THE FUTURE OF THE LAW OF THE SEA

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Proceedings of the Symposium on the Future of the Sea
organized at Den Helder by the Royal Netherlands Naval College
and the International Law Institute of Utrecht State University
26 and 27 June 1972

edited by

L. J. BOUCHEZ AND L. KAIJEN

MARTINUS NIJHOFF / THE HAGUE / 1973

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ISBN 978-94-011-8680-3 ISBN 978-94-011-9485-3 (eBook)
DOI 10.1007/978-94-011-9485-3

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PREFACE

It is no surprise that the subject "The Future of the Law of the Sea" meets with special interest in the Netherlands. "The sea is our element, the roaring sea our glory," as the old folksong says. For a nation whose fate and prosperity are so closely connected with the sea, it is of the utmost importance to which regime the nations that border upon, sail and exploit the sea are subjected. Until recently nobody worried about the legal regime of the sea. The principle of the freedom of the sea, since Hugo Grotius one of the strongest, hardly assailable, principles of international law, was it not of paramount importance for the Netherlands?

Since the Second World War this security does not exist any more. International Law is shaken in its foundations. This law, once anchored in the sense of justice of the then leading nations, which certainly did not think similarly, but to a certain extent along the same lines, has been shaken by the development of groups which no longer accept these rules as the guiding principle of their actions. The alarmingly scant willingness among the younger nations to accept the compulsory jurisdiction of the International Court, and the scarce assignments conferred to that Court, bear witness to this crisis. More and more International Law is traversed by economical, sociological, political and power factors which are pushing aside the conceptions of law once considered stable. A great number of new problems as a consequence of the technical developments with respect to the sea have contributed thereto.

The concept of the freedom of the sea has suffered considerably. The jurisdiction of the coastal state presents many new problems. The width of the territorial sea has become a point of fierce discussion. The acceptance of the "continental shelf" causes many difficulties. The technically ever progressing possibility of exploiting the seabed – quite a short time ago we were assured in Geneva that an exploitation on a greater depth than 200 meters under sea-level could practically be disregarded –

has entailed quite a number of new uncertainties. Pollution of the sea was an entirely unknown concept; overfishing was hardly thought of. Oceanographic research did not yield difficulties.

The papers included in this volume illustrate the immense changes which have occurred in the meantime. They are not reassuring. It is quite clear that new rules of law are indispensable and that their formulation will entail great difficulties. Nevertheless the question arises whether it is too optimistic to expect that these difficulties will be surmounted sooner here than in other fields of International Law. In the first place the circle of nations intensely concerned with the sea is smaller than with other subjects of International Law. Moreover, it is perhaps justified to expect that in this field, notwithstanding all special situations, still a somewhat greater homogeneity than in an other field may be counted on.

A thorough study of the problems the new development entails is a primary requirement. This volume, containing contributions of outstanding experts, endeavours to further this aim.

J. P. A. François

OPENING-ADDRESS

by

VICE-ADMIRAL E. ROEST

There is hardly a nation in the world of which the history is so closely associated with the sea as the Netherlands. A nation, literally reclaimed from the sea, a nation which has to fight a continuous battle in order to conserve that salvaged land.

It is therefore no surprise that a nation with such a strong historic association with the sea is extremely interested in the future of this often so capricious element.

I am very pleased that the Royal Netherlands Naval College – as one of the training institutes of users of the sea – or rather the protectors of those users – has taken the initiative to organize this symposium, and particularly that they have done so in close conjunction with the university world. In actual fact this is a continuation of a process of co-operation between the Royal Netherlands Navy and the scientific world, which has already established in the technical field. This is a promising and intriguing development which has the full support of the Minister of Defence.

Co-operation between branches of sciences, as well as research, has nowadays become an integral part in Higher Education. The deeper significance of this co-operation is a concentration of potential and means which is necessary to solve the many problems we all face today. Maybe this national concentration will cross the borders, which would be of much value and a stimulating development.

It is apparent that by organizing this symposium the Royal Netherlands Navy will contribute to this development which she previously did in the technical field. In this technical field I would like to mention the “Corrosion Research” where the Technical University in Delft, the industry and the Navy translate mutual interest in scientific co-operation.

The Royal Netherlands Navy has been active for a long time in Hydrography and Oceanography and it is not without reason that the names of Admiral Langeraar and Admiral van Weelde appear in the pro-

gramme. Furthermore the Navy is particularly interested in and concerned about the pollution of the sea, because of its active role in recognizing and reporting of pollution.

Going further through the programme of the next two days I do not see a subject in which the Navy does not have interest. Neither do I see a subject that does not concern the Navy and its College in both an executive and scientific role.

Thus, the subjects to be discussed, are not simply restricted to the judicially scientific problems. They are extended to cover complete concept of "The Sea".

The Royal Netherlands Navy has a variety of tasks in peacetime and wartime. The main task is to guarantee the unrestricted use of the sea and the protection of Fishery. Showing the flag and representing the nation abroad includes demonstrating Dutch knowledge and interest in particular fields. One of these fields is the exploration of the sea. Bearing in mind that the concept of the sea represents a different world with many still unknown resources. Now in his article "Resources of the Sea and International Law" published in the Israel Review of July 1971, Dr. Boasson gives, in my opinion, a very useful classification of those resources.

Against the background of the subjects to be discussed in the next few days it is interesting to quote from Dr. Boassons' article. He mentions:

1. The sea as a source of drinking water;
2. The sea as a source of health resorts;
3. The sea as source of salt and minerals, won by a process of evaporation;
4. The sea as a source of energy;
5. The sea as a means of transport;
6. The sea as a source of live animal-food and a source of live plant-food;
7. The sea or sea floor as a source of metals and minerals;
8. The sea floor as a source of fuel;
9. The sea as a cleanser or simply as sewerage and a refuse dump.

Realizing then, all the many aspects attached to that seemingly simple concept "The Sea", one is impressed by the great potential on one hand and by the threat to that potential on the other hand. When dealing with such a complicated and extremely delicate subject it is of primary importance to mobilize international interest, knowledge and skill. I hope the symposium will be a contribution to that goal.

This symposium has another aspect which I would like to mention. It realizes a long cherished wish of Admiral Bagchus who will complete

in July a five year tour of duty as Flag Officer-in-Charge of Officer Training and Education at the Royal Netherlands Naval College.

By organizing this symposium, the staff of the College wishes to emphasize the leading role taken by Admiral Bagchus in the development of scientific education in the Royal Netherlands Navy during the past five years. Under his direction, this education was drastically reviewed and adapted to align with the development in society. The achievement of Admiral Bagchus has been to ensure that during all these changes, with the training based more and more on fundamental knowledge, the professional requirements of the Naval Officer were never neglected.

The officers trained at the College were received well in the Fleet, and the technical branches achieved high standards during their final year at University. The education of young men who will be the leaders in the Naval organization is a fascinating subject. Not only must they be trained in fundamental and specialist knowledge, they must also be trained as leaders in a complex maritime military organization.

Admiral Bagchus moulded the staff of the College into a single unified team which carried out its training tasks selflessly. Admiral Bagchus has always kept the officers under training in the centre of his vision, and his knowledge of the individuals, their background and their achievements clearly illustrated his interest in each student.

Admiral you can look back on an extremely successful career which has culminated in your present appointment. It will always be remembered that under your stimulating leadership Naval scientific research got a moderate but definite start. It must be of great satisfaction to you, that the organization of this symposium is a projection of the appreciation for your work.

I wish the organizers and participants all possible success at this symposium and with that wish I declare the international symposium on the Future of the Sea now opened.