

1958 GENEVA CONVENTIONS ON THE LAW OF THE SEA

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On 29 April 1958, as recorded in the Final Act (A/CONF.13/L.58, 1958, UNCLOS, Off. Rec. vol. 2, 146), the United Nations Conference on the Law of the Sea opened for signature four conventions and an optional protocol: the Convention on the Territorial Sea and the Contiguous Zone (CTS); the Convention on the High Seas (CHS); the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR); the Convention on the Continental Shelf (CCS); and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD). The CTS entered into force on 10 September 1964; the CHS on 30 September 1962; the CFCLR on 20 March 1966; the CCS on 10 June 1964; and the OPSD on 30 September 1962. States bound by the Conventions and the Protocol, are, as at 23 July 2008, respectively: for the CTS, 52; for the CHS, 63; for the CFCLR, 38; for the CCS, 58; and for the OPSD, 38.

The Conventions and Protocol are the product of the (first) United Nations Conference on the Law of the Sea, held in Geneva from 24 February to 27 April 1958. The convening of the Conference (by United Nations General Assembly resolution 1105 (XI) of 21 February 1957) was the culmination of a long process. It had its precedents in the work of the Hague Conference for the Codification of International Law held in 1930 under the auspices of the League of Nations. This Conference dealt with the territorial waters. Although not agreeing on the breadth of the territorial sea, it could present in its report 13 draft articles setting out a measure of agreement on many aspects of this subject. These articles would become the basis of further work. In the framework of the United Nations, the International Law Commission (ILC) indicated since the beginning of its work, in 1949, the regime of the high seas and of the territorial sea among the topics ripe for codification. A Special Rapporteur was designated, who proceeded to submit reports on various aspects of the law of the sea.

Up to the end of its work, in 1956, the ILC, and the General Assembly, which closely followed its work, proceeded through several drafts concerning different aspects of the law of the sea. It was only in the final report submitted to the General Assembly in 1956 that all provisions were systematically ordered as one body of draft articles covering the whole of the law of the sea. This final report was to be the main basis for the work of the 1958 Geneva Conference.

The Conference, whose task was “to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate” (resolution 1105 (XI) referred to above), did not succeed in keeping the provisions on the law of the sea in one instrument. The unity of the law of the sea, painstakingly reached at the final stages of the work of the ILC, was lost (such unity was to be one of the main objectives pursued and reached in the 1982 United Nations Convention on the Law of the Sea). The adoption of four conventions and a protocol in lieu of one all-encompassing convention may be seen, and was conceived,

as a device to attract the acceptance by a broad number of States of at least some of the Conventions, in this way avoiding very radical reservations, or the decision by certain States not to accept an all-encompassing convention because of opposition to one or more of its main component parts. The fact that the CFCLR and the OPSD have attracted a number of ratifications and accessions substantially lower than the other Conventions indicates that this Convention and Protocol were seen as controversial by States that considered the other Conventions acceptable. Significant absences in the groups of States having ratified the CTS and the CCS indicate specific difficulties, for instance as regards innocent passage through straits or the regime of the continental shelf.

Attended by 86 States, the Conference organized itself in five main committees and a plenary, and followed rules of procedure similar to those of the United Nations General Assembly, so that while provisions could be adopted in one of the committees by simple majority, a two-thirds majority was required when the provision reached the plenary. This procedural rule made it impossible to agree on the breadth of the territorial sea. Although a 12 mile breadth probably could have secured approval in the committee, it was clear that it could not do so in plenary, thus the question was left unresolved by the CTS. The fact that this Convention provides that the external limit of the contiguous zone can not exceed 12 miles from the baseline indicates that no breadth beyond 12 miles was seen as acceptable.

The United Nations General Assembly considered this key unresolved question, together with that of fishing limits, worthy of a further effort at reaching agreement and made them the main items on the agenda of the Second United Nations Conference on the Law of the Sea, held in Geneva from 16 March to 26 April 1960. This Conference failed to fulfil its objective. Among the various proposals, ranging from 3 to 200 miles maximum limits, a proposal for a 6 miles breadth of the territorial sea plus a 6 miles fishery zone immediately adjoining it was accepted in the Committee of the Whole but did not obtain the necessary two-thirds majority in plenary.

The CTS sets out in detailed provisions the main rules on the territorial sea and the contiguous zone. Its rules address, in particular, baselines, bays, delimitation between States whose coasts are adjacent or face each other, innocent passage and the contiguous zone. Among the aspects that at the time were seen as the most controversial were those related to article 16. First, article 16, paragraph 4, provides that innocent passage, which cannot be suspended, applies in straits used for international navigation not only connecting one part of the high seas to another part of the high seas, but also to the territorial sea of a foreign State, thus including also the strait of Tiran. Second, in article 16, no distinction is made regarding innocent passage of warships, hence the provision is generally couched for all ships. This outcome resulted from the fact that the States in favour of requiring the coastal State's consent did not vote alongside those who favoured prior notification.

The CHS defines the high seas as all parts of the sea not included in the territorial sea and internal waters. It deals specifically with: the freedoms of the high seas; the right of a State to have ships flying its flag under conditions fixed by it, stating the controversial requirement of the existence a "genuine link"; the rights and obligations of the flag State; piracy; the right of visit; hot pursuit; and the laying of submarine cables and pipelines. It also contains two early and pioneering provisions on pollution by the discharge of oil and of radio-active wastes.

The CFCLR sets out principles and mechanisms for the rational management of fisheries in the high seas. It insists on cooperation between States engaged in the same fisheries, it recognizes the special interest of the coastal State when the fisheries are in the high seas adjacent to its territorial sea and provides for compulsory settlement of disputes concerning all the key rules. Some of the provisions are similar to those that were to be adopted in 1995 in the United Nations Fish Stocks Agreement. At the time, the CFCLR was very controversial, as is evidenced from the low number of ratifications and accessions: on one hand, many States were keen on developing exclusive fishery rights beyond the territorial sea – a regime for fisheries on the high seas beyond the external limit of the territorial sea was not satisfactory; on the other hand, the central role given to the compulsory settlement of disputes was something that States were not ready for at the time.

The CCS sets out rules on the notion, limits and regime of the continental shelf. The basic concept of the sovereign right of the coastal State as regards resources of an area of the seabed beyond the external limit of the territorial sea had emerged in State practice only since 1945. It has been rightly said that the Convention “crystallizes” a relatively quick process of formation of a customary rule, which also includes the notion that the rights of the coastal State over the shelf do not require occupation or express proclamation. The provision on the external limit, based on the 200 meters isobath and on exploitability, was to be seen as obsolete in light of technological progress and was radically modified in the 1982 Convention. The rule on delimitation, based on the equidistance plus special circumstances concept, was clearly indicated by the International Court of Justice (ICJ) as not corresponding to customary law (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 42, para. 69). It is noteworthy, however, that recent developments in the ICJ case law on delimitation have brought the Court to accept an “equitable principles/special circumstances” method which, as recognized by the Court, is “very similar” to the equidistance/special circumstances method of the CCS (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I. C. J. Reports 2002*, p. 441, paragraph 288).

The OPSD, to which only States parties to at least one of the Geneva Conventions can become party, provides for compulsory jurisdiction of the ICJ for all disputes concerning the interpretation or application of the Conventions, unless the parties to the dispute agree to arbitration or conciliation. This Protocol has never been applied in practice, and the modest number of parties it has attracted shows that compulsory settlement of disputes in law of the sea matters, if it is to be practically relevant, must be an integral part of the instrument dealing with the substance; a lesson learned by the Third United Nations Conference on the Law of the Sea (1973-1982) in drafting the 1982 Convention.

The importance of the Geneva Conventions is currently mostly historical, as an expression of the “traditional law of the sea”, namely, the law prevailing before the transformations in the international community and in its assessment of the uses of the seas that brought about the Third United Nations Conference on the Law of the Sea. The Conventions were adopted less than a decade before the famous speech by Arvid Pardo at the General Assembly in 1967 that started the process for the complete renewal of the law of the sea, and entered into force just a few years before that event. This explains why, notwithstanding their intrinsic legal quality, they were soon seen by a majority of the States as obsolete. Under article 311, paragraph 1, of the United Nations Convention on the Law of the Sea of 1982, the 1982 Convention “shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958”. The 155 parties to

the 1982 Convention include most of the States bound by the Geneva Conventions; the latter Conventions remain binding only as between, or in the relationships with, the few States that are parties to the relevant Geneva Convention and not parties to the 1982 Convention. This is, in particular, the case of the United States, Colombia, Israel and Venezuela.

Many provisions of the Geneva Conventions, at the time of their adoption, corresponded to customary international law. This seems particularly true as regards the CHS, most of which has been transported into the 1982 Convention, and whose preamble explicitly specifies that its purpose is “to codify the rules of international law relating to the high sea”. This provision is not repeated in the other Geneva Conventions. Still, a number of provisions in the CTS are set out in the 1982 Convention and can be seen as corresponding to customary law. Moreover, the basic provisions of the CCS, as remarked above, have been indicated as contributing to the “crystallization” of the customary notion of the continental shelf and still correspond to customary law.

Related materials

A. Legal instruments

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, United Nations, *Treaty Series*, vol. 1833, p. 3.

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 4 August 1995, United Nations, *Treaty Series*, vol. 2167, p. 3.

B. Jurisprudence

International Court of Justice, *North Sea Continental Shelf, (Federal Republic of Germany/Netherlands), (Federal Republic of Germany/Denmark), Judgment, I.C.J. Reports 1969*, p. 3.

International Court of Justice, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303.

C. Documents

League of Nations, *Acts of the Conference for the Codification of International Law*, (LN. doc. C.351.M.145, 1930, V.); Report of the Second Commission, League of Nations Publication V. *Legal*, 1930.V. 9 (C.230, M. I 17, 1930. V).

Yearbook of the International Law Commission, 1949, (A/CN.4/13 and Corr. 1-3), chapter II, p. 281.

Yearbook of the International Law Commission, 1956, vol. II, document A/3159.

Official Records of the United Nations Conference on the Law of the Sea, Geneva, 24 February-27 April 1958, (A/CONF.13/L.58), vol. 2, p. 146.

Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, Annexes, (A/CONF.19/L.15, annex).