
GENERALITIES ON THE PRINCIPLES GOVERNING THE INTERNATIONAL AREA OF SUBMARINE TERRITORIES

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Abstract: *The 1982 United Nations Convention on the Law of the Sea regulates all maritime spaces, establishing a specific fundamental legal framework, starting with sovereign zones and continuing with the jurisdiction, use and sovereign rights of states, as well as their obligations. At the same time, it establishes new maritime spaces, the exclusive economic zone and the international submarine area and formulates new principles and norms to govern these maritime spaces, managing, for the first time, to legally enshrine the concept of "common heritage of humanity" for the international submarine area and its resources, developing the principles that govern these maritime spaces. In this context, this article provides an overview of the principles that govern the international submarine area in light of the provisions United Nations Convention on the Law of the Sea of 1982.*

Keywords: *international area of submarine territories, common heritage of humanity, maritime spaces, law of the sea, United Nations Convention on the Law of the Sea of 1982*

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The Third UN Conference on the Law of the Sea succeeded, following complex, sustained and lengthy negotiations, in elaborating a new law of the sea, enshrined in a single convention¹. The holding of the Third UN Conference on the Law of the Sea and the 1982 Convention marked a new stage in the evolution of the codification and progressive development of public international law².

The 1982 United Nations Convention on the Law of the Sea regulates all maritime spaces,

¹M. Popescu, *Law of the Sea: National Jurisdiction Areas*, Artprint Publishing House, 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-Jun 2004, p. 131.

²E.P. Andreyev, et al., *The International Law of the Sea*, Translated from the Russian by Dmitry Belyavsky, Progress Publishers, Moscow, 1988, p. 5.



establishing the specific fundamental legal framework, starting with sovereign zones and continuing with the jurisdiction, use and sovereign rights of states, as well as their obligations³.

Among the particularities of this international normative process, in addition to a series of well-known and widely accepted practices and customs, new maritime spaces have been established: the exclusive economic zone and the international zone of submarine territories, and new principles and norms have been formulated to govern the new maritime spaces⁴. The text of the Convention was adopted by the Conference on 30 April 1982⁵ and was opened for signature on 10 December 1982, in Montego Bay, Jamaica⁶.

By December 9, 1984, the Convention had been signed by 159 states, but 60 ratifications were required for it to enter into force.

This essential requirement was only met in 1993, so that on November 16, 1994, the United Nations Convention on the Law of the Sea entered into force⁷. The entry into force of the 1982 Convention was, however, possible only after the adoption on 28 July 1994, in New York, of the Agreement on the Application of Part XI of the 1982 Convention, which brings substantial changes to the legal regime of submarine territories located beyond the limits of national jurisdiction, located beyond the limits of national jurisdiction, established by the 1982 Convention.

The 1982 Convention succeeded, for the first time, in developing and legally consecrating the concept of "common heritage of humanity"⁸ for the international area of submarine territories and its resources⁹; in establishing an institutional structure specific to the international area of submarine territories, a structure consisting of: a specialized international organization - the International Submarine Territories Authority¹⁰, an operational body of the Authority, which directly carries out activities of management, transport, processing and marketing of the resources of the Area: the Enterprise and a specific mechanism for settling disputes: the Chamber for the Settlement of Disputes Concerning Submarine Territories, a component part of the International Tribunal for the Law of the Sea; in establishing a legal regime regarding activities in the Area and the exploitation of its resources. The regime for the exploitation of the resources of the Area, established by the 1982 Convention, is the result of long, particularly difficult negotiations, carried out throughout the Third Conference of the NATIONS United Nations on the Law of the Sea, between developing and highly industrialized states.

Given the particularities, importance and novelty of submarine territories, activities in the international area of submarine territories will be carried out in compliance with the fundamental

³B. 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.

⁴R. Miga- Besteliu, *International Law – Introduction to Public International Law*, All Beck Publishing House, Bucharest, 1998, p. 248.

⁵The Convention was adopted with 130 votes in favor, 4 against (Israel, Turkey, USA, Venezuela) and 17 abstentions. (including England, FR Germany, Belgium, Holland, Italy, Spain, USSR, other states from Eastern and Western Europe). (M.C. Wood, *International Seabed Authority: The first four years*, p. 179 - www.mpil.de/shared/data/pdf).

⁶The Final Act of the Convention was signed on December 10, 1982, by 117 states and entities.

⁷*UN Convention on the Law of the Sea: a chronology*, United Nations Chronicle, New-York, vol. 32/1995, p. 10.

⁸The idea of declaring the international area of submarine territories a common heritage of humanity is also found in the declarations of American presidents Johnson, in 1966, and Nixon, in 1967. (D. Hunter, J. Salzman, D. Zaelke, *International environmental Law and Policy*, Foundation Press, New-York, 2002, p. 759).

⁹Art. 136 of the 1982 Convention states that "The Area and its resources are the common heritage of humanity."

¹⁰In art. 1, paragraph 2 of the 1982 Convention, the term International Seabed Authority is used, and in art. 156, paragraph 1, the term International Submarine Territories Authority is used.

principles of international law¹¹, which underlie relations between states, and the principles enshrined in the 1982 Convention to govern submarine territories located outside national jurisdictions, principles which, in turn, can be grouped into three categories:

- **the fundamental principle** which defines the legal regime of the Area: *The Area and its resources are the common heritage of humanity* (art. 136 of the 1982 Convention); The principle of the common heritage of humanity was introduced, definitively and irrevocably, into the law of the sea by the 1982 Convention, which, in a series of articles, establishes the essential elements of its legal content. Thus, art. 136 of the 1982 Convention declares, concisely and unequivocally, that “ *The Area and its resources are the common heritage of humanity*”. This concept, which has a principle value with regard to the exploration and exploitation of the resources of the Area, is developed in art. 137, paragraph 2 of the Convention, which specifies that “ *all rights over the resources of the Area belong to all humanity*”, on whose behalf the Authority will act, and in art. 140, paragraph 1 which establishes that “ *activities in the Area shall be carried out... in the interest of all humanity*”, regardless of the geographical situation of the States, whether coastal or landlocked, and taking into account in particular the interests and needs of developing States and of peoples who have not attained full independence or a self-governing regime recognized by the United Nations, in accordance with Resolution No. 1.514/XV and other relevant resolutions of the General Assembly”.
- This concept, established as a principle, is developed by the 1982 Convention in a series of articles, their provisions allowing the identification of **general but also specific principles**¹², intended to contribute to the most accurate understanding of the extremely complex and innovative content of the notion of common heritage of humanity¹³, as well as its legal implications.

The general principles, with binding legal force over the entire area of the Area and its resources, as well as over all states carrying out activities in this space, are:

- *the principle of national non-appropriation,*
- *the principle of inalienability of resources,*
- *the principle of using the Area in the legitimate interests of all states,*
- *the principle of using the Zone for exclusively peaceful purposes,*
- *the principle of effective participation of developing states in activities carried out in the Area,*

¹¹Art. 138 of the 1982 Convention states: “In their general conduct in the Area, States shall comply with Part XI, the principles enshrined in the Charter of the United Nations and other rules of international law, showing concern for the maintenance of peace and security, for the promotion of international cooperation and mutual understanding.”

¹² I. Brownlie, *Principles of Public International Law*, sixth edition, Oxford University Press, Oxford, 2003, p. 242-243.

¹³ A. Cassese, *International Law*, Oxford University Press, Oxford, 2001, p. 61.



*The specific principles*¹⁴, which are applicable only to certain concrete issues of the Area or its resources¹⁵ are:

- *the principle of respecting the legal regime of the Zone,*
- *the principle of liability for damage to the Area,*
- *the principle of respecting the rights and legitimate interests of riparian states,*
- *the principle of protecting the marine environment and human life and the correlation of activities in the Area with other activities in the marine environment,*

Although the most important principle on which the entire legal regime of the international area of submarine territories is based is that according to which the area constitutes the common heritage of humanity, the amendments brought by the Agreement on the application of Part XI of the 1982 Convention considerably diminish its content. In expressing this opinion we consider aspects such as: replacing compensatory amounts with a mechanism of economic assistance; in establishing the financial clauses in the contracts concluded for the activities carried out in the Area, the following principles will be taken into account: the payment system will be as simple as possible, with reduced costs, both for the Authority and for the contractor, and the taxes due will be comparable to those specific to terrestrial production of the same or similar minerals, which determines equal treatment for what is extracted from the territory subject to national sovereignty and from that of the common heritage, territories that have a distinct legal regime; the fee of \$1,000,000 which contractors were required to pay annually, in accordance with the provisions of article 13, paragraph 3 of Annex III to the 1982 Convention, was eliminated by the provisions of the 1994 Agreement, but it was stipulated that such fee would be paid from the date of commencement of commercial production, and its amount would be established by the Council; also, the 1994 Agreement, according to the provisions of Section 8, paragraph 3, decided to reduce the fee of 500,000 US dollars to be paid for studying applications for approval of a work plan limited to a single phase, whether it is the exploration or exploitation phase, to the amount of 250,000 US dollars; the launch of the Enterprise's activity will be in the form of joint ventures; the provisions relating to the obligation of a transfer of technologies, as provided for by the 1982 Convention, have been repealed by the provisions of the 1994 Agreement, according to Section 5 a, para. 2 and were replaced by a general obligation to cooperate in order to encourage States to facilitate the acquisition of technologies necessary for deep-sea mining by the Enterprise or developing States.

All of this is likely to lead us to appreciate that the vision of the common heritage of humanity is one thing, and its realization is something else entirely. We would like to point out, however, that, with all its imperfections, the current international regime of exploration and exploitation, based on the principle of common heritage, is an acceptable alternative to a situation in which its absence would only have led to uncertainty, tension and confrontation in international relations.

¹⁴The specific principle of public international law is the principle that gives expression to a specific international value and whose action is limited to one or more branches of public international law. (D. Popescu, A. Năstase, *The System of Principles of Public International Law* , Academy Publishing House, Bucharest, 1986, p. 20).

¹⁵V. Ciuvăț, *The legal regime of exploration and exploitation of marine resources*, Universitaria Publishing House, Craiova, 2001, p. 71-72.



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