile limit, the Russian military delegates spoke for a 12-mile limit.

Other multilateral conventions regulate maritime fishing, the avoidance of pollution of maritime waters, the regime of underwater spaces in the international zone, the prevention of approaches, the protection of submarine cables, etc. The Geneva Convention on the Continental Shelf (1958) regulated a new institution of the Law of the Sea — the continental shelf.

<sup>11</sup>For the use of the Commission in its work on the subject of the territory sea, the Secretariat published a volume in the *United Nations Legislative Series* entitled " *Laws and Regulations on the Regime of the Territorial Sea* " (ST/LEG/SER.B/6, United Nations publication, Sales No. 1957.V.2).

<sup>12</sup>Of the eighty- six states representatives there, seventy -nine were members of the United Nations and seven were members of specialized agencies, though not of the United Nations

Due to the important changes that took place after the Geneva Conference of 1958 and the one of 1960 in the maritime practice of the states and in the development of maritime technique, the need to replace the old regulations of the Law of the Sea was imposed.

Recently, new institutions of the Law of the sea have been defined, such as: the underwater spaces beyond the national jurisdiction of the states (the international zone), or the economic zone of the sea <sup>13</sup>.

The Third UN Conference on the Law of the Sea, whose convening was decided as early as 1970, began its work in 1973, and ended in 1982 with the adoption of the *United Nations Convention on the Law of the Sea*, which entered into force on November 16, 1994.

The importance of the first two Conferences in Geneva are seen in the greatest, as a stage of history, which created the first *traditional* <sup>14</sup>*law of the sea*.

### **7. Montego Bay Convention (1982) on the Law of the Sea**

*The Montego Bay Convention on the Law of the Sea* was adopted. The participating states, represented by over 400 delegates, wanted to specify, in the very preamble of the Convention, that they wish to develop - through this Convention - the principles contained in Resolution 2749 (XXV) of December 17, 1970, by which the UN declared solemnly, that the area of the bottom of the seas and oceans, as well as their subsoil, beyond the limits of national jurisdiction, and the resources of this area are the "common heritage of humanity", so the exploration and exploitation of the area will be done in the interest of all humanity. They are convinced that the progressive development and codification of the law of the sea, achieved through the respective *Convention*, will contribute to the strengthening of peace and security, cooperation and amicable relations between all nations, in accordance with the principles of justice and equal rights, that they will favor the economic and social progress of to all the peoples of the world <sup>15</sup>, according to the goals and principles of the UN, as they are stated in the Charter of the Organization.

In art. 2, it is specified that the sovereignty of the state extends beyond its territory and internal waters, over an area of the adjacent sea, designated as the territorial sea. This sovereignty also extends over the airspace above the territorial sea, as well as over the bottom of this sea and its subsoil.

In art. 3 states that "any state has the right to determine the width of its territorial sea; **this width does not exceed 12 nautical miles**, measured from the baselines established in accordance with this *Convention*".

Therefore, this multilateral convention established, in the end, not without contradictory discussions, determined, first of all, by economic interests, the maximum limit of the territorial sea, specifying, at the same time, that each state is able to adopt the width of the territorial sea that wants, but without exceeding this limit, which is 12 miles <sup>16</sup>.

<sup>13</sup> Trocan, Laura Magdalena. Protection the marine environment in the context of activities developed in the international zone of submarine territories, "Constantin Brâncuși" Tg-Jiu University Annals, vol I, No. 2/2007.

<sup>14</sup><http://untreaty.un.org/cod/avl/ha/gclos/gclos.html>

<sup>15</sup> George Sherban. *Introduction to the social contract theory*, Ed. Europolis, Constanta, 1996, p. 71.

<sup>16</sup> Florian Coman, *Public international law*, Vol. 1, SYLVI Publishing House, Bucharest, 2001, p. 164. The territorial sea includes the strip of sea adjacent to the shore, with a width of 12 nautical miles, measured from the baselines, considered as the lines of the highest ebb along the shore or, as the case may be, the straight lines joining the most advanced points of the shore. The 1982 Convention on the Law of the Sea establishes the width of the territorial sea at 12 nautical miles (22,224 km), the limit that Romania has consecrated through ar. 1 of Law no. 17/1990 regarding the legal regime of inland maritime waters, the territorial sea and the contiguous zone of

*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 upon <sup>17</sup>.

---

Romania.

<sup>17</sup>Dumitru Mazilu in dialogue with Vasile Popa, *The ordeal of virtue* , Timișoara Aura Publishing House, 2002, pp. 64 – 65.