THE NEW LAW OF THE SEA

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editors

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PREFACE

On September 27th-29th 1982, a Colloquium on the New Law of the Sea was convened in Athens under the auspices of the Pantios School of Political Science. The Colloquium was intended to analyse some of the aspects of the legal regime emerging out of the Third United Nations Conference on the Law of the Sea. Its organisers had hoped that it would coincide with the historical event of a successful termination of the works of that Conference; their hope was fulfilled. Therefore, the Athens Colloquium has been, as far as we know, the first international scientific gathering on the New Law of the Sea which followed the adoption of the new Convention and the works of which were based on the final text of the Convention and on the proceedings of the already completed Conference.

The papers which are published in this volume constitute the main bulk of the reports presented at the Athens Colloquium. In fact, only one main report (presented by Mr. Th. Katsoufros on the straight baselines) and three written interventions (by Messrs. S. Perrakis, P.Stangos and G. Timagenis) are not published here for purely technical reasons. All the other reports are reproduced in the following pages, duly improved by their authors or by the editors for the purposes of this publication.

It should be stressed that the original reports which were presented at the Athens Colloquium were based on events and legal situations which had preceded or followed the adoption of the new Convention but which had occurred before its eventual signing in Montego Bay on December 10th, 1982.* Given that a number of events or legal situations were produced after the first drafting of the reports or even after the termination of the Athens Colloquium influencing certain reports in their substance (e.g. the papers by Messrs. Brown and Vignes), the latter were partly redrafted and adjusted to the new realities. However, in regard to those reports the contents of which were not outdated by the signing of the

Convention or by some other major events, no attempt was made to align them with the situations which followed their first public appearance.

We should also stress that the structure of the book --its division into four parts and the sequence of the reports-- follows the structure of the Colloquium: It begins with the analyses on the Third United Nations Conference on the Law of the Sea and its works ; it then proceeds to examine three of the basic families of legal rules which are established by the new Convention on the Law of the Sea: The family of the rules on sovereignty and jurisdiction over the areas which are adjacent to the coasts of States the family of the rules on the international maritime areas; and, finally, the family of the rules which refer to the settlement of disputes provided for by the Convention. It goes without saying that the nature of this publication, which is, essentially, a compilation of papers, does not allow a systematic and exhaustive approach to all the above questions but simply a monographic coverage of the main points and problems under consideration. Moreover, a certain overlapping of the various reports could not have been avoided. However, the editors have made every possible effort to minimize overlapping and redundant repetitions.

It would be almost impossible to thank all those who have contributed both to the realisation of the Athens Colloquium and to the publication of its works. We would like to thank in particular the Greek Ministry of Foreign Affairs and the Ministry of Culture and Sciences, the Commercial Bank of Greece and the Greek Tourist Organisation for both their material and moral support. We would also like to thank our collaborators who laboriously coped with the needs of the organisation of the Colloquium and, more particularly, Messrs. G. Tsaltas, S. Perrakis, P. Stangos, M. Ioannou and Mrs.M. Katsiyannis; also, the presidents of the sessions, Professors G. Tenekides, R.-J. Dupuy, K. Ioannou, L. Caflisch and Ambassador Evensen, who contributed by

their dexterous presidencies to the eventual success of the Colloquium; Mrs. Rozakis who prepared the Index and Mrs. Christoforidou who patiently typed the proofs. Finally, we would like to thank the North-Holland Publishing Company and Mr. Michielsen and his staff for helping us publish these reports.

Christos L. Rozakis
Constantine A. Stephanou

Athens, June 1983

* The United Nations Convention on the Law of the Sea, concluded at Montego Bay on December 10, 1982, was signed on behalf of 117 States and two other entities. The Final Act of the UNCLOS III was signed on behalf of 140 States and nine other entities. See 21 I.L.M. (1982), p. 1477.

LIST OF ABBREVIATIONS

The list contains only a limited number of abbreviations which recurrently appear throughout the book. Individual papers also contain a number of abbreviations used by their authors for the purposes of their contribution.

(The) Common Heritage	(The) Common Heritage of Mankind
(The) Convention	(The) Third United Nations Convention on the Law of the Sea (Done at Montego Bay, December 10, 1982). Unless otherwise specified, reference is made to the United Nations Document A/CONF.62/122, 7 October 1982.
E.C.R.	European Court Report
E.E.C.	European Economic Community
E.E.Z.	Exclusive Economic Zone
I.C.J.	International Court of Justice
I.L.C.	International Law Commission
I.L.M.	International Legal Materials
ITLOS	International Tribunal for the Law of the Sea
OJ	Official Journal of the European Communities
NATO	North Atlantic Treaty Organization
PCIJ	Permanent Court of International Justice
U.N.	United Nations Organization
UNCLOS I	(The) First United Nations Conference on the Law of the Sea (1958)

UNCLOS III	(The) Third United Nations Conference on the Law of the Sea (1973 - 1982)
UNITAR	United Nations Institute for Training and Research

TABLE OF CONTENTS

The New Law of the Sea
C.L. Rozakis and C.A. Stephanou (eds.)

INTRODUCTION

Nicholas Valticos
Secretary General
Institute of International Law

Like History, international law is presently experiencing an acceleration. And the evolution that carries it along, at times forging ahead and at times drawing back, tends to modify its nature appreciably; or, rather, to render its nature more complex, since, along with traditional law governing relations between States, we see progressively developing an international institutional law which aims, at least in principle, at protecting the fundamental rights of peoples and individuals, the fate and the future of humanity.

Land, sea, and space, all three of these elements, have been affected by this trend to varying degrees. Several reasons seem to contribute to that: man's technological progress which brings the universe closer to his reach, requirements of justice which are felt more strongly by modern societies, and the voice of the less developed countries which gets more and more audible. The individual, at the foot of the ladder; the most deprived countries, at the state level; and humanity itself, at the top of the structure, are gradually being attended to by international law. To use a greek word that has been used a lot in recent years, the dialogues are multiplying: the North-South dialogue, the dialogue between the State and the individual which continues unceasingly, and also another dialogue that has recently emerged, i.e. that between States and humanity, or, to be more precise, the organised international community. It is this last dialogue which, to a large extent, has marked the renewing of the law of the sea. As Professor Quéneudec wrote, in fact, some ten years ago, we are witnessing extensive

challenging in the domain of the law of the sea. Although this body of law is a part of international law, since it concerns communications among States and affects international relations, it is also of a very particular character because of its specific object, the sea, the operations that take place in it, and the rules that govern its appropriation.

Not so long ago the term appropriation would have seemed strange, since it referred to an entity whose major part was still considered as res nullius or res communis and whose freedom was supported by Grotius in a controversy that has remained famous. It is ironic to note, while on the subject, that the reason he gave was that the sea enjoyed such a great richness that it would suffice for all the uses that people wished to make of it, whether they wanted to draw water from it, or fish in it, or navigate on it. He could not foresee, in his time, oil, the nodules, or the pollution of the seas and its disastrous consequences.

Developments in recent years have enhanced the importance of the law of the sea. Not so much because of the immensity of maritime spaces which is such that we could say that Land should rather be called the Sea, if one were to reason from the point of view of its surface only - or if Man were fish. In fact, the immensity of the oceans though it has always existed, has been perceived only at a relatively recent point in time. The significance of the law of the sea has been increased by essentially two factors on the one hand, technological progress, which has permitted Man to gradually master navigation, to extend his dominion over the vast ocean spaces and to intensify the exploration of its depths; on the other hand, there was the feeling, - and its effect has been decisive - that the sea has ceased to be only the great path of communnication open to navigators, merchants and fishermen. In our times men do not strive to find the "fabulous metal", beyond familiar seas and horizons. It is vertically, down in the unfathomable depths, that the riches are now being searched for. Moreover, it is beyond the territorial sea, in its traditional sense, that coastal States are trying to get hold

of additional natural resources. These new factors have led to conflicts of interests as well as to a shake-up of traditional values and recognized norms.

All this is now well known of course, and I would, indeed, have scruples about repeating it, but it is well to begin by reminding ourselves of certain essential features of the great turn that the law of the sea has recently taken. Because it is, in fact, a question of a great turn and, indeed, of a profound mutation. A mutation that has taken place after a great effort for compromise between opposing positions. The traditional upholders of the freedom of navigation were opposed by the supporters of the appropriation of resources and the riches of the co-called Common Heritage of Mankind. The interests of coastal States, in favour of an increased individual appropriation of these resources diverged from those of States that advocated a large collective appropriation of the sea-bed. The supporters of an international administration of the sea-bed were opposed by countries, such as the United States wishing that at least parts of the areas involved would be reserved for free enterprise. In short, it was in a large range of matters - one must not forget pollution, scientific research, and transfer of technology - that differing interests put industrialised countries, coastal countries, and developing countries into opposing camps. The oceans were being subjected to partitioning, to use the rather strong term employed by Professor Rene-Jean Dupuy.

This is the context - simplified here in the extreme - within which the Third United Nations Conference on the Law of the Sea took place; a conference the result of which, viewed as a whole, is of considerable importance. The Conference, in accordance with its mandate from the General Assembly, has adopted a convention which covers, practically, all aspects of the uses and the resources of the sea. By bringing into play an original approach to negotiating and drafting, it has not only codified the existing international law, but it has also profoundly modified long accepted facts by introducing novel concepts and equilibria.

We are all familiar with the basic features of the Convention. First of all, the territorial sea may not exceed 12 nautical miles, while foreign ships navigating in it enjoy the right of "innocent passage". The Exclusive Economic Zone, a new concept, extends to 200 nautical miles over which coastal States have sovereign rights as far as natural resources and certain economic activities are concerned, while the other States enjoy the freedom of navigation and land-locked States - together with certain other States - are authorised to participate in the exploitation of a part of the zone's fisheries, when a coastal State is not itself capable of fully exploiting them. Together with this economic concept of the exclusive zone there subsists the partly geological concept of the continental shelf over which coastal States exercise sovereign rights with a view to its exploration and exploitation, without the legal status of superjacent waters being affected by such exploration and exploitation rights. The continental shelf, however, has now been redefined to measure horizontally at least 200 miles from the coast, with the possibility of extending up to 350 miles and even, more, under certain circumstances.

At the same time, all States benefit from long-standing freedoms with regard to navigation, overflight, scientific research, and fishing in the high seas, while they are obliged to take measures for the conservation and management of biological resources. Moreover, specific provisions apply to the so-called enclosed and semi-enclosed seas. Furthermore, Land-locked States are acknowledged the right of access to and from the sea, as well as freedom of transit passage across the territory of interceding States.

The most impressive of the innovations brought about by the Convention appears to be the provision proclaiming the resources of the International Sea-bed Area to constitute the Common Heritage of Mankind and the rules inplementing this principle. The whole issue was the most difficult to resolve during the negotiations. Developing countries supported an autonomous operating system, based on the Enterprise,

i.e. the operating arm of the Authority which would exploit the resources itself, while on the hand, most industrialised States were in favour of a contractual system, which would limit itself to the issuing of permits. After a lot of wrangling and jarring, only an attempt -one could say - at an approach was accomplished; no global consensus was ever reached. The definitive text of the Convention establishes a kind of parallel system, quite complex certainly, for the exploration and the exploitation of the Area. All future activities in the Area will be supervised by the International Sea-bed Authority which will be in a position to carry out its own mining operations through its operating arm, the Enterprise, as well as to sign contracts with private and public entities for the purpose of exploitation of the Area's resources.

The Convention also provides that States are obliged to put into effect means for preventing the pollution of the marine environment. It also covers activities pertaining to marine scientific research. The Convention also stipulates that States should promote the development and the transfer of marine technology. Finally, it provides for various means of peaceful settlement of disputes concerning the interpretation or application of the Convention.

It is, perhaps, understandable that a text of such importance which deals with complex issues, where opposition was so intense did not finally cover in axtenso all the subject matters (I am thinking, among other things, with regret, of the rules concerning the exploitation of the sea-bed) and did not fully satisfy all interested parties. The need for compromise has at times resulted in more or less scissored wordings or general formulas which may lead to conflicts, as well as to provisions that may not always be found to be the most succesful. Several States, therefore, may not be pleased with this or that solution, especially with regard to the balance between freedom and regulation, between individual appropriation and collective appropriation and also with regard to the conditions and rules of the system of exploration and the exploitation of the International

Sea-bed Area.

Nevertheless, no one could dispute the importance of the work that has been accomplished or, even less, the greatness of the concept of the Common Heritage of Mankind which has been incorporated in the Law of the Sea. Thus to reach beyond the realm of the law of the sea, general international law has made a new, important step towards what Wilfred Jenks, has called, since 1958, "the Common Law of Mankind". Naturally, such a statement should not be accompanied by too many illusions and should be made with a clear view of the contradictions and conflicts which are dividing the international community at present. Is it not, after all, individual appropriation by coastal States that occupies the largest part of the final text of the Convention?

We have pointed out the importance of the work that has been accomplished, as well as its limitations. We have indicated that the objective, which was to come up with a convention adopted by consensus, has not been achieved and it was finally by a formal vote that the text was adopted. And although a vast majority, voted in favour i.e. 130 to 4, with 17 abstentions, we cannot underestimate the fact that the United States was among those four countries that voted against and that certain important countries of Western Europe, as well as the socialist countries of Eastern Europe, were among those that abstained. What then, under such circumstances, can be the future of this Convention, which took so much effort and negotiating to be adopted and what can its real influence be on the development of the law of the sea? This is a question that one has the right and indeed, the duty, to ask. On the 30th of last April, in his concluding speech, Mr. Koh, Chairman of the Conference expressed the wish that the various States, realising the importance of the Convention, would sign and ratify it, even if their delegations had voted against it or had abstained. The Convention will enter into force 12 months from the date that the 60th ratification or accession has been submitted.