PRAVO MORA U SREDOZEMLJU TIJEKOM POVIJESTI

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THE LAW OF THE SEA IN THE MEDITERRANEAN THROUGHOUT THE HISTORY

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Abstract

U radu se izlažu temeljne značajke razvoja prava mora u Sredozemlju, od prvih povijesnih vrela do Treće konferencije Ujedinjenih naroda o pravu mora 1982. godine. Autorice analiziraju stoljećima dug proces stvaranja toga prava koje vrijedi na svim morima, kroz prizmu njegove primjene u sredozemnim morskim prostorima – od vremena slobodne upotrebe mora za svakoga prema rimskom pravu i gospodstva na moru feudalnih vladara (država) u srednjem vijeku do prvih tragova suvremenog prava mora u 17. stoljeću i kodifikacijskih napora tijekom 20. stoljeća. Posebna pozornost posvećena je složenom putu nastanka pravnih režima i granica u Sredozemnom moru.

Ključne riječi: Sredozemno more; pravo mora; stari vijek; srednji vijek; novi vijek; morske granice; teritorijalno more; kodifikacija

Abstract

This paper presents the principal characteristics of the development of the law of the sea in the Mediterranean, from the initial historical sources to the Third UN Conference on the Law of the Sea (1982). A centuries-long process of creating that law, which applies to all seas, the authors analyzed through the prism of its application in the Mediterranean marine spaces − from the time of the Roman law and its free use of the sea for all, the lordship over the sea by the feudal sovereigns (states) in the Middle Ages, until the first traces of the contemporary law of the sea in the 17th century and codification efforts in the 20th century. A special attention is paid to the complexity of the genesis of the legal regimes and boundaries in the Mediterranean Sea.

Keywords: the Mediterranean Sea; the law of the sea; antiquity; Middle Ages; Modern Age; maritime boundaries; territorial sea; codification

More je tijekom cijele povijesti za čovječanstvo imalo iznimno važnu ulogu kao prostor komunikacije i neiscrpan izvor hrane, o čemu svjedoče i najstariji povijesni izvori. Obje te funkcije mora poticale su razvoj pravnih pravila čije prve tragove nalazimo u sredozemnim morskim prostorima. Stvaranje pravila koja se odnose na morske prostore usko je vezano uz sustavnu izgradnju međunarodnog prava koje uređuje odnose između subjekata tog prava, prvenstveno uzajamne odnose država.[1] Vlast nad širokim prostranstvima mora za države oduvijek je bilo važno pitanje, posebice za one koje su nastojale dominirati u međunarodnim odnosima. Svoje zahtjeve u početku ostvarivale su upotrebom sile, a potom, kroz dulja vremenska razdoblja i vrlo postupno, započele su s dobrovoljnom i ujednačenom primjenom određenih običaja iz kojih su se stoljećima kasnije razvila i prva pravila prava mora.[2]

Pravo mora jedna je od najstarijih grana međunarodnog javnog prava.[3] U pravnoj literaturi najčešće se definira kao sustav međunarodnih pravnih pravila kojima se uređuju granice državne vlasti na moru, prava i obveze međunarodnopravnih subjekata u pojedinim područjima mora, morskog dna i podzemlja te reguliraju njihovi međusobni odnosi uzrokovani različitim upotrebama mora, podmorja i morskog okoliša.[4]

Dug put koji je prethodio postizanju osnovnih sporazuma među državama o prostornom dosegu i normativnom sadržaju pravnih režima na moru[5] svjedoči o snažnim konkurirajućim interesima država u pogledu morskih prostora. Prema suvremenom pravu mora, u područjima gdje su njihovi

Throughout history, the sea has had a fundamental role to mankind, being a medium of communication and an inexhaustible source of food, as evidenced by the oldest historical sources. Both of these functions have stimulated the development of legal rules, whose first traces can be found in the Mediterranean maritime spaces. The creation of rules regarding marine spaces is closely related to the systematic development of international law, which governs the relations between the subjects of that law, primarily mutual relations of the states.[1] Authority over the vast expanses of the seas has always been an important matter to states, especially those that have attempted to dominate in international relations. Their demands were at first imposed by the use of force, and then, over a long period of time and very gradually, they have started with the voluntary and uniform application of certain customs, from which, centuries later, the first rules of the Law of the Sea were developed.[2]

The Law of the Sea is one of the oldest branches of public international law.[3] In legal literature, it is usually defined as a system of international legal rules governing the state's boundaries in sea, the rights and obligations of the subjects of international law in certain marine spaces, the seabed and subsoil, as well as regulating relationships rising from various uses of the sea, the seabed and the marine environment.[4]

A long path that preceded the conclusion of basic interstate agreements on the spatial extent and normative content of legal regimes at sea,[5] testifies to the strong competing national interests relating

[1] O pojmu i naravi međunarodnog prava više pojedinosti v. J. ANDRASSY – B. BAKOTIĆ – M. SERŠIĆ – B. VUKAS, 2010, 1–7, 10–15; V. Đ. DEGAN, 2011, 2–7; D. RUDOLF, 2012, 413; M. DIXON, 2013, 3–4; V. IBLER, 1987, 169–170.

[2] Iako se često koristi i naziv *međunarodno pravo mora*, upotreba termina *međunarodno* u novijoj hrvatskoj pravnoj literaturi ocjenjuje se suvišnom jer je poznato da se radi o dijelu međunarodnog javnog prava.

[3] Za razliku od unutarnjeg prava, norme međunarodnog javnog prava stvaraju se izričitom ili prešutnom suglasnošću država sa sadržajem određenog pravnog pravila. Riječ *javno* dodaje se uz *međunarodno pravo* da bi se isključilo međunarodno privatno pravo koje je uvijek unutarnje državno pravo.

[4] D. RUDOLF, 2012, 433; Y. TANAKA, 2012, 3–4; J. HARRISON, 2011, 1–2; B. VUKAS, 2002, 1303-–1310.

[5] Pod *pravnim režimom* valja razumijevati sveukupnost važećih pravnih normi u određenom morskom području.

[1] For further details about the concept and nature of international law see J. ANDRASSY – B. BAKOTIĆ – M. SERŠIĆ – B. VUKAS, 2010, 1–7, 10–15; V. Đ. DEGAN, 2011, 2–7; D. RUDOLF, 2012, 413; M. DIXON, 2013, 3–4; V. IBLER, 1987, 169–170.

[2] Although the term *International Law of the Sea* is frequently used, in contemporary Croatian legal literature the use of the term "international" is considered unnecessary, since the Law of the Sea is known to constitute a part of Public International Law.

[3] As opposed to internal law, the norms of Public International Law are created by the explicit or implied consent of states to the content of a particular legal rule. The term *public* is added to *international law* to exclude Private International Law which always belongs to the domain of internal law of each state.

[4] D. RUDOLF, 2012, 433; Y. TANAKA, 2012, 3–4; J. HARRISON, 2011, 1–2; B. VUKAS, 2002, 1303–1310.

[5] *Legal regime* means the totality of applicable legal regulations in a particular maritime area.

interesi najveći – u unutarnjim morskim vodama, arhipelaškim vodama i u teritorijalnom moru, obalne države uživaju suverenost.[6] U dijelovima mora koji su udaljeniji od obale – u epikontinentskom i gospodarskom pojasu, države imaju suverena prava, a u vanjskom pojasu samo ograničena prava vršenja nadzora. Dijelovi mora izvan nacionalne jurisdikcije država – otvoreno more i Međunarodna zona dna mora i oceana, prostori su u kojima ni jedna obalna država ne može vršiti nikakvu isključivu vlast, osim nad brodovima koji plove pod njezinom zastavom.

Izgradnja toga sustava morskih prostora nakon višestoljetnih prijepora napokon je dovršena 1982. godine usvajanjem Konvencije UN-a o pravu mora. Taj dug i složen put na kojem su se stalno sukobljavale dvije oprečne tendencije, jedna za osiguranjem slobode mora za sve i druga za proširenjem vlasti država nad morskim prostorima, u ovome radu nastoji se rasvijetliti kroz analizu pravnog uređenja odnosa u Sredozemnom moru tijekom povijesti. U istraživanjima se pokušalo ići unatrag koliko to povijesni izvori omogućuju. Brojni događaji koji su u tome dugom razdoblju utjecali na odnose u Sredozemnom moru ne razmatraju se s povijesnog i političkog aspekta jer bi to zahtijevalo okvire znatno šire od ovoga rada. Sažet prikaz razvojnog puta prava mora na stranicama koje slijede usredotočen je prvenstveno na važnu ulogu koju su u tom procesu imale države na sredozemnim obalama – od Gibraltara do Levanta i najistočnijih točaka Crnog mora.[7]

[6] Pojam *suverenost* označava teritorijalno vrhovništvo (svu i najvišu vlast) države nad osobama i stvarima na njezinu području. Ta vlast je isključiva – suverenost jedne države u određenom prostoru isključuje suverenost druge države. Za razliku od suverenosti, koja je ograničena samo međunarodnim pravom i međunarodnopravnim obvezama, *suverena prava* strogo su ograničena i svojom namjenom i svrhom. Šire objašnjenje tih pojmova v. D. RUDOLF, 2012, 742–743; V. IBLER, 1987, 306–307; E. M. BORGESE, 1994, 35–38.

[7] Za potrebe ovoga rada upotrebljava se dakle šira definicija Sredozemnog mora koja se temelji na izvornom geografskom konceptu koji uključuje i Crno more. V. npr. M. KLEMENČIĆ, 1997, 75; J. RIĐANOVIĆ, 2002, 56; J. PERNETTA, 1995, 138–139; M. MATAS, 1981, 8. Danas je na tim obalama dvadeset i šest država – Albanija, Alžir, Bosna i Hercegovina, Bugarska, Cipar, Crna Gora, Egipat, Francuska, Grčka, Gruzija, Hrvatska, Italija, Izrael, Libanon, Libija, Malta, Maroko, Monako, Rumunjska, Ruska Federacija, Sirija, Slovenija, Španjolska, Tunis, Turska i Ukrajina.

to maritime areas. According to contemporary law of the sea, the coastal states have sovereignty in areas of their greatest interest[6] − in their internal waters, archipelagic waters and territorial sea. In the maritime spaces farther off the coast − in the continental shelf and their economic zones, the states have sovereign rights, and in the contiguous zone only limited rights of supervision. Marine spaces beyond national jurisdiction − high seas and international seabed zone, are the areas in which no coastal state may exercise any exclusive authority, except over the ships navigating under its flag.

After centuries of disputes, the establishment of the above system of marine zones was finally completed in 1982, with the adoption of the United Nations Convention on the Law of the Sea. Through a historical analysis of the legal regulation of relations in the Mediterranean, this paper aims to clarify this long and complex path in which there was a constant conflict between the two opposing tendencies − one to ensure the freedom of the sea for all, and the other that aspired to extend national authority over the seas. The research attempted to encompass the time as historical sources allowed. Numerous events influencing relations in the Mediterranean over this long period are not considered from the historical and political standpoint, since that would significantly exceed the scope of this paper. A brief overview of the development of the law of the sea on the following pages is primarily focused on the important role that the states on the Mediterranean coasts had in this process − from Gibraltar to the Levant, and the easternmost points of the Black Sea.[7]

[6] The concept of *sovereignty* represents territorial supremacy (entire and supreme power) of a state over persons and things on its territory. Such power is exclusive – the sovereignty of a state over a particular area excludes the sovereignty of any other state. In contrast to sovereignty, which is only limited by international law and international legal obligations, *sovereign rights* are strictly limited both in their application and purpose. For a broader explanation of the terms see D. RUDOLF, 2012, 742−743; V. IBLER, 1987, 306−307; E. M. BORGESE, 1994, 35−38.

[7] For the purpose of this paper, the broader definition of the Mediterranean is used, based on the original geographical concept which includes the Black Sea. See e. g. M. KLEMENČIĆ, 1997, 75; J. RIĐANOVIĆ, 2002, 56; J. PERNETTA, 1995, 138−139; M. MATAS, 1981, 8. Nowadays, there are twenty-six states on its shores − Albania, Algeria, Bosnia-Herzegovina, Bulgaria, Cyprus, Montenegro, Egypt, France, Greece, Georgia, Croatia, Italy, Israel, Lebanon, Libya, Malta, Morocco, Monaco, Romania, the Russian Federation, Syria, Slovenia, Spain, Tunisia, Turkey and Ukraine.

1. STARI VIJEK I RIMSKO PRAVO

Iz oskudnih zapisa starog vijeka može se zaključiti da u tom razdoblju ljudske povijesti još nije postojao nikakav općenito priznat pojam o pravu na more, a plovidba i ribolov bili su ograničeni na vrlo uska područja uz obale. Skromna znanja o tome kako se uhvatiti u koštac s veličinom, snagom i opasnostima mora, kao i nerazvijenost sredstava kojima su ljudi toga vremena raspolagali, nisu dopuštali da se znatno udalje od obale. Pravni pisci i povjesničari slažu se da takve ograničene mogućnosti korištenja morskih prostranstava nisu zahtijevale pravnu regulativu, pogotovo ne takvu koja bi utjecala na odnose među već postojećim državama u starom vijeku.[8] Ako su pojedine države imale osobit interes s obzirom na neka mora, jednostavno su ih prisvajale. U to vrijeme dakle, kada još nije postojao ni sustav međunarodnog prava ni međunarodne zajednice, na moru je vladala praksa pune permisivnosti. U pogledu vlasti nad morem države toga vremena nisu priznavale nikakvih granica osim vlastite snage, a more je pripadalo onome tko njime stvarno vlada, do granica njegove vlasti i dok mu vlast traje.[9]

Razvoj znanja i tehnike potrebnih za ovladavanje morskim prostranstvima doveo je postupno do intenziviranja plovidbe i ribolova te do prvih začetaka pravne regulacije. Permisivnost u upotrebi mora, sporo i u vrlo ograničenoj mjeri, počela su zamjenjivati interna pravna pravila. Tako je interni pravni poredak Grčke u prostorima u blizini obala dodjeljivao isključivo pravo ribolova nekim hramovima, javnim ustanovama ili lokalnom stanovništvu.[10]

I grčki gradovi prisvajali su različita prava na more, a poznato je da su Atenjani još 449. god. pr. Kr. branili perzijskim vojnim brodovima plovidbu od Bospora do obale Pamfilije.[11]

Uz oružane sukobe, koji su u to vrijeme bili potpuno pravno neregulirani, borbe za prevlast

[8] V. IBLER, 2001, 25; W. G. VITZTHUM, 2002, 1–5; R. P. ANAND, 1983, 10–11; J. ZISKIND 1973, 35–49. Od opsežne literature o okolnostima plovidbe Sredozemnim morem u to vrijeme v. npr. M. TORELLI, 2003, 116 i d.; L. CASSON, 1991, 170–176.

[9] Usp. N. KATIČIĆ, 1953, 19.

[10] A. RAESTAD, 1913, 2–3, 11.

[11] P. FAUCHILLE, 1925, 20.

1. ANTIQUITY AND ROMAN LAW

A few records from Antiquity suggest that no generally acknowledged concept regarding the right to the sea existed at the time, with navigation and fishing being limited to very narrow coastal areas. The limited knowledge of how to cope with the size, power and dangers of the sea, coupled with the undeveloped means at the disposal of the people of the time, did not allow them to go far from the shore. Legal writers and historians concur that such limited possibilities of the usage of marine spaces did not require legal regulation, especially not of the kind that would have an impact on relations between the already existing states in Antiquity.[8] If a state had a specific interest regarding a certain sea, it would simply seize it. At the time, in the absence of international law and international community, full permissiveness was practiced at sea. As for authority over the sea, the states of Antiquity recognized no boundary except for their own power, with the sea belonging to whoever had actual control over it, up to the boundaries of his control and for the duration of his authority.[9]

The development of the knowledge and technology necessary to control the marine spaces has gradually led to intensification of navigation and fishing, as well as the inception of legal regulation. The permissiveness in the usage of the sea was slowly and to a very limited extent, substituted by internal legal regulations. In that way, the internal legal order of Greece granted exclusive fishing rights in coastal areas to particular temples, public institutions or the local population.[10] The Greek city-states likewise claimed various rights to sea, and the Athenians are known to have prohibited the Persian warships to navigate from the Bosporus to the coast of Pamphilia as early as 449 BC.[11]

Along with warfare, divested of any legal regulation at the time, the struggles for supremacy over the seas were also conducted by diplomatic means,

[8] V. IBLER, 2001, 25; W. G. VITZTHUM, 2002, 1–5; R. P. ANAND, 1983, 10–11; J. ZISKIND 1973, 35–49. For extensive literature on navigation circumstances in the Mediterranean at the time see e.g. M. TORELLI, 2003, 116 ff.; L. CASSON, 1991, 170–176.

[9] Cf. N. KATIČIĆ, 1953, 19.

[10] A. RAESTAD, 1913, 2–3, 11.

[11] P. FAUCHILLE, 1925, 20.

na moru vodile su se i diplomacijom, a ponekad su završavale i ugovorima o razgraničenju vlasti i prava plovidbe. Ipak, pravno stanje stvoreno tim ugovorima temeljilo se isključivo na snazi pregovarača, a ne na načelima o prostornim granicama državne vlasti nad pojedinim morem. Iako je za tu vrlo udaljenu prošlost teško pronaći dovoljno preciznih podataka, pouzdano se zna da su se Perzijanci tzv. Kimonovim mirom (oko 465. godine pr. Kr.) odrekli plovidbe zapadno od crte određene nekim otocima u Egejskom moru.[12]

Valja spomenuti i odredbe o ograničenju plovidbe koje su pratile primirje sklopljeno 423. godine pr. Kr. između Atene i Sparte sa saveznicima[13] te trgovački ugovor između Rima i Kartage iz 509. godine pr. Kr. o razgraničenju interesnih zona u Sredozemnom moru.[14] Ipak, u iskorištavanju mora u to vrijeme pravo još nije moglo imati značajniju ulogu.

Nakon što su Rimljani porazili jedinu suparničku silu u regiji – Kartagu u 3. stoljeću pr. Kr., započeli su svoje širenje u predjelima oko Sredozemnog mora.[15] Vlast Rimske Republike, a kasnije i Carstva, postupno je proširena na sve obale Sredozemlja, kao i na cjelokupno njegovo važnije europsko, afričko i azijsko zaleđe. Sredozemno more zajedno sa svim njegovim današnjim sastavnim dijelovima nalazilo se u središtu toga politički jedinstvenog prostora. Jednoj državi uspjelo je zavladati cijelim morem i ona nije imala razloga ograničavati punoću svoje vlasti isključivo na neki pojas mora uz obalu.[16]

Rimljani su zajedno s učvršćenjem svoje vlasti na kopnenim područjima sve više uviđali i prednosti nadzora nad morem pa je Sredozemno more

[12] N. KATIČIĆ, 1953, 19.

[13] C. PHILLIPSON, 1911, 372, 377–378; L. B. SOHN, 1997, 3.

[14] Tim ugovorom (koji je obnovljen 347. godine pr. Kr.) Rim se obvezao da će ograničiti svoje pomorske ekspedicije te je svojim mornarima zabranio prelazak određenih točaka uz sjevernu obalu Kartage. R.-J. DUPUY – D. VIGNES 1991, 82–83; U. LEANZA, 1993, 66.

[15] Nakon što su zavladali zapadnom obalom Jadrana, Rimljani se počinju uplitati u odnose u tome moru s težnjom da osvoje i njegovu istočnu obalu. Kada je ilirska kraljica Teuta zaprijetila grčkoj koloniji Issa, Rimljani su brzim ratnim pohodom 229. godine pr. Kr. svladali Teutu pa je ilirska država pala pod snažni utjecaj Rima. V. H. SIROTKOVIĆ – L. MARGETIĆ, 1988, 10; B. KOJIĆ – R. BARBALIĆ, 1975, 15.

[16] N. KATIČIĆ, 1953, 20.

occasionally even ending with agreements on the delimitation of power and navigation rights. Still, the legal setting created by such agreements was based exclusively on the strength of the negotiators, rather than on any principle regulating the spatial limits of state power over a given sea. Although identifying a sufficient quantity of precise data for such distant history is difficult to find, it is known that the Persians had repudiated navigation west of the line marked by particular islands in the Aegean Sea by the so called Peace of Cimon (approx. 465 BC).[12]

It is also worth mentioning the provisions regarding the limitation of navigation, which accompanied the truce concluded between Athens on the one side and Sparta with her allies on the other in 423 BC,[13] as well as a commercial contract between Rome and Carthage from 509 BC on the delimitation of zones of interest in the Mediterranean.[14] Still, at that time, the law could not have had a significant role in the utilization of the sea.

Once the Romans defeated their only rivals in the region, Carthage, in the 3rd century BC, they began their expansion across the Mediterranean.[15] The authority of the Roman Republic and later of the Roman Empire has gradually expanded across the entire Mediterranean coast, as well as its more relevant European, African and Asian hinterlands. The Mediterranean Sea, along with all of its present constituent parts was at the center of this politically unique space. Only one state succeeded in gaining control over the entire sea, hence it had no reason to limit the scope of its governance exclusively to the coastal zone.[16]

Along with the consolidation of their dominance in the land territories, the Romans became aware of

[12] N. KATIČIĆ, 1953, 19.

[13] C. PHILLIPSON, 1911, 372, 377–378; L. B. SOHN, 1997, 3.

[14] By that agreement (renewed in 347 BC), Rome was obliged to limit its maritime expeditions, and Roman mariners were prohibited from proceeding beyond certain points by the northern coast of Carthage. R.-J. DUPUY – D. VIGNES 1991, 82–83; U. LEANZA, 1993, 66.

[15] After taking over the western Adriatic coast, the Romans started to interfere in relations in that sea, with the purpose to conquer its eastern coast as well. After the Illyrian queen Teuta threatened the Greek colony of Issa, the Romans overcame Teuta by a quick military invasion in 229 BC, hence, Illyria fell under a strong influence of Rome. See H. SIROTKOVIĆ – L. MARGETIĆ, 1988, 10; B. KOJIĆ – R. BARBALIĆ, 1975, 15.

[16] N. KATIČIĆ, 1953, 20.

postupno postalo *Mare internum*, *Mare Romanum*, odnosno *Mare nostrum* kako su ga nazivali, smatrajući ga u svakom pogledu svojim. Kada bi se kriteriji današnjeg međunarodnog prava mogli primijeniti na tadašnje prilike, čitavo Sredozemno more (uključujući Jadransko i Crno more) činilo bi unutarnje morske vode Rimskog Carstva na vrhuncu njegove moći.

Ipak, Rimljani nikada nisu transformirali *Mare nostrum* u zatvoreno more, rezervirano isključivo za subjekte Carstva, nego je upravo nadmoć Rima osiguravala slobodno korištenje mora svima.[17] Iz tih sloboda bili su isključeni jedino neprijatelji rimskog naroda te pirati koji su smatrani i neprijateljima čovječanstva (*hostes humani generis*). U rimskom pravu more se izjednačavalo sa zrakom i vodom koja teče, pa i s morskom obalom.[18] Budući da se u to vrijeme činilo da su riblja bogatstva neiscrpna, svatko je na moru mogao loviti ribu. Rimski pravnici isticali su da je more kao *res communis omnium*, zajednička stvar kojom se svatko može služiti, ali na kojoj nitko ne može steći isključiv posjed.[19]

Rimsko pravo ukinulo je dakle sve ranije odredbe o ograničenju plovidbe i ribolova te prihvatilo načelo – „Po prirodnom pravu sljedeće stvari su slobodne za sve ljude: zrak, voda koja teče, more i posljedično morska obala". To pravilo isticali su svi znameniti rimski pravnici – Ulpianus, Celsus, Marcianus i Pomponius, a ono je ušlo i u Justinijanove *Institutiones* pa je tako kroz više od četiri stoljeća načelno bilo priznato da je more slobodno.[20]

U pravno uređenje mora rimsko pravo unijelo je dakle tri elementa – (1.) da more nije u vlasništvu pojedinca, (2.) da je pod vrhovništvom države, (3.) da ni vrhovništvo države ne može priječiti slobodnu plovidbu morem od strane svih ljudi. Taj razvoj

[17] Usp. G. RIGHETTI, 1987, 437. Opširan povijesni prikaz v. G. RICKMAN, 2003, 127–153.

[18] Mišljenje da more nije ni u čijem vlasništvu prvi je izrazio Celsus riječima *maris communem usum omnibus hominibus* i usporedio ga sa zrakom. Kasnije su i drugi rimski pravnici prihvatili to stajalište izjednačavajući more i s morskom obalom. Više pojedinosti v. N. KATIČIĆ, 1953, 20–21; T. FENN, 1925, 723–724.

[19] W. G. VITZTHUM, 2002, 4–5; P. T. FENN, 1925, 720–721; V. Đ. DEGAN, 2002, 3; A. ROMAC, 1992, 133–134; H. S. KHALILIEH, 1998, 131 i d.; E. D. BROWN, 1997, 170.

[20] Usp. A. RAESTAD, 1913, 3–4; B. FASSBENDER *et alii*, 2012, 362 i d.; M. ZORIČIĆ, 1953, 6.

the control over the seas, so the Mediterranean Sea gradually became *Mare internum*, *Mare Romanum*, i.e. *Mare nostrum* as they named it, considering it theirs in all aspects. If the criteria of present international law were to be applied to the circumstances of that time, the entire Mediterranean Sea (including the Adriatic Sea and the Black Sea) would constitute the internal waters of the Roman Empire, at the time of its greatest power.

Still, the Romans have never transformed *Mare nostrum* into a closed sea reserved exclusively for the subjects of the Empire, but it was Roman supremacy that ensured the freedom of the use of the sea by all.[17] From this freedom were exempted only the enemies of the Roman people, and the pirates, who were considered the enemies of mankind (*hostes humani generis*). In Roman Law, the sea was equivalent to the air and running water, and even shores of the sea.[18] Since, at the time, the fish resources seemed inexhaustible, everyone was allowed to fish at sea. Roman jurists argued that the sea was *res communis omnium*, a common matter everyone could use, but no one could gain exclusive possession of.[19]

The Roman Law thus repealed all the previous regulations limiting navigation and fishing, embracing the principle that: „By the law of nature the following things are common to all men; air, running water, the sea, and, consequently the shores off the sea." This rule was cited by all the distinguished Roman jurists − Ulpianus, Celsus, Marcianus and Pomponius. It was also incorporated into Justinian's *Institutiones*, and for over four centuries the freedom of the sea was recognized in principle.[20]

Thus, the Roman Law may be considered to have introduced three elements into the legal regulation of the sea: (1) that the sea is not owned by any individual, (2) that it is governed by the state, (3) that

[17] Cf. G. RIGHETTI, 1987, 437. For extensive historical background see G. RICKMAN, 2003, 127−153.

[18] The opinion that the sea could not be owned by anyone was first expressed by Celsus, who stated that *maris communem usum omnibus hominibus*, comparing it with the air. Subsequently, his views were adopted by other Roman jurists, who equated the sea with the sea coast. For more details see N. KATIČIĆ, 1953, 20−21; T. FENN, 1925, 723−724.

[19] W. G. VITZTHUM, 2002, 4−5; P. T. FENN, 1925, 720−721; V. Đ. DEGAN, 2002, 3; A. ROMAC, 1992, 133−134; H. S. KHALILIEH, 1998, 131 ff.; E. D. BROWN, 1997, 170.

[20] Cf. A. RAESTAD, 1913, 3−4; B. FASSBENDER *et alii*, 2012, 362 ff.; M. ZORIČIĆ, 1953, 6.

odnosio se međutim samo na more kao cjelinu. U načelima rimske jurisprudencije i u rimskim pravnim propisima još nije bilo temelja za posebno pravno uređenje pojedinih dijelova mora, određenih po njihovom geografskom položaju i blizini obali. Ipak, pri kraju razdoblja rimske vladavine opaža se utjecaj kopna na more u pogledu prava ribolova.[21]

2. SREDNJI VIJEK

Nakon podjele Rimskog Carstva i propasti njegova zapadnog dijela (476. godine), prestala je vlast jedne države nad Sredozemnim morem. Nastankom brojnih novih država na njegovim obalama i odnosi na moru bitno su izmijenjeni. Na zapadnom dijelu nekadašnjeg Carstva nastale su manje države pod franačkom i germanskom dominacijom, na južnim i jugoistočnim obalama proširio se utjecaj Arapa, a na istoku je rimsku tradiciju u uređenju odnosa na moru pokušao nastaviti Bizant. Nove države započele su se koristiti morem u različite svrhe, zahtijevajući vlast na sve širim područjima. Rivalitet na moru za vrijeme ranog srednjeg vijeka prema nekim autorima nije bio ništa drugo nego *bellum omnium contra omnes*.[22] Colombos tvrdi da sloboda mora u Sredozemlju uopće nije postojala između jedanaestog i šesnaestog stoljeća (razdoblje križarskih ratova, utemeljenja i izgradnje turske vlasti u Carigradu, borbe između talijanskih gradova).[23]

Pretenzije novih država odnosile su se u početku samo na dijelove mora ispred njihovih obala. S porastom njihove političke snage, a posebice s procvatom gospodarskog života i tehničkim napretkom potkraj toga razdoblja, kada su i udaljena morska područja postala pristupačna, javljaju se tendencije i njihova prisvajanja. Istodobno s tim procesima širio se i sadržaj vlasti novih država, koja se više nije ograničavala samo na obavljanje zaštitnih funkcija, nego se očitovala i kroz zabrane plovidbe te zabrane strancima da iskorištavaju morska bogatstva.[24]

[21] N. KATIČIĆ, 1953, 24–25.
[22] E. D. BROWN, 1997, 169; usp. V. IBLER, 2001, 27.
[23] J. COLOMBOS, 1959, 45.
[24] N. KATIČIĆ, 1953, 57–58.

not even the state governance can prevent free navigation of the seas by all. However, this development was only applied to the sea as a whole. The principles of Roman jurisprudence and Roman regulations still lacked the bases for special legal regulation of different parts of the sea, depending on their geographical location and proximity to the coast. Still, the influence of the land on the sea, in the sense of fishing rights, is beginning to be noticed by the end of the Roman rule.[21]

2. THE MIDDLE AGES

The division of the Roman Empire and the fall of its western part (476 AD) marked the end of the rule of a single state over the Mediterranean. The emergence of numerous new states on its coasts significantly altered relations at sea. Smaller states under Frankish and Germanic domination were formed in the western part of the former Empire, the Arab influence spread across its southern and south-eastern shores, while in the east Byzantium was attempting to continue the Roman tradition of regulating relations at sea. The new states began using the sea for different purposes, claiming control over expanding areas. According to some authors, rivalry at sea in the Early Middle Ages was nothing else than *bellum omnium contra omnes*.[22] Colombos asserts that the freedom of the sea did not exist at all in the Mediterranean between the eleventh and the sixteenth century (the period of the Crusades, and the establishment of Turkish power in Constantinople, as well as the rivalry between Italian cities).[23]

At first, the pretensions of the newly formed states related only to the parts of the sea along their shorelines. However, with the increase of political power, especially economic prosperity and the technical development at the end of that period, when even the remote maritime areas became accessible, the growing tendencies of their appropriation appear. The content of authority of the new states, expanding simultaneously with these processes, was no longer limited to the performance of protective

[21] N. KATIČIĆ, 1953, 24–25.
[22] E. D. BROWN, 1997, 169; cf.V. IBLER, 2001, 27.
[23] J. COLOMBOS, 1959, 45.

Poput rimskih prethodnika, i vladari Bizanta morske prostore smatrali su područjima nad kojim se ostvaruje cjelokupna carska vlast. Stoga nikakvih posebnih pravila o morskim prostorima još nije bilo. Za razliku od ostalih dijelova tadašnje Europe, istočni carevi nastavili su rimsku ideju univerzalizma, iako na znatno ograničenijem prostoru i usprkos velikim promjenama u snazi Carstva.[25] Upravo stoga iz mora kao cjeline još nije bilo izdvojeno obalno područje s posebnim pravnim statusom, iako je već bilo ograničenja u ribolovnim odnosima poput onih u pravnom poretku Grčke.[26]

Novele cara Leona iz 9. stoljeća odbacile su pravilo rimskog prava da obalni vlasnik ne smije trećima braniti ribolov ni *ante aedes* – pred svojom kućom na obali. Tim vlasnicima odobravalo se da ribolov obavljaju stalnim napravama sve do određene udaljenosti od obale čime je dakle napušteno načelo da je more *in usu communis*. Takve tendencije postupno su se prenijele i na područje vlasti države nad morem pa bizantsko, a kasnije i turško zakonodavstvo dopuštaju ribolov i vađenje soli samo svojim podanicima. Iskorištavanje morskih bogatstava strancima se dozvoljavalo jedino temeljem posebnih privilegija.[27]

Od početka 9. stoljeća u Europi sve više počinje prevladavati mišljenje da su određeni dijelovi mora pod vrhovništvom pojedinih feudalnih vladara ili, uvjetno rečeno, „država".[28] Najčešće se smatralo da su dijelovi mora koji prodiru u unutrašnjost kopna ili su zatvoreni između kopna i otoka pod neograničenom vlašću obalne države.[29] Ipak, ti prvi začetci razvoja današnjeg prava mora nisu posvuda bili istovremeni i ravnomjerni.[30]

[25] Car Justinijan I. u 6. stoljeću poduzeo je posljednji pokušaj obnove jedinstvenog Rimskog Carstva osvojivši Italiju, veliki dio sjeverne Afrike, jugoistočni dio Španjolske te otoke Siciliju, Sardiniju, Korziku i Baleare. S Justinijanom je Sredozemno more ponovo postalo unutarnje more Carstva, a rimsko pravo opet je zavladalo kopnom i morem. Više v. N. KATIČIĆ, 1953, 40 i d.

[26] Ponovo su utvrđena isključiva prava ribolova pojedinaca, općina, svetišta i drugih ustanova. A. RAESTAD, 1913, 12.

[27] N. KATIČIĆ, 1953, 28; *Law and Society in Byzantium* 1994: 44 i d. O tadašnjim ribolovnim propisima u istarskim i dalmatinskim gradovima v. I. BEUC, 1986, 266.

[28] Feudalni vladari smatrali su da imaju pravo naplaćivati pristojbe za ribolov u „svome" moru.

[29] Ti dijelovi mora *inter fauces terrarum* (u ždrijelu kopna) – luke, zaljevi, ušća rijeka i dijelovi mora zatvoreni između razvedenih obala i otoka, prema suvremenom pravu mora prostori su unutarnjih morskih voda.

[30] Brown tvrdi da se prvi tragovi današnjeg prava mora mogu

functions, but was manifested by the prohibition of navigation and the prohibition of exploiting sea resources by foreigners.[24]

Like their Roman predecessors, the rulers of Byzantium also considered the marine spaces to be the areas over which the full power of the empire was exercised. Therefore, no special rules regarding the marine spaces existed at the time. Unlike other parts of Europe, the eastern emperors upheld the Roman idea of universalism, even though in significantly reduced territory and despite substantial changes in the strength of the Empire.[25] Owing to this reason, the coastal area with a particular legal status was not yet separated from the sea as a whole, although some restrictions in fishing relations had already existed, such as those found in the legal order of Greece.[26]

The Novels of the emperor Leo from the 9th century, discarded the rule of the Roman Law according to which the owner of the coast cannot prohibit the third party from fishing, not even *ante aedes* – in front of his house. These owners were allowed fishing by the usage of permanent devices up to a certain distance from the coast, whereby the principle that the sea is in *usu communis* was abandoned. These tendencies gradually also spread to the domain of the state power over the sea, with first Byzantine and then Turkish legislation granting only their subjects the right to fish and harvest salt. Foreigners were allowed to exploit the sea only based on special privileges.[27]

From the beginning of the 9th century, the opinion that certain parts of the sea are under the rule of individual feudal lords, or so-called "states",[28] starts to prevail in Europe. The parts of the sea protruding

[24] N. KATIČIĆ, 1953, 57–58.

[25] In the 6th century, Emperor Justinian I made one final attempt to restore a unified Roman Empire by conquering Italy, a large portion of northern Africa, southern-east Spain and the islands of Sicily, Sardinia, Corsica and the Balearic Islands. At the time of Justinian, the Mediterranean Sea again became the internal sea of the Empire, and the Roman Law was again applied over land and the sea. For more information see N. KATIČIĆ, 1953, 40 ff.

[26] The exclusive fishing rights of individuals, municipalities, temples and other institutions were reestablished. A. RAESTAD, 1913, 12.

[27] N. KATIČIĆ, 1953, 28; *Law and Society in Byzantium* 1994: 44 ff. On the fishing regulations in Istrian and Dalmatian towns of that time see I. BEUC, 1986, 266.

[28] Feudal lords believed they had the right to charge fishing fees in "their" sea.

Neke države smatrale su da imaju određenu vlast i nad mnogo širim dijelovima mora ispred svojih obala, a tijekom 10. stoljeća nekoliko je jakih pomorskih država započelo isticati svoje zahtjeve za vlašću nad čitavim morima. U Sredozemnom moru pretenzije slične tadašnjim zahtjevima Danske i Engleske[31] imali su sve snažniji talijanski gradovi-države Genova, Venecija, Pisa i Amalfi. Genova je prisvajala vlast nad Lionskim zaljevom i Ligurskim morem, a postoje i povijesni dokazi da joj je ta vlast bila priznata, što joj je omogućilo monopol u trgovini i plovidbi ispred francuskih obala. Naime, grof Raymond od Toulousea 1174. godine Genovi je i formalno dodijelio monopol na prijevoz robe uzduž francuske obale od zapadne granice Genove do Narbone.[32] Sredinom 12. stoljeća Genova je proširila svoju trgovačku nazočnost i ispred afričkih i levantskih obala (Egipta, Maroka i Sirije) te Sicilije. Pobijedivši flotu Pise u velikoj pomorskoj bitki kod Melorije 1284. godine, Genova je prisvojila Korziku, Sardiniju i Elbu te postala „la Dominante", odnosno vladarica zapadnog Sredozemlja.[33] Nakon učvršćenja svoje vlasti u grčkom arhipelagu i Mramornom moru, Genova je započela nadzirati i važan pomorski put iz Sredozemlja u Crno more.

Uz stvaranje uporišta u istočnom Sredozemlju, Venecija je već u 11. stoljeću započela i borbe za svoju prevlast nad Jadranskim morem. Orijentirajući svoju trgovinu na istočne sredozemne obale, morala je za svoje brodove osigurati slobodu plovidbe Jadranom.[34] Od pape Aleksandra III. isposlovala je 1177. godine priznanje njezina tobožnjeg prava na to more, koje je svojatala čitavo vrijeme svoje vladavine, nazivajući ga prema rimskoj tradiciji *Mare Venetorum* ili *Golfo di Venezia*. Nakon

naći tek na izmaku kasnog srednjeg vijeka. E. D. BROWN, 1997, 169.

31 Danska je isticala svoje zahtjeve za vlast nad Baltikom, a Engleska je svojatala mora oko Britanskih otoka. Već u 10. stoljeću engleski kralj Edgar pridavao je sebi naslov vladara Britanskog oceana („Sovereign of the Britannic Ocean"). Više v. J. COLOMBOS, 1959, 45, 49; W. G. GREWE, 2000, 131.

32 U. LEANZA, 1993, 67–68; W. G. GREWE, 2000, 130–131.

33 O povijesti Genove kao pomorske sile v. Z. KLARIĆ, 2004, 192, 209.

34 Prvenstveno zbog njegove razvedenosti jer se plovidba u vrijeme jedrenjaka i brodova na vesla najčešće odvijala zaštićenim prolazima između obale i otoka. Gospodar tih prolaza vladao je do neke mjere i plovidbom između Jadrana i istočnog dijela Sredozemnog mora. N. KATIČIĆ, 1953, 41.

to the inland or enclosed between the shore and the islands were usually considered to be under unrestricted authority of the coastal state.[29] However, these inceptions of the development of the modern Law of the Sea were neither simultaneous nor uniform everywhere.[30]

Some states considered to have had a certain authority over much wider areas of the sea in front of their coasts, and in the 10th century several powerful coastal states started asserting their right of dominion over entire seas. In the Mediterranean Sea, the increasingly powerful Italian city-states of Genoa, Venice, Pisa and Amalfi had pretensions similar to those made by contemporary Denmark and England.[31] Genoa appropriated the Gulf of Lion and the Ligurian Sea, and historical evidence suggests its authority was recognized, allowing it to monopolize trading and navigation along the coast of France. That is, Count Raymond of Toulouse, formally granted Genoa a monopoly on the transportation of goods along the French coast, from the western border of Genoa to Narbonne, in 1174.[32] In the middle 12th century, Genoa expanded its commercial presence along the coasts of Africa, the Levant (Egypt, Morocco and Syria) and Sicily. Having defeated the fleet of Pisa in the great naval battle of Meloria in 1284, Genoa appropriated Corsica, Sardinia and Elba, becoming "la Dominante", i.e. the ruler of the western Mediterranean.[33] After consolidating its sovereignty in the Greek archipelago and the Sea of Marmara, Genoa also began to control the important maritime route from the Mediterranean to the Black Sea.

Along with the formation of its strongholds in the eastern Mediterranean, Venice had already in the

29 According to the modern Law of the Sea, such parts of the sea *inter fauces terrarum* (in the jaws of the land) − ports, bays, estuaries and areas of the sea enclosed between the indented shore and islands, are the spaces of internal waters.

30 Brown claims that the first origins of modern Law of the Sea cannot be found prior to the end of the Late Middle Ages. E. D. BROWN, 1997, 169.

31 While Denmark claimed power over the Baltic, England laid claim to waters around the British Isles. As early as the 10th century, English king Edgar proclaimed himself ("the Sovereign of the Britannic Ocean"). See more in J. COLOMBOS, 1959, 45, 49; W. G. GREWE, 2000, 131.

32 U. LEANZA, 1993, 67−68; W. G. GREWE, 2000, 130−131.

33 About history of Genoa as a maritime power see Z. KLARIĆ, 2004, 192, 209.

pada Bizanta, kada je postala prva pomorska sila Sredozemlja, otvoreno je istupila sa zahtjevom za samostalnim gospodarenjem cijelim Jadranskim morem,[35] od kojeg nije odustajala sve do svoje propasti krajem 18. stoljeća, iako nikada nije posjedovala sve njegove obale.[36]

Za razliku od Rima i Bizanta koji su svoju moć na moru temeljili na vlasti koju su imali nad njegovim obalama, Venecija nije imala takvog uporišta zbog stalnih sukoba s ostalim državama na Jadranu.[37] Gospodstvo nad samo pojedinim dijelovima obale nije joj davalo temelj za vlast nad čitavim morem. Svoj *dominium* i *imperium* na moru[38] ostvarivala je zahvaljujući svojoj politici stvaranja sustava brojnih utvrđenih luka te skladišta oružja i hrane, strogo podređenih svojim trgovačkim interesima. Ugovorima s državnim tvorevinama na teritoriju nekadašnjeg Bizantskog Carstva Mlečani su osiguravali i svoju dominaciju na Levantu, gdje u to vrijeme, osim Genove, nisu imali ozbiljnijeg takmaca. Prema nekim autorima, sporazumi koje je Venecija zaključivala s carevima Ottom IV. 1209. i Friedrichom II. 1220. godine mogli bi ukazivati na priznanje njezinih prava, iako su mišljenja u doktrini oko toga podijeljena.[39]

[35] Katičić ističe da je Venecija Jadran „dotad prisvajala pod plaštem bizantskog vrhovništva i na temelju pravnog naslova careve vlasti". N. KATIČIĆ, 1953, 53. Usp. L. MARGETIĆ, 1997, 133–135.

[36] Sve što se odnosi na venecijansku politiku u svrhu uspostavljanja i obrane njezine dominacije nad Jadranskim morem profesor zagrebačkog Pravnog fakulteta akademik Natko Katičić temeljito istražuje s pravnog i političkog aspekta u svom opsežnom djelu *More i vlast obalne države* iz 1953. godine. Budući da je hrvatska pravna doktrina tim djelom dobila odgovore na sva važna pitanja vezana uz razdoblje mletačkih posezanja za Jadranom, u ovome radu ta pitanja neće se detaljnije razmatrati.

[37] Budući da su vladali znatnim dijelovima istočne jadranske obale, hrvatski vladari imali su i vlast na moru pred svojim obalama. Uz dužnosti, osobito u suzbijanju otimačina na moru, imali su i prava, primjerice ubiranja poreza radi gradnje brodova i držanja vojnih posada koje su pružale zaštitu pomorcima. U povijesnim razdobljima u kojima je Venecija plaćala danak Hrvatima radi slobodne plovidbe Jadranskim morem većih sukoba nije bilo. V. više D. RUDOLF, ml. 1996, 445–449; N. KATIČIĆ, 1953, 40–43, 51–52.

[38] Pod izrazom *dominium* u rimskom pravu podrazumijevalo se rimsko civilno vlasništvo kao potpuna i isključiva vlast na tjelesnoj stvari. Izraz *imperium* označavao je ovlaštenje viših magistrata u doba republike, odnosno cara od principata dalje, da mogu u obavljanju svoje funkcije poduzimati različite mjere, donositi akte i kažnjavati. Prema A. ROMAC, 1975, 165–166, 229–230. O problemu srednjovjekovnog vlasništva v. Ž. BARTULOVIĆ, 1997, 54–56.

[39] W. G. GREWE, 2000, 129.

11th century started its struggles for dominion over the Adriatic. Focusing its trade on the eastern Mediterranean shores, it had to ensure the freedom of navigation in the Adriatic Sea for its ships.[34] In 1177, it obtained the recognition of its quasi-right to that sea from Pope Alexander III, which it continued to usurp throughout its reign, calling it, according to the Roman tradition, *Mare Venetorum or Golfo di Venezia*. After the fall of Byzantium, which made it the strongest maritime power in the Mediterranean, Venice openly asserted its claim for sole dominion over the entire Adriatic Sea,[35] which it refused to relinquish until its fall in the late 18th century, in spite of never having exercised control of all its shores.[36]

In contrast to Rome and Byzantium which based their power at sea on the dominion they had over its shores, Venice did not have such base due to continuous confrontations with other Adriatic states.[37] Dominion over only particular parts of the coast did not provide the authority to rule the entire sea. Its *dominium* and *imperium* at sea[38] were reali-

[34] Primarily due to its indented coast, because protected passages between the coast and the islands were the most frequently used navigation routes at the time when vessels were propelled by sail or oars. The sovereign of these passages, also to some extent, controlled navigation between the Adriatic and the eastern Mediterranean. N. KATIČIĆ,1953,41.

[35] Katičić emphasizes that „Venice had previously appropriated the Adriatic under the guise of Byzantine authority and based on the legal title of the power of the Emperor." N. KATIČIĆ, 1953, 53. Cf. L. MARGETIĆ, 1997, 133−135.

[36] Professor at the Zagreb School of Law, Natko Katičić, explores everything pertaining to the Venetian policy aiming to establish and defend its domination over the Adriatic in detail, from both the legal and the political standpoint, in his comprehensive work *More i vlast obalne države* from 1953. Since it provided the Croatian legal doctrine with answers to all important questions relating to the period of Venetian dominion over the Adriatic, these issues will not be dealt with in more detail in this paper.

[37] Since they had the power over large parts of the eastern Adriatic coast, the rulers of Croatia had dominion over waters along their shores. Apart from responsibilities, especially the prevention of piracy, they also had rights, e.g. the right to impose taxes to build ships and keep military garrisons which protected seafarers. There were no major confrontations at the time when Venice paid tribute to the Croats to be allowed free navigation in the Adriatic Sea. For more information see D. RUDOLF, Jr. 1996, 445−449; N. KATIČIĆ, 1953, 40−43, 51−52.

[38] In Roman Law, the term *dominium* refers to the Roman civil ownership as full and exclusive power over a physical item. The term *imperium* marked the authority of the higher magistrates in the time of the Republic, i.e. of the Emperor from the Principate on, in the performance of their function, the ability to take different measures, enact legislation and punish. According to A. ROMAC, 1975, 165−166, 229−230. Regarding the issue of ownership in the Middle Ages see Ž. BARTULOVIĆ, 1997, 54−56.

Kao oblik iskazivanja venecijanske vlasti nad morem valja spomenuti i svečanost „vjenčanja" mletačkog dužda s Jadranskim morem koja se održavala svake godine na blagdan Uznesenja. Toj ceremoniji, prilikom koje je dužd svečano bacao zlatni prsten u more – kao znak istinske i trajne vladavine (*desponsamus te mare in signum veri perpetuique dominii*), nazočni su bili i veleposlanici mnogih stranih kršćanskih država, izražavajući na taj način slaganje s vlašću Venecije u Jadranskom moru.[40]

Uz gospodstvo na Jadranu i zapadnim obalama Grčke, tijekom križarskih ratova Venecija je stekla i vlast nad svim otocima i trgovački najvažnijim uporištima Bizantskog Carstva – na Sporadima, Cikladima, Cipru i u Maloj Aziji, a od cara je dobila kao ustupak i prostran dio samog Carigrada. Osvajanjem mreže luka koje su joj osiguravale podršku u trgovini s Levantom te vlašću nad velikim pomorskim bazama smještenim točno nasuprot islamskog svijeta – Krfom i Kretom, Venecija je organizirala svoje trgovačko djelovanje širom Sredozemlja u svojoj *Stato di mare*.[41]

Arapi koji su zavladali znatnim dijelom sredozemnih obala, od Levanta i sjeverne Afrike do Pireneja, već su od sredine 7. stoljeća započeli ugrožavati slobodnu plovidbu između južnih i sjevernih luka Sredozemlja. Napadali su brodove pljačkajući terete te često odvodeći posadu i putnike u roblje. Suočeni s tim problemima, talijanski gradovi-države započeli su pružati zaštitu trgovačkim brodovima. Zauzvrat su tražili da im se prizna vrhovništvo nad morima koja su se protezala uz njihove obale te da im strani brodovi dok plove tim morima plaćaju obvezne pristojbe. [42]

Takve namete najprije je uvela Venecija radi pokrivanja troškova brodova koji su nadzirali sigurzed through its policy of establishment of a system of numerous fortified ports, as well as arm and food warehouses, strictly serving its commercial interests. By the agreements with state entities in the territory of the former Byzantine Empire, Venetians ensured their dominion in the Levant, in which at that time, they had no serious rival except Genoa. According to some authors, the agreements that Venice concluded with the Emperors Otto IV in 1209 and Friedrich II in 1220, may indicate the recognition of its rights, although opinion is divided on this in the doctrine.[39]

It is also worth mentioning the celebration of the "wedding" of the Doge of Venice with the Adriatic Sea, held on Ascension day each year, as a form of expressing Venice's maritime dominion. The ceremony, during which the Doge would solemnly throw the wedding ring into the sea as a sign of true and lasting governance (*desponsamus te mare in signum veri perpetuique dominii*), was attended by ambassadors of many foreign Christian nations, demonstrating in this way their approval with the maritime dominion of Venice in the Adriatic.[40]

During the crusades, apart from sovereignty over the Adriatic and the western coast of Greece, Venice also obtained dominion of all the islands and the most important strongholds of commercial activities of the Byzantine Empire – the Sporades, the Cyclades, Cyprus and Asia Minor, even gaining a sizeable portion of Constantinople from the Emperor as a concession. Venice organized its trading throughout the Mediterranean in its *Stato di mare* [41] by conquering a network of ports that supported its trading with the Levant, and establishing dominion over large maritime bases situated directly opposite the Islamic world – Corfu and Crete.

The Arabs, who controlled a significant part of the

[40] W. G. VITZTHUM, 2002, 6–7; M. ZORIČIĆ, 1953, 7–8.

[41] Najistaknutiji zagovaratelj zahtjeva Venecije za dominacijom nad Jadranskim morem bio je teolog, povjesničar i savjetnik Venecijanske Republike Paolo Sarpi. Njegova osnovna teza bila je da je dominij u Jadranu iskonsko prirodno pravo Venecije jer „nije stečen, nego je nastao zajedno sa samom Republikom, sačuvan je i proširen snagom oružja i utvrđen običajem starijim od svakog pamćenja". Njegovi argumenti najsustavnije su izloženi u djelu *Dominio del Mar Adriatico della Serenissima Repubblica di Venezia*. Prikaz njegovih radova v. T. SCOVAZZI, 2002, 23–27; N. KATIČIĆ, 1953, 115–121; D. RUDOLF ml., 2004a, 135–138.

[42] M. ZORIČIĆ, 1953, 7; N. KATIČIĆ, 1953, 42–52.

[39] W. G. GREWE, 2000, 129.

[40] W. G. VITZTHUM, 2002, 6–7; M. ZORIČIĆ, 1953, 7–8.

[41] Theologian, historian and counsellor of the Republic of Venice, Paolo Sarpi, was the most prominent advocate of the Venetian claim for dominion over the Adriatic. His basic thesis was that the dominion over the Adriatic was the primordial natural right of Venice since it "was not acquired, but rather emerged simultaneously with the Republic, was preserved and expanded by the power of arms and established by a custom older than memory." His rationale is best explained in *Dominio del Mar Adriatico della Serenissima Repubblica di Venezia*. For an overview of his works see T. SCOVAZZI, 2002, 23–27; N. KATIČIĆ, 1953, 115–121; D. RUDOLF Jr., 2004a, 135–138.

nost plovidbe u područjima ispred njezine obale. S istim ciljem kasnije su njezini ratni ili naoružani trgovački brodovi krstarili i na pučini. Mlečani su stoga od 1269. godine za plovidbu sjevernim Jadranom unutar područja od Ravenne do Riječkog zaljeva tražili visoke naknade od stanovnika Trevisa, Padove, Ferrare, Ravenne, Bologne, Ancone, Genove, Pise i Sicilije, kao i od brodova koji su dolazili iz Levanta. Takvo ograničenje uzalud su pokušavale otkloniti Bologna i Ancona, čak i upotrebom oružja.[43] Uz pravo ubiranja raznih nameta i pristojbi, redarstvenu i kaznenu sudbenost, vlast Venecije uključivala je čak i blokadu tuđih luka radi osiguravanja monopola u područjima koje je smatrala važnima za svoje državne interese, poglavito trgovačke (primjerice, prijevoz komercijalno isplativih roba poput pamuka i soli). Učinke prevlasti Mlečana na moru talijanski pravnik Pacius sažeo je u pet točaka:

1. Dužd je jamčio sigurnost na moru, poglavito suzbijanjem gusarenja.
2. Štitili su stanovnike Venecije.
3. Kažnjavali su kriminalce koji su uhvaćeni na moru temeljem istog prava koje se primjenjivalo na kriminalce koji su uhvaćeni na kopnu.
4. Imali su pravo zabraniti plovidbu.
5. Mogli su naplaćivati putarine i naknade svim brodovima.[44]

Primjer Venecije kasnije su slijedile Genova i Pisa, uvodeći plaćanje pristojbi za plovidbu Ligurskim i Tirenskim morem. Tako je s vremenom ubiranje nameta od stranih brodova za plovidbu morem u prostorima pred obalama srednjovjekovnih država postalo legitimno.[45]

O uređenju odnosa u Sredozemnom moru u tom razdoblju istaknuti talijanski autor djela iz međunarodnog prava Umberto Leanza piše: „Pomorske republike zapravo su vršile radnje pomorske policije. Zahvaljujući njihovoj nazočnosti na moru,

[43] W. G. GREWE, 2000, 129–130; usp. V. IBLER, 1965, 18–19.

[44] Citat iz Paciusova djela – *De dominio maris Hadriatici disceptatio inter Sereniss. Regem Hispaniarum ob regnum Neapolitanum, et Sereniss* – naveden je prema W. G. GREWE, 2000, 130.

[45] R.-J. DUPUY – D. VIGNES 1991, 65; usp. H. S. KHALILIEH, 1998, 132. Lučke pristojbe plaćale su se i u senjskoj luci, što je 1257. godine uzrokovalo spor između dubrovačkih pomoraca i templara, v. Ž. BARTULOVIĆ, 1997, 25.

Mediterranean shore, from the Levant and north Africa to the Pyrenees, had already from the middle of 7th century started jeopardizing free navigation between the southern and northern Mediterranean ports. They were attacking ships, stealing cargo, and often taking both the crew and the passengers into slavery. Faced with these problems, the Italian city-states began offering protection to merchant ships. In return, they requested the recognition of their sovereignty over seas along their coastline, and payment of mandatory fees by foreign ships navigating in these seas. [42]

Such fees were first introduced by Venice to cover the cost of ships that controlled the safety of navigation along its coast. Its warships, or armed merchant ships later cruised the open sea with the same purpose. Thus, from 1269, the Venetians demanded high fees for navigating the northern Adriatic within a line drawn from Ravenna to the Gulf of Fiume from the inhabitants of Treviso, Padua, Ferrara, Ravenna, Bologna, Ancona, Genoa, Pisa and Sicily, as well as the ships arriving from Levant. Bologna and Ancona attempted in vain to ward off such constraints even by force of arms.[43] Along with the right to impose different fees, police and penal jurisdiction, the authority of Venice included the right to impose a blockade on foreign ports to ensure the Venetian monopoly in fields considered important for state interests, especially commercial interests (e.g. transportation of economically profitable goods like cotton and salt). The Italian jurist Pacius summarized the effects of Venetian maritime dominion in five points:

1. The Doges guaranteed safety on the sea, in particular through the suppression of piracy.
2. They protected the citizens of Venice.
3. They punished criminals who were captured on the seas on the basis of the same law which was applied to criminals who were captured in their territories on shore.
4. They had the right to prohibit navigation.
5. They could levy tolls and fees on all ships.[44]

[42] M. ZORIČIĆ, 1953, 7; N. KATIČIĆ, 1953, 42–52.

[43] W. G. GREWE, 2000, 129–130; cf. V. IBLER, 1965, 18–19.

[44] Quote from a work of Pacius – *De dominio maris Hadriatici disceptatio inter Sereniss. Regem Hispaniarum ob regnum Neapolitanum, et Sereniss* – according to W. G. GREWE, 2000, 130.

trgovačka plovidba bila je moguća bez izlaganja opasnosti.“ Čitava sredozemna zajednica imala je korist od tih aktivnosti, posebice u pogledu zaštite od napada pirata i korsara.[46]

Kada je između Venecije i Genove izbio rat za prvenstvo u levantskoj i crnomorskoj trgovini 1294. godine, bizantski car bio je na strani Genove pa se taj sukob pretvorio u venecijansko-bizantski rat. Potpisavši s Venecijom ugovor o „vječnom miru“, Genova se izvukla iz tog rata, a Bizant se pokorio tada nadmoćnoj Veneciji koja je iz toga sukoba izašla s novim kolonijama u Egeju i time postala neupitan gospodar istočnog Sredozemlja.

Venecija i Genova privremeno su imale i sveobuhvatnu kontrolu nad Crnim morem te Bosporom i Dardanelima, koja je bila zasnovana na širokoj mreži trgovačkih luka uzduž crnomorskih obala. Čak ni dolazak Turaka 1357. godine nije im uspio onemogućiti ulazak u područje tjesnaca. Takvo stanje nije se promijenilo sve do turskih osvajanja u 15. stoljeću i pada Carigrada 1453. godine. Crno more od tada postupno postaje zatvoreno tursko more opkoljeno kopnom te potpuno nedostupno kršćanima koji su plovili u obližnjim područjima Sredozemnog mora.[47] Posebno valja istaknuti da cilj ostvarivanja vlasti na moru tadašnjih sredozemnih država ipak nije bio vezan uz veličinu morskih prostora, nego prvenstveno uz nadzor plovnih putova i osiguravanje slobodnog odvijanja trgovine.[48] Stoga tada još nisu zaključivani nikakvi ugovori o granicama na moru, nego brojni ugovori o pomorskoj trgovini.

Uz ugovor s Pisom, Dubrovnik je između 1148. i 1203. godine zaključio niz takvih ugovora s jadranskim gradovima – Barijem, Molfettom, Ravennom, Fanom, Anconom, Monopolijem i Termolijem. Također, tijekom 12. stoljeća sklopljeni su i ugovori Dubrovnika s Rovinjom, Kotorom i omiškim Kačićima.[49] U području Jadrana iz

Genoa and Pisa later followed Venice's lead, introducing tributary fees for the navigation over the Ligurian and Tyrrhenian Seas. In time, imposed tributary fees on foreign ships navigating the waters along the coasts of medieval states became legitimate.[45]

A distinguished Italian expert in international law, Umberto Leanza, writes about the regulation of relations in the Mediterranean Sea at the time: „Maritime republics essentially performed the functions of maritime police. Owing to their presence at sea, merchant navigation was possible without exposure to danger.” The whole Mediterranean community had the benefit of these activities, especially with regard to protection from pirate or corsair attack.[46]

When the war between Venice and Genoa over trading supremacy in the Levant and the Black Sea started in 1294, the Emperor of Byzantium sided with Genoa, transforming the confrontation into the Byzantine-Venetian War. Having signed a treaty with Venice on “eternal peace”, Genoa withdrew from the war and Byzantium yielded to Venice, who was superior at the time. Venice got out of the conflict with the new colonies in the Aegean, becoming the undisputed ruler of the eastern Mediterranean.

The Venetians and Genoese temporarily exercised comprehensive control over the Black Sea, the Bosphorus and the Dardanelles. This control was based on an extensive network of commercial trading ports along Black Sea coast. Not even the arrival of the Turks in 1357 had succeeded banning them from entering the Straits. It was not until the Turkish conquests of the fifteenth century and the fall of Constantinople in 1453 that the picture changed. From that time, the Black Sea gradually became a closed Turkish land-locked sea, which was no longer accessible to Christians navigating in the

[45] R.-J. DUPUY – D. VIGNES 1991, 65; cf. H. S. KHALILIEH, 1998, 132. Port dues were also charged in the port of Senj, which led to dispute between Dubrovnik seafarers and Templars in 1257, see Ž. BARTULOVIĆ, 1997, 25.

[46] U. LEANZA, 1993, 68. It should be noted that the term *corsair* is a name for a privately-owned armed ship (together with its commander and crew) which, at times of war, based on a special authorization of a ruler or a government, participated in war against an enemy, especially against its merchant fleet, by exercising the right to the seizure of the spoils of war. *The Paris Declaration Respecting Maritime Law* of 1856, prohibited this manner of warfare. According to V. IBLER, 1987, 140−141; M. ZORIČIĆ, 1953, 16.

[46] U. LEANZA, 1993, 68. Valja napomenuti da je pojam *korsar* naziv za naoružani brod (također i za zapovjednika i posadu) u privatnom vlasništvu koji je u doba rata, na osnovi posebnog ovlaštenja vladara ili vlade, sudjelovao u ratu protiv neprijatelja, posebice protiv njegove trgovačke mornarice, vršenjem prava ratnog plijena. *Pariškom pomorskom deklaracijom* iz 1856. godine takav način ratovanja je zabranjen. Prema V. IBLER, 1987, 140–141; M. ZORIČIĆ, 1953, 16.

[47] W. G. GREWE, 2000, 130.

[48] Usp. N. KATIČIĆ, 1953, 30.

[49] *Pomorska enciklopedija*, 1975, 265–266; B. KOJIĆ – R.

tog vremena poznat je i ugovor između Venecije i Brindisija (1199.), a zaključivali su se i ugovori o pomorskoj trgovini s vladarima vrlo udaljenih područja (poput ugovora Venecije sa švedskim i normanskim kraljevima iz 1125., 1155. i 1232. godine). U zapadnom dijelu Sredozemlja takvi su ugovori sklopljeni između Pise i Gaete (1214.), Pise i Tunisa (1157., 1186. i 1313.), Genove i Barcelone (1146.) te Genove i Marseillea (1211. i 1229. godine).[50] Iz tog doba potječe i jedan od najstarijih zbornika pomorskog prava, poznat kao „Konzulat mora" (*Consolato del mare, Consulatus maris*), nastao oko 1370. godine prvenstveno radi jamčenja nesmetane trgovine Sredozemnim morem. Temeljem te zbirke lokalnih statuta i običaja, prešutno prihvaćene širom Sredozemlja, rješavali su se sporovi pred sudcima – konzulima u tadašnjim velikim pomorskim središtima. Njime je također bilo propisano da zaraćena država, koja je uhitila neprijateljski brod, mora vratiti neutralnu robu koja se na njemu nalazi.[51]

Među primjere ostvarivanja državne vlasti u morskim prostorima pred njihovim obalama svakako valja ubrojiti i primjenu propisa o zaštiti zdravlja iz 14. i 15. stoljeća, kada su se u Sredozemlju pojavile opasne zarazne bolesti. Tako je radi zaštite od prenošenja kuge 1377. godine Dubrovnik, prvi na istočnom Jadranu, uveo karantenu na otočićima ispred Cavtata,[52] a Venecija je primjenjivala propise o petnaestodnevnoj karanteni za sve brodove koji su dolazili iz pravca Levanta. Slične odredbe radi zaštite od kolere i žute groznice primjenjivane su u Genovi 1467., Mallorci 1471. te u Marseilleu 1476. godine.[53]

U tadašnjim državama oko Sredozemnog mora pojam obalnih voda razvio se u skladu s učenjima tadašnjih pravnika kao prostor nadležnosti obalne

BARBALIĆ, 1975, 48–50.

50 R.-J. DUPUY – D. VIGNES 1991, 83.

51 R. P. ANAND, 1983, 11–12; R. J. DUPUY – D. VIGNES, 1991, 63; W. G. VITZTHUM, 2002, 6; H. BOOYSEN, 2003, 188.

52 Prema odluci Velikog vijeća Dubrovnika nitko tko je dolazio iz zaraženih krajeva nije smio ući u grad prije nego što provede mjesec dana na tim pustim otocima. Brodovi koji su dolazili iz zaraženih krajeva morali su se zadržati mjesec dana ispred Dubrovnika prije nego što im je bilo dopušteno da uplove u luku. B. KOJIĆ – R. BARBALIĆ, 1975, 59.

53 R.-J. DUPUY – D. VIGNES, 1991, 65; M. ZORIČIĆ, 1953, 13–14; C. EXTAVOUR, 1979, 14.

nearby areas of the Mediterranean Sea.[47] It should be emphasized that the goal of establishing authority over the sea of Mediterranean states of that time was not related to the extent of maritime areas, but primarily to the control of waterways and insurance of the freedom of trade.[48] Hence, at the time, no agreements on maritime boundaries were yet concluded, but numerous treaties concerned with commercial maritime interests were signed.

In addition to the agreement with Pisa, Dubrovnik concluded a number of such agreements with the Adriatic cities between 1148 and 1203 − with Bari, Molfetta, Ravenna, Fano, Ancona, Monopoli and Termoli. During the 12th century, Dubrovnik also concluded agreements with Rovinj, Kotor and Kacici of Omis.[49] In the Adriatic, from that time, there is a known agreement between Venice and Brindisi (1199). Closely related treaty types were also concluded even with the sovereigns of cities and regions geographically more distant from one another (as was the case with a series of agreements linking Venice to the Swedish and Norman kingdoms from 1125, 1155 and 1232). In the western part of the Mediterranean, such treaties were concluded between Pisa and Gaeta (1214), Pisa and Tunis (1157, 1186 and 1313), Genoa and Barcelona (1146) and Genoa and Marseilles (1211 and 1229).[50] From that time also dates one of the oldest maritime law codes, known as the "Consulate of the sea" (*Consolato del mare, Consulatus maris*), created around 1370, primarily to guarantee undisturbed trade in the Mediterranean Sea. Based on that codex of local statutes and customs, tacitly recognized throughout the Mediterranean, disputes were resolved before the judges − consuls in the large maritime cities of the time. It also stipulated that a belligerent state that seized an enemy ship was obligated to return any neutral goods found on the ship.[51]

Among the examples of exercising the state power over marine spaces in front of their shores, should certainly be noted the enforcement of health regu-

47 W. G. GREWE, 2000, 130.

48 Cf. N. KATIČIĆ, 1953, 30.

49 *Pomorska enciklopedija*, 1975, 265−266; B. KOJIĆ − R. BARBALIĆ, 1975, 48−50.

50 R.-J. DUPUY − D. VIGNES 1991, 83.

51 R. P. ANAND, 1983, 11−12; R. J. DUPUY − D. VIGNES, 1991, 63; W. G. VITZTHUM, 2002, 6; H. BOOYSEN, 2003, 188.

države, odnosno *districtus* (iz čega je za vlast države na moru i nastao naziv – *jurisdikcija*).[54] Pravni pisci 14. stoljeća uglavnom su dijelili zajedničko stajalište da teritorij grada koji je smješten na moru obuhvaća i određene površine mora. O mjerilima za granice tog dijela mora pod vlašću obalne države postojala su međutim različita gledišta.

Uz *crtu sredine*, kao mjera za morske granice ponekad se isticala i *granica dogleda*, koja se potom pretvarala u određenu udaljenost (najčešće do 14, ali ponekad i do 21 milje od obale).

Odgovor na pitanje o dosegu toga *districtusa*, odnosno jurisdikcije obalne države, pokušao je dati i jedan od najznamenitijih pravnika tog vremena – postglosator *Bartolus de Saxoferrato* (1314. – 1357.) u svojem djelu *Tractatus de insula*. Pozivajući se na rimsko pravo po kojem su otoci na „umjerenoj udaljenosti" od neke provincije potpadali pod jurisdikciju te provincije te ističući kao umjerenu udaljenost dva dana plovidbe od obale, Bartolus je priznao obalnoj državi pravo jurisdikcije u prostoru širokom čak 100 talijanskih milja ili 150 kilometara. Njegovo mišljenje bilo je prihvaćeno i u teoriji i u praksi, a podržavali su ga i španjolski, talijanski te francuski pisci kroz sljedeća četiri stoljeća.[55]

3. RAZDOBLJE OD POČETKA NOVOG VIJEKA DO 20. STOLJEĆA

U pogledu uređenja pravnih odnosa na moru tradicionalni pojmovi srednjeg i novog vijeka predstavljaju dva bitno različita razdoblja. Vremenska granica između njih istinska je prekretnica jer se oko 1500. godine, nakon velikih zemljopisnih otkrića, temeljito mijenja gospodarska struktura tadašnje Europe te otvaraju novi plovidbeni putovi.

Španjolska i Portugal nakon otkrića Amerike ističu svoje zahtjeve za vlašću nad čitavim oceanima, zajedno s otkrivenim i prisvojenim područjima na kopnu. Te njihove neumjerene zahtjeve

[54] *Jurisdikcija* se u međunarodnom pravu najčešće definira kao ostvarivanje određene sudske, upravne i policijske vlasti na nekom području ili predmetu. V. npr. I. BROWNLIE, 2003, 105–106; V. IBLER, 1987, 116.

[55] W. G. GREWE, 2000, 132; usp. i A. RAESTAD, 1913, 14–16; S. A. SCHWARZTRAUBER, 1970, 22; M. ZORIČIĆ, 1953, 13.

lations in the 14th and 15th centuries, when severe infectious diseases began to spread across the Mediterranean. In order to prevent the spreading of plague, in 1377, Dubrovnik was the first in the eastern Adriatic to introduce quarantine on the islets in front of Cavtat,[52] and Venice enforced regulations of a 15-day quarantine for all ships arriving from the direction of the Levant. Similar measures, designed to control the spread of cholera and yellow fever, were adopted by Genoa in 1467, Mallorca in 1471 and Marseilles in 1476.[53]

Under the influence of the teachings of contemporary jurists, in the states around the Mediterranean Sea of that time, the concept of coastal waters as zones under the control of the respective coastal state, i.e. as *districtus*, (according to which the authority of a state at sea is called − *jurisdiction*)[54] was developed. The 14th century legal writers mostly held the position that the territory of a coastal city also encompassed certain parts of the sea. However, there were different views regarding the measures for the limits of that part of the sea under the jurisdiction of a particular coastal state.

Apart from the *median line*, the *line of sight* was sometimes used as the measure for the sea limits, which was then converted into a fixed distance (most frequently 14, and occasionally up to 21 miles from the coast).

In his work *Tractatus de insula* postglossator *Bartolus de Saxoferrato* (1314 − 1357) − one of the most famous and quoted jurists of the Middle Ages − made an attempt to resolve the reach of the districtus, i.e. jurisdiction of a coastal state. Referring to Roman Law, according to which islands at a "moderate distance" from a province fell under the jurisdiction of that province, wherein moderate distance was defined as two days of navigation from the coast, Bartolus recognized coastal states' jurisdiction in

[52] According to a decree of the Great Council of Dubrovnik, no one arriving from the infected areas was allowed to enter the city before spending a month on these deserted islands. Ships arriving from the infected areas were required to stay in front of Dubrovnik for 30 days, before they were allowed to enter the port. B. KOJIĆ − R. BARBALIĆ, 1975, 59.

[53] R. J. DUPUY − D. VIGNES, 1991, 65; M. ZORIČIĆ, 1953, 13−14; C. EXTAVOUR, 1979, 14.

[54] In international law, *jurisdiction* is most frequently defined as the exercise of certain judicial, administrative and police power over an area or an item. See e.g. I. BROWNLIE, 2003, 105−106; V. IBLER, 1987, 116.

oštro je kritizirao znameniti nizozemski pravnik *Hugo Grotius* (1583. – 1645.) u djelu *Mare liberum* objavljenom 1609. godine. U poglavlju pod naslovom „Niti Indijski ocean ni pravo plovidbe njime ne pripadaju Portugalcima na temelju okupacije" branio je načelo slobode plovidbe tvrdeći da je more neprikladno za fizičko prisvajanje pa ni jedan narod ne može nad njime steći posjed. Od toga pravila Grotius je izuzeo samo djeliće mora (*diverticula maris*) okružene sa svih strana kopnom, nad kojima je dopuštao čak i stjecanje privatnog vlasništva. U sustavnom djelu *De jure belli ac pacis* iz 1625. godine dopustio je vlasništvo i nad nekim zaljevima i tjesnacima, ako se posjeduje čitava obala. Grotiusovo učenje o slobodi mora prvotno je naišlo na snažne otpore, posebice u doktrini koja je opravdavala interese najjačih pomorskih država tog vremena.

U djelu *Mare clausum* iz 1635. godine engleski pisac *John Selden* (1584. – 1654.) branio je zahtjeve svoje zemlje nad morima koja su se protezala od obala Švedske do Španjolske tvrdeći da čak i veliki morski prostori mogu biti podvrgnuti teritorijalnoj suverenosti određene države te da je more slobodno sve dok ga netko ne okupira.[56] Borba između tih dviju doktrina i njihova ostvarivanja u praksi trajala je gotovo do kraja 18. stoljeća, snažno utječući na cjelokupan razvoj prava mora.

Sve te promjene nakon velikih otkrića snažno su se odrazile u Sredozemnom moru, koje gubi svoju stoljećima dugu dominantnu prometnu i trgovačku ulogu. Gradovi-države na njegovim obalama otada postupno ostaju bez geografskih i gospodarskih temelja svoje moći. Istovremeno na te prostore prodiru Turci, koji će uskoro kao nova sila zavladati velikim dijelom Sredozemlja.

Unatoč pobjedi oceanske plovidbe, Venecija, Genova, Pisa i Dubrovnik u početku toga razdoblja ipak još ne posustaju u svojim trgovačkim djelatnostima širom Sredozemlja, a pomorski pravci prema Levantu i nadalje imaju veliku važnost. Na otvaranje međunarodnoj trgovini novim

[56] Grotiusovo i Seldenovo učenje predmet su razmatranja u djelima brojnih autora, v. primjerice F. DE PAUW, 1965, 1–76; J. K. OUDENDIJK, 1970, 13–40; R. P. ANAND, 1983, 2–3, 77–88, 105–107; K. BOOTH, 1985, 12 i d.; D. RUDOLF ml., 2004b, 921–933; T. CLINGAN, 1994, 12–20.

the area to the extent of 100 Italian miles, i.e. 150 kilometers. His opinion was accepted both in theory and practice, and supported by Spanish, Italian and French authors over the next four centuries.[55]

3. THE PERIOD BETWEEN THE BEGINNING OF THE MODERN AGE AND THE 20TH CENTURY

With respect to the regulation of legal relations at sea, the traditional concepts of the Middle Ages and the Modern Age, represent two substantially different periods. The time limit separating them is a true milestone, since the great geographic discoveries and the consequent opening of new sea routes radically changed the economic structure of Europe around 1500.

After the discovery of America, Spain and Portugal claimed sovereignty over entire oceans, together with the discovered and appropriated territories on lands. Their excessive demands were strongly criticized by the renowned Dutch jurist *Hugo Grotius* (1583 − 1645) in his work *Mare liberum*, published in 1609. In the chapter titled "Neither the Indian Ocean nor the right of navigation thereon belongs to the Portuguese by the title of occupation", he advocated the principle of the freedom of navigation arguing that the sea was inappropriate for physical possession, and that no nation could have the ownership over it. From this principle Grotius excluded only small parts of the sea (*diverticula maris*) surrounded by land, over which he allowed private ownership. In his systematic work *De jure belli ac pacis* from 1625, he also allowed ownership over certain gulfs and straits, in case of the possession of the entire coast. Grotius's teachings on the freedom of the seas first encountered strong opposition, especially in the doctrine that justified the interests of the strongest maritime states of the time. In the work *Mare clausum* from 1635, English writer *John Selden* (1584 − 1654) defended the claims of his country over the seas extending from the coasts of Sweden to Spain, stating that even the extensive marine spaces can be subjected to territorial sovereignty of a state, and that the sea is only free un-

[55] W. G. GREWE, 2000, 132; cf. also A. RAESTAD, 1913, 14−16; S. A. SCHWARZTRAUBER, 1970, 22; M. ZORIČIĆ, 1953, 13;

plovidbenim pravcem za Indiju i Daleki istok u 16. stoljeću (oko Rta dobre nade) najbolje od svih sredozemnih gradova odgovaraju Venecija i Dubrovnik – pojačanom trgovačkom i diplomatskom aktivnošću.[57] Uz njih, od 17. stoljeća trgovinu s Levantom vode Marseille i Barcelona, a potom sve više nizozemski i engleski trgovački brodovi.

Budući da su prva tri stoljeća novog vijeka u području Sredozemlja bila obilježena čestim ratovanjima, i pravni pojmovi vezani uz obalna područja na moru[58] razvijali su se u velikoj mjeri kao pojmovi ratnog prava. Tako se i nekadašnja kaznena sudbenost u predmetu gusarenja pretvorila u ograničenje plijenovnog prava uz obale nezaraćenih država.[59]

Posebne promjene u dotadašnje uređenje odnosa u Sredozemnom moru unijela su španjolska osvajanja u Italiji. Španjolski ratni i trgovački brodovi koji su iz Napulja često dolazili u svoje baze u Jadranu s vremenom su započeli ugrožavati monopol koji je Venecija imala u tome moru. Venecija nije priznavala pravo uzapćenja turskih brodova koja su Španjolci vršili u Jadranskom moru sve do Krfa, a tvrdila je da njezini ratni brodovi imaju pravo uzapćivati turske brodove i u španjolskim vodama južne Italije, ako je progon započeo u Jadranu. Španjolci su u svrhu svoje obrane, uz iznošenje političkih argumenta, često osporavali i zakonitost venecijanske vlasti u Jadranskom moru. U oštroj polemici koja se u vezi s tim pitanjima razvila brojni talijanski pravnici odbacili su učenje o granici od 100 milja. Valja napomenuti da je ta morska granica u Italiji tada

[57] Ta dva središta pomorske aktivnosti bila su u stalnoj su međusobnoj borbi prikrivenoj učtivošću, ali ponekad i u otvorenom neprijateljstvu jer trgovina jednog grada raste ili pada na štetu odnosno korist drugoga. Kada je Venecija u prvoj polovici 16. stoljeća zaratila s Turskom, Dubrovnik je proširio svoju trgovinu i izgradio veliku i kvalitetnu trgovačku mornaricu. Kroz duga povijesna razdoblja Mlečani su ometali dubrovačku pomorsku trgovinu, o čemu više v. N. KATIČIĆ, 1953, 83–84.

[58] Valja spomenuti i prve dokumente koji upućuju na međunarodno-pravno reguliranje ribolova na istočnoj obali Jadrana. Spor zbog ribolova oko otoka Sušca iz 16. stoljeća, nakon duljih diplomatskih akcija, okončan je zaključkom mletačkog Senata kojim je priznato pravo ribarima Dubrovačke Republike da obavljaju ribolov u tome području. SAMBRAILO, 1958, 48–49.

[59] U 17. stoljeću pomorski ratovi bili su toliko učestali da je stanje rata bilo gotovo trajno, što je uvelike ometalo pomorsku trgovinu. N. KATIČIĆ, 1953, 156.

til someone occupies it.[56] The conflict between these two doctrines and their application in practice was not resolved almost until the end of the 18th century, strongly influencing the overall development of the Law of the Sea.

All these changes subsequent to the great discoveries had a strong impact on the Mediterranean Sea, which lost its centuries-long dominant role in transportation and commerce. City-states along its coasts gradually lost the geographic and economic bases of their power. At the same time, the Turks were invading this area, and soon dominated over a large part of the Mediterranean as a new force.

In spite of the experience in oceanic navigation, at the beginning of that time, Venice, Genoa, Pisa and Ragusa (Dubrovnik) did still not decrease their trading operations in the Mediterranean, and navigation routes towards the Levant continued to be of great importance. Of all the Mediterranean cities, Venice and Ragusa (Dubrovnik) had the best response to new navigation routes opening international trading with India and the Far East in the 16th century (around Cape of Good Hope) − by intensification of commercial and diplomatic activity.[57] Along with them, from the 17th century, Marseille and Barcelona also started trading with the Levant, and later on, Dutch and English merchant ships also join the trade.

Taking into account that the first three centuries of the Modern Age in the Mediterranean were marked by frequent warfare, the legal terms related to coastal areas of the sea[58] developed to a great extent as terms of the law of war. Former criminal law jurisdiction

[56] The teachings of Grotius and Selden are a subject of consideration in the works of a number of authors, e. g. F. DE PAUW, 1965, 1−76; J. K. OUDENDIJK, 1970, 13−40; R. P. ANAND, 1983, 2−3, 77−88, 105−107; K. BOOTH, 1985, 12 ff.; D. RUDOLF Jr., 2004b, 921−933; T. CLINGAN, 1994, 12−20.

[57] These two centers of maritime activity were in a continuous rivalry veiled by courteousness, but occasionally even openly hostile, due to the fact that the trade of one city was thriving or subsiding to the detriment or benefit of the other. When Venice waged war with Turkey in the first half of the 16th century, Ragusa (Dubrovnik) expanded its trade, building a large and valuable merchant navy. Over long historical periods, the Venetians were interfering with the maritime trade of Ragusa (Dubrovnik). For more information see N. KATIČIĆ, 1953, 83−84.

[58] The first documents indicative of international-legal regulation of fishing on the eastern Adriatic coast should also be mentioned. After protracted diplomatic interventions, the dispute over fishing around the island of Sušac from the 16th century was finally resolved with the decision of the Venetian Senate recognizing the right of the fishermen from the Republic of Ragusa (Dubrovnik) to fish in the area. SAMBRAILO, 1958, 48−49.

već bila široko prihvaćena, unatoč tome što nije bila u skladu s tehničkim mogućnostima toga vremena.[60]

Uz dotadašnje granice izvedene iz općih načela, postupno se sve više učvršćuje nova *granica dometa topa* za određivanje područja zaštićenog silom oružja, čime se radikalno umanjuju zahtjevi obalnih država u pogledu širine mora pod njihovom vlašću. Za takvu granicu prvi se zalagao nizozemski pravnik *Cornelius van Bynkershoek* (1673. – 1743.)[61] u djelu *De Dominio maris* iz 1702. godine. On je smatrao da se trajna vlast država nad morem može protezati samo do udaljenosti koja se može kontrolirati dometom topa.[62]

Od 16. stoljeća pa do druge polovice 18. stoljeća granica dometa topa primjenjivala se samo u sporovima o ratnom plijenu, a tek potom države u ugovorima započinju međusobno priznavati vlast nad morem do te granice. Velika Britanija zaključila je s Alžirom i Tunisom 1762. godine ugovore prema kojima je britanskim ratnim brodovima dopušteno vršenje plijenovnog prava protiv neprijateljskih brodova izvan dometa topova s njihovih obala, a ugovor Španjolske i Alžira iz 1786. ustanovljavao je granicu dometa topa samo za brodove u prolasku. Također, nekoliko je talijanskih državica izdalo deklaracije o neutralnosti za vrijeme Sjevernoameričkog rata za nezavisnost,[63] kojima se granica dometa topa uvodi odjednom u cijeloj Italiji. Takve izjave dali su veliki knez toskanski 1778. te papa, Genova i Venecija 1779. godine.[64]

over piracy was thus transformed into limitation of the right of seizure along the coasts of non-belligerent countries.[59]

Spanish conquests in Italy introduced particular changes to the previous regulations of relations in the Mediterranean Sea. In time, Spanish war and merchant ships frequently leaving Naples for their bases in the Adriatic, began to jeopardize the Venetian monopoly in that sea. Venice refused to recognize the Spanish right to seize Turkish ships in the Adriatic Sea up to Corfu, and claimed that its warships had the right to seize Turkish ships in the Spanish waters of southern Italy, in case persecution started in the Adriatic. In their defense, apart from presenting political arguments, the Spaniards frequently disputed the legitimacy of Venetian rule over the Adriatic Sea. In sharp polemics about these questions, a number of Italian jurists rejected the doctrine regarding the 100-mile maritime boundary, widely accepted in Italy in spite of exceeding the technological possibilities of the time.[60] Along with the former boundaries derived from general principles, the new *cannon shot boundary* was gradually becoming accepted for determination of area protected by fire-power, radically reducing the claims of the coastal states regarding the extent of the sea under their control. This type of boundary was first advocated by the Dutch jurist *Cornelius van Bynkershoek* (1673 − 1743)[61] in his work *De Dominio maris* from 1702. He held the position that the permanent dominion of states over sea could only extend to the distance that a cannon shot could reach

[60] Iako se granica od 100 milja održala u teoriji vrlo dugo (sve do 18. stoljeća), sa sigurnošću se može tvrditi da je u Sredozemnom moru u praksi vrijedila tijekom 16. stoljeća za brodove s tzv. „zaštitnim pismima" koje je izdavala obalna država. Opskrbljeni tim pismima, trgovački brodovi mogli su ploviti u okviru granice od 100 milja i u vrijeme rata, kao i u vrijeme mira. Bez tih pisama ostajali su bez imuniteta, osim ako se brod nije nalazio u nekoj luci. U. LEANZA, 1993, 69.

[61] Taj znameniti znanstvenik, branitelj gospodstva država nad morem, zadao je težak udarac mletačkim tezama tvrdeći da tobožnji dominij Venecije nad Jadranom nije pravno osnovan. Isticao je – ako je Venecija silom i okupirala dijelove mora, bez stvarnog i stalnog ostvarivanja vlasti, to nije dovoljno za održanje zakonitog posjeda. Za Bynkershoeka je upravo suprotno – ako druge izgonimo nepravednom silom, morali bismo se nazivati piratima, a ne gospodarima mora. Prema D. RUDOLF, ml. 1996, 449–450.

[62] Više v. T. SCOVAZZI, 2001, 68–70; W. G. VITZTHUM, 2002, 11–12; K. BOOTH, 1985, 15.

[63] Taj rat započet 1775. godine doveo je i do sukoba Velike Britanije s Francuskom, Nizozemskom i Španjolskom.

[64] T. SCOVAZZI, 2001, 70–71.

[59] Maritime warfare was such a common occurrence in the 17th century that the state of war was almost continuous, greatly interrupting the sea trade. N. KATIČIĆ, 1953, 156.

[60] Although the 100-mile boundary was maintained in theory for a long time (until the 18th century), it is certain that it was applied in practice to ships carrying so-called "letters of protection" issued by the respective coastal state, throughout the 16th century in the Mediterranean Sea. Carrying these letters, merchant ships could navigate within a 100 mile boundary both at times of war and times of peace. Without the letters, they were left without immunity, unless the ship was in a port. U. LEANZA, 1993, 69.

[61] This distinguished scholar, the advocate of the state dominion over the seas, severely struck the Venetian standpoints by claiming that the assumed dominion of Venice over the Adriatic has no legal basis. He emphasized that even if Venice had forcibly occupied parts of the sea, without actual and continuous exercising of power, it was insufficient to maintain legal possession. Bynkershoek's position was diametrically opposed − if we use unjustified force to expel others, we should call ourselves pirates, rather than masters of the sea. According to D. RUDOLF, Jr. 1996, 449–450.

Budući da su u to vrijeme artiljerije svih država bile približno jednake snage, prihvaćanje učenja o dometu topa kao granici državne vlasti na moru omogućavalo je laku i praktičnu orijentaciju. Ipak, domet topa nije bio općeprihvaćen kao stalna, određena mjera. Države su i nadalje različito određivale doseg svoje jurisdikcije na moru pa je Španjolska 1760. godine odredila granicu svoje vlasti na 6 milja od obale, a francusko-marokanskim ugovorom iz 1767. godine precizirano je da marokanski brodovi ne smiju krstariti uzduž francuske obale na udaljenosti bližoj od 30 milja. Ta uzajamna priznanja jednostranih pravnih akata i ugovori među tadašnjim državama u pravnoj doktrini ističu se kao prvi oblici međunarodnog zakonodavstva kojima je otvoren put izgradnje sustava morskih prostora i uređenja drugih odnosa na moru. [65]

Sve brojnije djelatnosti država na moru u to vrijeme zahtijevale su ustanovljavanje konkretnih granica i za druge funkcije državne vlasti na moru, izvan okvira zaštite od ratnih čina. Stoga se uskoro javila i zamisao da se domet topa pretvori u neku stalnu duljinu. Međutim, veliki problem predstavljala je činjenica da u 18. i 19. stoljeću još nije bilo jedinstveno prihvaćenih mjera. Osim milje koristile su se i druge mjere čija je duljina bila različita u pojedinim zemljama.[66]

Prvi prijedlog o stalnoj mjeri – *udaljenosti od tri milje* – iznio je 1782. godine u svome djelu o neutralnosti država u ratu talijanski pisac i diplomat *Fernando Galiani* (1728. – 1787.).[67] Budući da je taj njegov prijedlog uskoro prihvaćen od strane više država, ušao je u međunarodno pravo kao jedna od prvih granica morskog pojasa koji je kasnije dobio naziv – *teritorijalne vode* ili *teritorijalno more*.[68]

Mnoge sredozemne države ipak su i nadalje u

[65] N. KATIČIĆ, 1953, 132–133; M. D. EVANS, 2003, 623–624.

[66] Tako je 1 *lieu* ili *league* u Velikoj Britaniji i Francuskoj predstavljala 3 milje, a u skandinavskim zemljama 4 milje.

[67] Galiani navodi 3 milje kao najveću udaljenost do koje je moglo biti bačeno tane tada poznatom snagom baruta. V. T. SCOVAZZI, 2002, 28–30; M. ZORIČIĆ, 1953, 18–19; U. LEANZA, 1993, 70; W. C. EXTAVOUR, 1979, 15; W. G. GREWE, 2000, 410.

[68] Iako Galiani koristi upravo izraz „teritorijalno more“ (odnosno na tal. jeziku *mare territoriale*), taj će naziv postati općenito prihvaćen tek 1930. godine.

and thereby control.[62]

Between the 16th century and the second half of the 18th century, the cannon shot boundary was only used in disputes over the spoils of war. It was only after this period that the states started recognizing the authority over the sea up to that boundary by the agreements. In 1762, the United Kingdom concluded agreements with Algeria and Tunisia, according to which British warships were allowed to exercise the right of seizure against enemy vessels outside the range of cannons based on their shores, while the agreement between Spain and Algeria from 1786 established the cannon shot boundaries only to ships in transit. Also, several Italian states issued declarations of neutrality during the American War of Independence,[63] whereby cannon shot boundaries were simultaneously introduced throughout Italy. Declarations of this type were issued by the Grand Prince of Tuscany in 1778, and the Pope, Genoa and Venice in 1779.[64]

Since, at the time, all states had artilleries of roughly the same power, the acceptance of cannon range doctrine as a maritime state boundary enabled simple and practical orientation. Still, cannon range was not generally accepted as a constant, recognized measure. States continued determining the limits of their jurisdiction at sea in different ways, with Spain defining its jurisdiction extending 6 miles from its shores in 1760, and the French-Moroccan agreement from 1767 stipulating that Moroccan ships were prohibited from navigating along the French coast at a distance under 30 miles. In the legal doctrine, such mutual recognition of unilateral legal documents and state agreements is considered to be the first form of international legislation, paving the way to the establishment of the system of maritime zones and the regulation of other relations at sea. [65]

At that time, the growing number of maritime activities of the coastal states, demanded the establishment of specific boundaries for other functions of state authority at sea, outside the scope of protection against acts of war. Therefore, the idea of turning the cannon shot into some fixed distance soon appe-

[62] See more in T. SCOVAZZI, 2001, 68−70; W. G. VITZTHUM, 2002, 11−12; K. BOOTH, 1985, 15.

[63] That war, which started in 1775, led to the conflict of Great Britain with France, Netherlands and Spain.

[64] T. SCOVAZZI, 2001, 70−71.

[65] N. KATIČIĆ, 1953, 132−133; M. D. EVANS, 2003, 623−624.

svojim propisima predviđale različite morske granice s obzirom na različite funkcije svoje vlasti na moru – zaštitu neutralnosti, isključivi ribolov, kaznenu i drugu sudbenost, carinsku kontrolu i zdravstvenu zaštitu. Neke od njih određivale su širu granicu za pojas carinskog nadzora (unutar kojega su mogle sprječavati krijumčarenje) nego za pojas isključivog ribolova ili zonu zaštite neutralnosti.

Tako je Grčka uz pojas isključivog ribolova od tri milje, koji je ustanovila 1869. godine, odredila i carinsku granicu od 6 milja (zakonom iz 1901. godine). Francuska je 1888. godine zabranila strancima ribolov uz svoje obale u pojasu od tri milje računajući od crte niske vode,[69] a za pojas carinskog nadzora odredila je granicu od čak 20 kilometara.[70] Turska je za vrijeme rata s Italijom (1912. godine) obavijestila druge države da Solunski zaljev čini dio turskih unutarnjih voda te da turski pomorski teritorij obuhvaća pet milja računajući od obale. Pored toga, Turska je notom od 1. listopada 1914. ustanovila i granicu neutralnosti na moru od šest milja, a potom i carinski pojas od četiri milje. Također, ni Habsburška Monarhija, odnosno Austro-Ugarska,[71] nikada nije pozitivnim propisom ostvarila jedinstvenu granicu svoje suverenosti na moru.[72]

O tom razdoblju u razvoju prava mora Natko Katičić navodi:

„… teritorijalno more uistinu nastaje iz slijevanja praksom stvorenih i međunarodno priznatih pojedinačnih ovlaštenja države u susjednim dijelovima mora. Na koncu 18. stoljeća to slijevanje

ared. However, the additional problem was the fact that in the 18th and 19th centuries there were still no universally recognized measures. Apart from the mile, other measures were used, with varying distances in different countries.[66]

The first proposed fixed measure − *a three mile rule* − was proposed by Italian writer and diplomat *Fernando Galiani* (1728−1787) in his work on the neutrality of states at times of war from 1782.[67] Since his proposal was soon accepted by a number of states, it came to be known in international law as one of the first boundaries of the maritime belt later to be called − *territorial waters* or the *territorial sea*.[68]

However, in their regulations, many Mediterranean states continued to establish various maritime boundaries for different functions of their power at sea − protection of neutrality, exclusive fishing rights, criminal and other jurisdiction, customs control and health protection. Some states defined a wider boundary for customs control (within which they could prevent smuggling), than for the zone of exclusive fishing rights or for neutrality protection.

Thus, apart from establishing a three-mile exclusive fishing zone in 1869, Greece also defined a six-mile customs boundary (by the law of 1901). In 1888, France prohibited foreign citizens from fishing within a three-mile area from its coastline, measured from the low-tide line,[69] and for the belt of customs control defined the limit up to 20 kilometers.[70] During its war with Italy (1912), Turkey informed other countries that the Thermaic Gulf constituted a part of the internal waters of Turkey and that the Turkish marine

[69] U 19. stoljeću ribolov je postao važan činitelj u određivanju morskih granica, preuzimajući ulogu koju je u prethodnom stoljeću imala neutralnost i plijenovna sudbenost. Bilo je to vrijeme kad je napokon pobijedila teza da je ribolov u obalnom području rezerviran isključivo za stanovnike obalne države.

[70] Iako je granica pojasa carinskog nadzora tadašnjih obalnih država u Sredozemlju iznosila većinom 6 ili 9 milja, Francuska, Libanon i Sirija zahtijevali su granicu od 20 kilometara (nešto manje od 11 milja).

[71] Od 1867. godine.

[72] Carinska granica 1835. godine utvrđena je na udaljenosti od jedne austrijske milje, a od 1857. godine carinske straže mogle su obavljati pregled brodova unutar dometa topa, odnosno do granice od tri milje. Prema austrijskim propisima iz 1824. i 1835. godine pravo ribarenja do jedne morske milje od obale bilo je rezervirano isključivo za stanovnike obale. U službenom Pomorskom almanahu iz 1911. godine redovna teritorijalna granica Austro-Ugarske na moru određena je dometom topova koji je odgovarao trima morskim miljama računajući od najniže crte niskog mora.

[66] While 1 *lieu* or *league* meant 3 miles in the United Kingdom and France, it was regarded as 4 miles in the Scandinavian countries.

[67] Galiani held that the distance of three miles was surely the utmost range that a shell could have been projected with hitherto known gun powder. See T. SCOVAZZI, 2002, 28−30; M. ZORIČIĆ, 1953, 18−19; U. LEANZA, 1993, 70; W. C. EXTAVOUR, 1979, 15; W. G. GREWE, 2000, 410.

[68] Although Galiani used the term „territorial sea" (i.e. *mare territoriale* in Italian), this term would become universally recognized only in 1930.

[69] In the 19th century fishing became an important factor for defining maritime boundaries, assuming the role held by neutrality and right of seizure in the preceding century. It was the time when the notion that fishing in coastal areas was reserved exclusively for the inhabitants of the respective coastal state prevailed.

[70] Although the boundary of the customs control belt of the Mediterranean coastal states at the time was mostly established at 6 or 9 miles, France, Lebanon and Syria demanded a 20 kilometer boundary (somewhat less than 11 miles).

još nije dovršeno. Svaka zona postoji za sebe i za nju vrijede posebna pravila. Ipak se između njih najviše ističe zona neutralnosti … ona je oko 1880. zapravo jedina, ali čvrsto osnovana jezgra današnjega teritorijalnog mora."[73]

U praksi država toga vremena postupno je sve više izražavana i potreba za spajanjem različitih funkcija njihove vlasti na moru u jedan pojas u kojemu bi obalna država mogla imati suverenost. Iako je taj novi jedinstveni pojas prostorno bio uži od područja u kojima su države dotada ostvarivale različite djelatnosti (u početku je uglavnom obuhvaćao područje od tri milje od obale), s vremenom je postao međunarodno priznat te utemeljen na vrlo širokoj i ustaljenoj praksi. Tako su se konačno ostvarile teze postglosatora o distriktu i suverenosti jer je teritorijalno more napokon shvaćeno kao pojas vršenja svih oblika državne vlasti.

Takav postupni razvoj pojasa teritorijalnog mora i njegova izgradnja iz niza pojedinačnih funkcija napokon su dali i odgovor na doktrinarne prepirke toga vremena o temelju vlasti obalne države nad tim dijelom mora. S obzirom na ranija shvaćanja da država tim morskim prostorom vlada činom okupacije, od posebne je važnosti da je upravo praksa pokazala da za postojanje vlasti obalne države nad teritorijalnim morem nije potrebna nikakva izjava ili čin okupacije jer ta vlast postoji samom činjenicom protezanja mora uz obalu neke države.

Iako se u to vrijeme dakle već riješilo pitanje naravi vlasti obalne države u teritorijalnom moru, širina toga pojasa i nadalje je ostala prijeporna.[74] Zahtjevi sredozemnih država prije kodifikacijske Konferencije u Haagu 1930. godine kretali su se između 3 i 12 milja, ali neke od njih tražile su i dodatan pojas posebnih prava u produžetku teritorijalnog mora. Italija je svojim zakonodav-

territory extended five miles from the coast. In the note of October 1st 1914, Turkey also established a six-mile neutrality boundary at sea, and subsequently, a four-mile belt of customs control. The Habsburg Monarchy, i.e. Austria-Hungary[71] likewise never established a universal boundary of its sovereignty at sea by a positive regulation.[72]

Regarding this period of the development of the Law of the Sea, Natko Katičić states:

„… the origins of territorial sea truly lie in the confluence of practice-based and internationally recognized individual authorities of the state in the adjacent parts of the sea. At the end of the 18th century, this confluence was still incomplete. Each zone had a separate existence, with a special set of rules. Still, among them stands out the neutrality zone ... around 1880 this is actually the only, but solidly established nucleus of the contemporary territorial sea."[73]

In the practice of the states of the time, the need to consolidate the different functions of their authority at sea in a single belt, in which a coastal state could have sovereignty, was becoming increasingly expressed. Although this new unique belt was spatially narrower than areas in which states had previously performed their different activities (at first, it mainly encompassed a three-mile zone from the coast), in time it became internationally recognized and based on a very broad and established practice. In this way, the theses of postglossators regarding districts and sovereignty finally came into being, because the territorial sea was at last comprehended as a belt in which all forms of state power could be exercised.

Such gradual development of the territorial sea area and its formation from an array of separate functions, finally also provided an answer to the contemporary doctrinal disputes regarding the basis of state power over that part of the sea. Considering the former opinions that a state has the authority over this marine space by the right of occupation, it is of

[73] N. KATIČIĆ, 1953, 154.

[74] Španjolska nikada nije priznavala granicu svoje vlasti nad morem užu od šest morskih milja. Takvu granicu zahtijevali su i Libanon, Sirija, Grčka te Jugoslavija. Rusija sve do pred Prvi svjetski rat nije imala nikakvih odredbi o teritorijalnom moru, ali su carinske granice bile ustanovljene na 12 milja. Sovjetski Savez je nastavljajući politiku carske Rusije 1927. godine Pravilnikom o državnim granicama odredio pojas od 12 milja za različite državne nadležnosti u Crnom moru, a taj primjer kasnije su slijedile Bugarska i Rumunjska.

[71] As of 1867.

[72] In 1835, the customs control boundary was established at the distance of one Austrian mile and as of 1857, customs police were allowed to inspect ships within cannon range, i.e. within three miles. According to Austrian regulations from 1824 and 1835, the right of fishing within one nautical mile from the coast was reserved exclusively for the inhabitants of the coast. The official Nautical Almanac from 1911 defined the regular territorial boundary of Austria-Hungary at sea based on canon range equal to three nautical miles measuring from the lowest line of low tide.

[73] N. KATIČIĆ, 1953, 154.

stvom ustanovljavala različite granice na moru za pojedine djelatnosti pa je sve do Konferencije u Haagu bila država bez jedinstvene granice.[75] Od Pripremnog odbora za tu konferenciju zatražila je šest milja za teritorijalno more i daljnjih šest milja za pojedina prava. I Egipat je uz teritorijalno more od tri milje tražio daljnjih šest milja za zaštitu sigurnosti, plovidbe, fiskalnih i zdravstvenih interesa, a Grčka pojas sigurnosti u širini od 10 milja.[76]

Zahtjevi tih država bili su početak stvaranja novog pojasa na moru koji je kasnije nazvan vanjskim pojasom, a općenito priznanje stekao je tek 1958. godine – Konvencijom o teritorijalnom moru i vanjskom pojasu. Pravni pisci posebno su isticali da vanjski pojas nije sastavni dio teritorijalnog mora, nego pojas otvorenog mora potreban obalnim državama radi zaštitite četiri skupine njihovih interesa: sigurnosti plovidbe, zdravstvene (sanitarne) zaštite, zaštite ekonomskih interesa i opće državne sigurnosti. [77]

Na prijelazu iz 19. u 20. stoljeće u primjeni su bila dakle samo tri općenito priznata pravna režima na moru – unutarnje morske vode, teritorijalno more i otvoreno more. Uz sve spomenute neujednačenosti, bilo je to vrijeme kada se međunarodno pravo mora u Sredozemlju, kao i u drugim dijelovima svijeta, ipak napokon konsolidiralo.

special importance that the practice has shown that no declaration nor act of occupation was required for the establishment of authority of a coastal state over territorial sea, since such authority existed by the mere fact that the sea extends along the coast of a state. Although at that time, the issue of the nature of authority of a coastal state in the territorial sea had already been resolved, the breadth of this zone still remained disputable.[74] The claims of Mediterranean states prior to the 1930 Hague Codification Conference ranged between 3 and 12 miles, with some of them even demanding an additional belt with special rights, adjacent to the territorial sea. Since Italian legislature established different marine boundaries for particular activities, it was a state without a unique boundary until the Hague Conference.[75] From the Preparatory Committee of the Conference, it requested six miles for territorial sea and an additional six mile zone for particular rights. Apart from a three-mile territorial sea, Egypt also demanded an additional six miles for safety protection, navigation, fiscal and health interests, while Greece demanded a 10-mile protection zone.[76]

The demands of these states were for the formation of a new zone at sea, later called the *contiguous zone*, which became generally recognized only in 1958 – by the Convention on the Territorial Sea and the Contiguous Zone. The legal writers especially emphasized that the contiguous zone does not constitute an integral part of territorial sea, but a zone of the high seas

[74] Spain never recognized the boundary of its power at sea narrower than six nautical miles. Lebanon, Syria, Greece and Yugoslavia requested the same boundary. Russia had no regulations on territorial sea until World War I, but the customs boundaries were set at 12 miles. In 1927, the Soviet Union, continuing the policy of the Russian Empire, by the Ordinance on State Boundaries, established a 12-mile belt for various state jurisdictions in the Black Sea. Its example was subsequently followed by Bulgaria and Romania.

[75] Italy regulated the issues of safety at sea with regulations from 1895, prohibiting foreign vessels from performing cannon fire exercises closer than a cannon range from the shore at times of peace. With the Act of 1912 on the passage and stay of merchant ships along its coastline, Italy established a ten-mile maritime boundary. (In gulfs and bays, the boundary was measured from the baseline drawn between two opposite shores at the point closest to the entrance, where the distance between the shores did not exceed twenty miles). The agreement between the Kingdom of SHS and Kingdom of Italy from 1925 should be mentioned as a unique solution for regulating issues of customs control and fishing, see Ž. BARTULOVIĆ, 2004, 82.

[76] N. KATIČIĆ, 1953, 181–216; T. SCOVAZZI, 2001, 73–87; M. ZORIČIĆ, 1953, 18–22.

[75] Pitanja sigurnosti na moru Italija je uredila propisima iz 1895. godine, kojima su stranim brodovima u vrijeme mira bile zabranjene vježbe topovskom vatrom na domet topa od obale. Zakonom iz 1912. o prolasku i boravku trgovačkih brodova uzduž njezinih obala Italija je ustanovila morsku granicu od deset milja (u zaljevima i uvalama ta se granica računala od pravca povučenog između suprotnih obala na mjestu najbližem ulazu, gdje obale nisu udaljenije jedna od druge više od dvadeset milja). Kao jedinstveno rješenje uređenja pitanja carinskog nadzora i ribolova valja spomenuti Sporazum između Kraljevine SHS i Kraljevine Italije zaključen 1925. godine, v. Ž. BARTULOVIĆ, 2004, 82.

[76] N. KATIČIĆ, 1953, 181–216; T. SCOVAZZI, 2001, 73–87; M. ZORIČIĆ, 1953, 18–22.

[77] Vanjski pojas je dio mora koji leži izvan teritorijalnog mora neke obalne države, a dotiče se i nastavlja na vanjski rub teritorijalnog mora u pravcu pučine. V. IBLER, 1955, 17 i d.; M. ZORIČIĆ, 1953, 23–26.

4. OBALNE DRŽAVE SREDOZEMLJA I KODIFIKACIJA PRAVA MORA

Dvadeseto stoljeće u razvoju prava mora može se nazvati stoljećem kodifikacije jer su ga obilježila višestruka nastojanja da se dotadašnje običajno pravo (jednostrana i ugovorna praksa obalnih država)[78] sakupi i pretoči u pisana, sistematizirana i precizno formulirana pravila.[79] S tim ciljem sazvano je više velikih kodifikacijskih konferencija, od kojih su neke zbog nepremostivih neslaganja među državama ostale bez ikakvih rezultata.

Prvi pokušaj kodifikacije koji je potaknula Liga naroda bila je Konferencija u Haagu 1930. godine. Na njoj su sudjelovali predstavnici samo 47 država, a među njima i devet država iz područja Sredozemlja – Egipat, Francuska, Grčka, Italija, Jugoslavija, Monako, Rumunjska, Španjolska i Turska. Konferencija je završila neuspjehom jer se države sudionice nisu mogle složiti o jedinstvenoj širini teritorijalnog mora. Neke od njih zastupale su širinu od 3 milje, druge 4 ili 6 milja, a nekolicina njih je zahtijevala i pojas posebnih prava u nastavku teritorijalnog mora. Ipak, načelno su utvrđene pravne razlike između pojedinih dijelova mora i otada se pojavljuju četiri zone na moru, od kojih svaka ima drugačiji pravni položaj – unutarnje morske vode, teritorijalno more, vanjski pojas i more izvan dosega vlasti obalne države.[80]

Sve do Drugog svjetskog rata propisi o pravu mora pretežito su se odnosili na morsku površinu jer su u to vrijeme veće dubine mora i njegovo podzemlje još bili izvan dosega čovjeka. S dna mora dotada su se iskorištavali u malom obujmu samo pijesak, šljunak, spužve, biseri, koralji i školjke. Iz morske vode izdvajala se sol, a vrlo

[78] Pojedina pitanja vezana uz upotrebe mora već su ranije bila uređena međunarodnim ugovorima, primjerice zaštita podmorskih kabela – *Pariškom konvencijom o zaštiti podmorskih telegrafskih kabela* iz 1884., slobodna upotreba Sueskog kanala – *Carigradskom konvencijom o slobodnoj plovidbi Sueskim kanalom* iz 1888. te prolazak Gibraltarskim tjesnacem – odredbama *Deklaracije Francuske i Velike Britanije o Egiptu i Maroku* iz 1904. i *Konvencije između Francuske i Španjolske* iz 1912.

[79] Za definiciju *kodifikacije međunarodnog prava* v. V. IBLER, 1987, 126–127.

[80] O pokušaju kodifikacije u Haagu više v. C. EXTAVOUR, 1979, 20–21, 32–34, 38–41; V. IBLER, 1955, 42–58; R. P. ANAND, 1983, 142 i d.; M. ZORIČIĆ, 1953, 39–43, 47–50; J. HARRISON, 2011, 30–31; R. R. CHURCHILL – A. V. LOWE, 1998, 62–63; N. KATIČIĆ, 1953, 307.

required by the coastal states to protect four groups of their interests: safety of navigation, health (sanitary) protection, economic interests protection and general national safety.[77]

At the turn of the 19th and 20th centuries, there were only three generally recognized legal regimes at sea in application − internal waters, territorial sea and high seas. Aside from all the aforementioned discrepancies, it was the time when the international Law of the Sea finally consolidated both in the Mediterranean and the other parts of the world.

4. MEDITERRANEAN COASTAL STATES AND THE CODIFICATION OF THE LAW OF THE SEA

The twentieth century may be considered the century of codification in the development of the Law of the Sea, since it was characterized by multiple efforts to collect and adapt the former customary law (unilateral and contractual practice of coastal states)[78] into written, systematic and precisely formulated rules.[79] Several large-scale codification conferences were convened for this purpose, of which some were unsuccessful due to the insurmountable differences of opinion between the states.

The first attempt of codification initiated by the League of Nations was the Hague Conference in 1930. It gathered the representatives of only 47 states, including nine from the Mediterranean − Egypt, France, Greece, Italy, Yugoslavia, Monaco, Romania, Spain and Turkey. The conference was unsuccessful, owing to the failure of participating countries to agree on the unique breadth of the territorial sea. Some of them advocated for the breadth of 3 miles, the other ones 4 or 6 miles, and a

[77] The contiguous zone is a part of the sea that lies outside of the territorial sea of a coastal state, adjoining and extending on the external edge of the territorial sea towards the high seas. V. IBLER, 1955, 17 ff.; M. ZORIČIĆ, 1953, 23−26.

[78] Particular issues relating to the usage of the sea had previously been regulated by international agreements, e.g. the protection of submarine cables by the − *Paris Convention for the Protection of Submarine Telegraph Cables* (1884), free use of the Sues canal by the − *Constantinople Convention Respecting the Free Navigation of the Suez Maritime Canal* (1888), and the passage through the Strait of Gibraltar by the provisions of the − *Declaration between France and the United Kingdom respecting Egypt and Morocco* (1904) and the *Convention between France and Spain* (1912).

[79] For definition of the *codification of the international law* see V. IBLER, 1987, 126−127.

rijetko i neki metali.[81] Budući da su tijekom rata porasle potrebe za naftom, uskoro su neke države počele isticati i zahtjeve za prirodnim izvorima morskog dna i podzemlja ispod otvorenog mora u produžetku njihovih obala.[82] Time je postupno nastajao potpuno novi pravni institut na moru – epikontinetski pojas.[83] U prostorima koji su nekada bili dijelovi otvorenog mora otada se nisu prestali množiti novi različiti režimi pod vlašću obalnih država. Komisija za međunarodno pravo Ujedinjenih naroda utvrdila je početkom pedesetih godina prošlog stoljeća da je razvoj običajnog međunarodnog prava toliko uznapredovao da se kodifikacija te materije nameće kao nužnost. Nakon višegodišnjih opsežnih pripremnih radova ta je komisija izradila nacrt propisa koji su razmatrani i usvojeni na Diplomatskoj konferenciji u Ženevi 1958. godine. Iako predstavnici 86 država na toj Prvoj konferenciji UN-a o pravu mora o nekim važnim pitanjima nisu uspjeli postići suglasnost, taj pokušaj kodifikacije ipak je završio usvajanjem četiri posebne konvencije.[84]

- *Konvencija o teritorijalnom moru i vanjskom pojasu*[85] konačno je potvrdila suverenost obalnih država u njihovu teritorijalnom moru. Za mjerenje širine toga pojasa dopustila je povlačenje ravnih polaznih crta u područjima gdje je obalna crta duboko razvedena ili usječena ili ako se u

[81] Usp. J. ANDRASSY, 1970, 15 i d.

[82] Godine 1942. Venezuela i Britanija sklopile su dvostrani ugovor kojim su podijelile podmorje izvan njihova teritorijalnog mora u zaljevu Paria (između kopnenog dijela Venezuele i otoka Trinidada koji je tada bio britanski posjed). Predsjednik Sjedinjenih Država Harry S. Truman 1945. godine postavio je zahtjev za „prirodnim izvorima dna i podzemlja kontinentalne ravnine ispod otvorenog mora u produžetku obale Sjedinjenih Država". Istaknuo je i pravo svoje države da ustanovljuje „zaštitne zone" za ribolov u otvorenom moru u produžetku njezine obale te priznao i drugim državama pravo da donose slične akte. O tome v. više C. EXTAVOUR, 1979, 63 i d.

[83] Epikontinentski pojas obalne države obuhvaća morsko dno i podzemlje podmorskih prostora izvan njezina teritorijalnog mora. O jednostranim aktima država kojima je započeto prisvajanje tih prostora više v. J. ANDRASSY, 1951, 16–32, 43–49. Zbog njegova cjelokupnog djelovanja, Juraja Andrassyja možemo nazvati utemeljiteljem moderne znanosti međunarodnog prava u Hrvata, a njegova knjiga *Epikontinentalni pojas*, koja je bila je među prvima u svijetu o toj temi, vrijedan je doprinos razvoju svjetske znanosti.

[84] Hrvatski prijevod konvencija objavljen je u *Zborniku za pomorsko pravo* Jadranskog instituta Jugoslavenske akademije znanosti i umjetnosti 1961. godine. V. i V. IBLER, 1965, 166–196.

[85] Konvencija je stupila je na snagu 10. rujna 1964. godine, a vezuje 52 države.

few states claimed an additional special rights zone adjacent to the territorial sea. Nevertheless, in principle, there were determined the legal distinctions between different parts of the sea, with four maritime zones being mentioned thereafter, each with a distinct legal status − internal waters, territorial sea, contiguous zone and marine space beyond the national jurisdiction.[80]

Until World War II, the regulations on the Law of the Sea were mostly related to the surface of the sea, since at the time, greater depths and subsoil were still inaccessible to people. Seabed had previously only been exploited, to a very limited extent, for sand, gravel, sponges, pearls, corals and shells. Salt and, very rarely, metals were extracted from sea water.[81] Since at the time of war the demands for petrol increased, soon some of the countries began laying claims to the natural resources on the seabed and in the subsoil under the high seas in the extension of their shores.[82] A completely new legal institute at sea thus came into being − *the continental shelf*.[83]

New regimes under the coastal states jurisdiction have been multiplying ever since in areas previously considered to be parts of the high seas. In the early 1950s, the UN's International Law Commission found that the development of customary international law had made such progress that the codification

[80] More about codification attempts in the Hague see in C. EXTAVOUR, 1979, 20−21, 32−34, 38−41; V. IBLER, 1955, 42−58; R. P. ANAND, 1983, 142 i ff.; M. ZORIČIĆ, 1953, 39−43, 47−50; J. HARRISON, 2011, 30−31; R. R. CHURCHILL − A. V. LOWE, 1998, 62−63; N. KATIČIĆ, 1953, 307.

[81] Cf. J. ANDRASSY, 1970, 15 ff.

[82] In 1942 Venezuela and the United Kingdom concluded a bilateral agreement dividing the seabed and subsoil outside their territorial waters in the Gulf of Paria (between the land territory of Venezuela and the island of Trinidad, a British possession at the time). In 1945, the President of the United States of America, Harry S. Truman, laid claim to „the natural resources of the seabed and the subsoil of the continental shelf beneath the high seas in the extension of the coast of the USA". He also pointed out the right of his country to establish "protection zones" for fishing in the high seas in the extension of the coast of the USA, and recognized the right of other states to adopt similar acts. See more in C. EXTAVOUR, 1979, 63 ff.

[83] The continental shelf of a coastal state comprises the seabed and subsoil of submarine areas that extend beyond its territorial sea. More on unilateral state acts by which the appropriation of these areas commenced see in J. ANDRASSY, 1951, 16−32, 43−49. Taking into account his entire work, Juraj Andrassy may be considered the founder of the modern science of international law in Croatia and his book *The Continental shelf*, amongst the first in the world about this topic, is a valuable contribution to the development of the world science.

njezinoj neposrednoj blizini nalazi niz otoka (kao uzduž hrvatske obale). U pogledu vanjskog pojasa predvidjela je da u tom dijelu otvorenog mora obalne države mogu vršiti nadzor radi suzbijanja kršenja svojih carinskih, fiskalnih, useljeničkih i zdravstvenih propisa počinjenih na njihovom području ili u teritorijalnom moru. Iako je utvrđena i najveća širina vanjskog pojasa, i to do 12 morskih milja od polaznih crta od kojih se mjeri širina teritorijalnog mora, jedinstvena širina teritorijalnog mora i nadalje je ostala sporno pitanje. Brojne države su za taj pojas suverenosti tražile širinu od 12 milja, ali su neke, primjerice Albanija, i nadalje uporno zahtijevale veće širine. Ta konvencija vezuje jedanaest država koje imaju obale na Sredozemnom moru – Bosnu i Hercegovinu, Bugarsku, Crnu Goru, Hrvatsku, Italiju, Izrael, Maltu, Rumunjsku, Rusku Federaciju, Španjolsku i Ukrajinu.[86]

- *Konvencija o otvorenom moru*[87] kodificirala je postojeće pravo o morskim prostranstvima slobodnim za sve narode i države, koje se stoljećima razvijalo putem običajnog prava. Slobodama otvorenog mora obuhvaćene su slobode plovidbe, ribolova, prelijetanja i polaganja podmorskih kabela i cjevovoda. Strankama te konvencije postalo je također jedanaest sredozemnih država – Albanija, Bosna i Hercegovina, Bugarska, Crna Gora, Hrvatska, Italija, Izrael, Rumunjska, Ruska Federacija, Španjolska i Ukrajina.

- *Konvencija o epikontinentskom pojasu*[88] propisala je da obalne države u podmorju (prostoru morskog dna i podzemlja) izvan svoga teritorijalnog mora imaju suverena prava radi istraživanja i iskorištavanja njegovih prirodnih bogatstava. Uredila je i druga važna pitanja vezana uz taj, tada potpuno novi institut međunarodnog prava mora, ali ne i njegovu jedinstvenu vanjsku granicu. Ta konvencija vezuje trinaest država koje

[86] Među njima su dakle i nove države na obalama Jadrana i Crnog mora, nastale nakon raspada federacija bivše Jugoslavije i Sovjetskog Saveza (Bosna i Hercegovina, Crna Gora, Hrvatska, Slovenija, Gruzija i Ukrajina). Bivša Jugoslavija bila je među rijetkim zemljama koje su ratificirale sve četiri ženevske konvencije, a države slijednice sukcesijom su postale strankama nekih od njih.

[87] Konvencija je stupila je na snagu 30. rujna 1962. godine, a vezuje 63 države.

[88] Konvencija je stupila je na snagu 10. lipnja 1964. godine, a vezuje 58 država.

of the matter imposes as a necessity. After years of comprehensive preparatory work, the Commission made a draft of regulations, which were discussed and adopted at the 1958 Geneva Diplomatic Conference. Although the representatives of 86 countries participating at this first UN Conference on the Law of the Sea were unable to reach consent for some important issues, this attempt of codification still ended with the adoption of four separate conventions.[84]

- *The Convention on the Territorial Sea and the Contiguous Zone*[85] finally confirmed the sovereignty of coastal states over their territorial sea. For the purpose of measuring the width of the territorial sea, the drawing of straight baselines was to be employed in localities where the coastline is deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity (like in Croatia). Regarding the contiguous zone, it stipulated that in this part of the high seas, the coastal states were allowed to exercise the control necessary to prevent the infringement of their customs, fiscal, immigration or sanitary regulations, committed within their territory or territorial sea. Although the maximum breadth of the contiguous zone was established at 12 nautical miles from the baselines from which the breadth of territorial sea is measured, the uniform breadth of the territorial sea still remained a matter of dispute. For this sovereignty zone, a number of states claimed a 12-mile territorial sea, but some other states, such as Albania, continued to insist on greater breadth of this zone. The Convention is binding for eleven Mediterranean coastal states – Bosnia and Herzegovina, Bulgaria, Montenegro, Croatia, Italy, Israel, Malta, Romania, the Russian Federation, Spain and Ukraine.[86]

- *The Convention on the High Seas*[87] has codified

[84] The Croatian translation of the conventions was published in the *Collected papers on maritime law* of the Adriatic Institute of the Yugoslavian Academy of Sciences and Arts in 1961. Also see V. IBLER, 1965, 166–196.

[85] The Convention entered into force on September 10th 1964, and is binding for 52 states.

[86] They thus also include the new states on the coasts of the Adriatic and the Black Sea, formed after the dissolution of the federations of the former Yugoslavia and the Soviet Union (Bosnia and Herzegovina, Montenegro, Croatia, Slovenia, Georgia and Ukraine). Ex Yugoslavia was amongst the rare countries to have ratified all the four Geneva conventions, and successor states became parties to some of them by succession.

[87] The Convention entered into force on September 30th 1962,

imaju obale na Sredozemnom moru – Albaniju, Bugarsku, Cipar, Crnu Goru, Francusku, Grčku, Hrvatsku, Izrael, Maltu, Rumunjsku, Sloveniju, Španjolsku i Ukrajinu.

- *Konvencija o ribolovu i očuvanju živih bogatstava otvorenog mora*[89] koja je trebala očuvati pravo državljana svih zemalja na ribolov u otvorenom moru, a istovremeno zaštititi i legitimne interese obalnih država u dijelovima otvorenog mora u blizini njihove obale (čak i kad se njihovi građani ne bave ribolovom), taj cilj nije ostvarila. S vremenom je izgubila na važnosti pa vezuje vrlo mali broj zemalja. Među njima je i pet obalnih država iz područja Sredozemlja – Bosna i Hercegovina, Crna Gora, Francuska, Slovenija i Španjolska.

Očekivanja međunarodne zajednice da će tim konvencijama uspjeti urediti odnose na moru za dulje vremensko razdoblje pokazala su se neutemeljenima.[90] I nakon njihova stupanja na snagu brojne države su i nadalje zahtijevale donošenje međunarodnopravnih normi kojima bi se uredila njihova suverena gospodarska prava izvan teritorijalnog mora.[91] Uz složene političke okolnosti, jedan od najvažnijih razloga zašto ta kodifikacija nije ostvarila pozitivne rezultate svakako je vezan i uz činjenicu da je obuhvaćena materija bila podijeljena u četiri konvencije pa su države ratificirale samo one koje su najviše pogodovale njihovim interesima. Budući da je mali broj država postao njihovim strankama, te konvencije nikada nisu bile općenito prihvaćene. Unatoč tome, i nadalje su na snazi između njihovih država stranaka.[92]

Druga konferencija Ujedinjenih naroda o pra-

[89] Konvencija je stupila je na snagu 20. ožujka 1966. godine, a vezuje samo 38 država.

[90] Opširan osvrt na uređenje pravnih režima na moru prema ženevskim konvencijama v. N. KATIČIĆ, 1961, 25–72.

[91] Neke su države u tu svrhu tražile proširenje teritorijalnog mora i do 200 milja od obale. Ti zahtjevi nezadovoljnih obalnih država javljali su se pod različitim nazivima – ribolovna zona, patrimonijalno more i sl., a tek je na Trećoj konferenciji UN-a o pravu mora prevladao naziv – *isključivi gospodarski pojas*. Dugotrajna borba koja se vodila oko statusa i režima tog pojasa u međunarodnopravnoj doktrini i u diplomatskim suprotstavljanjima država važan je dio povijesti prava mora.

[92] I nakon što je Konvencija UN-a o pravu mora iz 1982. stupila na snagu (16. studenoga 1994.) te je prema njezinom članku 311(1). stekla „prevagu nad ženevskim konvencijama o pravu mora od 29. travnja 1958", ženevske konvencije i nadalje uređuju odnose između država koje nisu postale strankama nove konvencije, kao i između tih država i onih koje jesu stranke nove konvencije.

the existing legislation on high seas free to all nations and states, which was for centuries developing as customary law. The freedoms of the high seas include the freedom of navigation, the freedom of fishing, the freedom to fly over the high seas, and the freedom to lay submarine cables and pipelines. Among the parties of the Convention, there were also eleven Mediterranean states − Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Croatia, Italy, Israel, Romania, The Russian Federation, Spain and Ukraine.

- *The Convention on the Continental Shelf*[88] stipulated that coastal states had sovereign rights in submarine areas (on the seabed and in the subsoil) beyond their territorial sea for purposes of exploration and exploitation of its natural resources. It also regulated other important issues related to, at the time, the completely new institute of the international Law of the Sea, but failed to establish a uniform outer boundary. The Convention is binding on thirteen Mediterranean coastal states − Albania, Bulgaria, Cyprus, Montenegro, France, Greece, Croatia, Israel, Malta, Romania, Slovenia, Spain and Ukraine.

- *The Convention on Fishing and Conservation of the Living Resources of the High Seas*[89] that had the task of preserving the right of citizens of all states to fish at high seas, and at the same time to protect the legitimate interests of the coastal states in the areas of the high seas in vicinity of their shore (even if their citizens do not engage in fishing), did not achieve its goal. In time it lost its relevance, and is binding on a very small number of countries, including five Mediterranean coastal states − Bosnia and Herzegovina, Montenegro, France, Slovenia and Spain.

The expectations of the international community that these conventions would regulate relations at sea in the long term proved to be unfounded.[90] Even after they entered into force, numerous countries continued to claim the adoption of international legal norms, which would regulate their sovereign

and is binding for 63 states.

[88] The Convention entered into force on June 10th 1964, and is binding for 58 states.

[89] The Convention entered into force on March 20th 1966, and is binding for only 38 states.

[90] A comprehensive overview of the regulation of legal regimes at sea, pursuant to the Geneva conventions see in N. KATIČIĆ, 1961, 25−72.

vu mora, sazvana 1960. godine također u Ženevi, ponovo je trebala razmotriti širinu teritorijalnog mora i granice isključivog ribolova obalnih država. I ta je konferencija, poput one iz 1930., prošla bez ikakvih rezultata.[93] Budući da ženevske konvencije nisu regulirale neka važna pitanja vezana uz morske prostore te da su se ubrzo po njihovu stupanju na snagu pojavile i nove okolnosti koje su zahtijevale temeljitu reviziju međunarodnog prava mora,[94] Ujedinjeni narodi su 1970. godine odlučili sazvati Treću konferenciju o pravu mora.[95]

U tom velikom pothvatu međunarodnog zakonodavstva sudjelovali su predstavnici 168 država, uključujući sve tadašnje obalne države Sredozemlja. Kroz devet godina iscrpljujućih pregovora ipak su uspjeli u jednom mnogostranom međunarodnom ugovoru urediti odnose u pogledu gotovo svih oblika upotrebe cjelokupnog prostranstva mora i podmorja.[96]

Konvencija UN-a o pravu mora iz 1982. opsežan je međunarodni instrument s 320 članaka kojima se, među ostalim, obalne države ovlašćuju da prošire svoje teritorijalno more do 12 milja, vanjski pojas do 24 milje te isključivi gospodarski pojas do udaljenosti od 200 milja od polaznih crta od kojih se mjeri širina teritorijalnog mora.[97]

[93] Zajednički prijedlog o jedinstvenoj širini teritorijalnog mora od 6 milja, uz daljnjih 6 milja za isključivu ribolovnu zonu, nije bio prihvaćen jer je za to nedostajao samo jedan glas. I bivša Jugoslavija bila je među zemljama koje nisu podržale taj prijedlog.

[94] U tom razdoblju posljedice onečišćenja mora postale su ozbiljnije, izvršena su prva bušenja morskog dna na dubinama od 4000 metara, povećan je rizik od pomorskih nezgoda zbog porasta brojnosti i veličine tankera i dr.

[95] Treća konferencija UN-a o pravu mora započela je u New Yorku 3. prosinca 1973., a dovršena je 10. prosinca 1982. u Montego Bayu na Jamajci. Sve do kraja pregovora bilo je neizvjesno hoće li nova konvencija uopće biti usvojena i potpisana.

[96] Neki dijelovi Konvencije UN-a o pravu mora iz 1982. imali su učinak kodificiranja ranije postojećih pravila običajnog međunarodnog prava jer su mnoge konvencijske odredbe preformuliranje ili kodifikacija postojećeg konvencijskog ili običajnog međunarodnog prava i prakse država. Pojedini dijelovi Konvencije inkorporiraju propise ženevskih konvencija o pravu mora iz 1958. godine bez značajnih izmjena. To posebice vrijedi za odredbe koje se odnose na teritorijalno i otvoreno more. V. J. HARRISON, 2011, 53.

[97] Konvencijskim propisima uređeni su i novi instituti – arhipelaških voda te tranzitnog prolaska kroz sve tjesnace koji služe međunarodnoj plovidbi. Pomaknuta je i vanjska granica epikontinentskog pojasa koja se pod posebnim uvjetima može protezati do 360 milja širine od polaznih crta, o čemu detaljnije v. Y. TANAKA, 2012, 132–142. O odrazu tih velikih promjena u pravu mora na sredozemne morske prostore v. B. VUKAS, 1977, 57–78.

economic rights beyond the territorial sea.[91] Apart from complex political circumstances, the division of the subject matter in four conventions, allowing the states to ratify only those most beneficial to their interests, is certainly one of the most important reasons why codification failed to yield positive results. Since only a small number of states became their parties, the conventions were never universally accepted. Nevertheless, they are still in force between their parties.[92]

The Second United Nations Conference on the Law of the Sea was also convened in Geneva in 1960, with the intention of discussing the outer limit of the territorial sea, as well as the fishery zone. Similar to the Conference in 1930, this Conference also failed to provide results.[93] Since the Geneva conventions did not regulate some important issues related to marine spaces, and taking into account that shortly after their entry into force appeared the new circumstances that needed serious reconsideration of the international Law of the Sea,[94] the United Nations decided to convene the Third Conference on the Law of the Sea in 1970.[95]

The representatives of 168 countries, including all the Mediterranean coastal states of that time, participated in this great venture of international legisla-

[91] Some states claimed the expansion of the territorial sea up to 200 miles from the coast for this purpose. These claims of the unsatisfied coastal states appeared under a variety of names − fishing zone, patrimonial sea and similar, and it was only at the Third UN Convention on the Law of the Sea that the term − *exclusive economic zone* prevailed. The long struggle over the status and regime of that zone in the international law doctrine, as well as in the diplomatic confrontations between the states, constitutes an important part of the history of the Law of the Sea.

[92] Even after entry into force of the 1982 UN Convention on the Law of the Sea (on November 16th 1994), "prevailing the Geneva conventions on the Law of the Sea of 19 April 1958" pursuant to its Article 311(1), the Geneva conventions continue to regulate relations between states which have not become parties to the new convention, as well as relations between those states and the states which are parties to the new convention.

[93] The joint proposal which provided for a six-mile territorial sea plus a maximum of six-mile exclusive fishery zone, was defeated by a single vote. Former Yugoslavia was among the states that rejected this proposal.

[94] In this period, the consequences of sea pollution became more serious, the first drillings of the seabed at the depth of 4000 meters were made, the risk of maritime accidents increased due to the growing number of tankers as well as their size, etc.

[95] The Third UN Conference on the Law of the Sea began in New York, on December 3rd 1973, and was completed in Montego Bay, Jamaica on December 10th 1982. Until the finalization of negotiations, it was uncertain whether the new convention would be adopted and signed.

Detaljno su propisane i pojedinosti novog režima isključivog gospodarskog pojasa u kojem su obalne države dobile dalekosežna gospodarska prava i jurisdikcijska ovlaštenja.[98] Budući da se upravo u toj širokoj zoni nalaze ekonomski najvažnija morska bogatstva, uvođenjem toga novog pravnog režima postavljeni su i temelji potpuno novog gospodarenja svjetskim oceanskim resursima.

Brojni propisi Konvencije iz 1982. predstavljali su dakle progresivni razvoj općeg običajnog prava, potvrđujući proširenje suverenosti, suverenih prava i jurisdikcije obalnih država u prostorima koji su nekada bili pod režimom otvorenog mora. Propisi o vlasti obalne države u pojedinim dijelovima mora, kao i oni o pravu plovidbe i prolaska, sročeni su kao propisi općenite naravi koji se odnose na sve države svijeta. Stoga tekst koji je Treća konferencija UN-a o pravu mora ponudila državama na potpisivanje 1982. godine doista odražava svijest o tome da pravo mora treba biti univerzalan sustav koji obuhvaća cijelu međunarodnu zajednicu. Uzimajući u obzir broj država koje su Konvenciju UN-a o pravu mora usvojile, dugotrajan postupak i način formuliranja njezinih pravila, u literaturi iz međunarodnog prava često se navodi da je ta konvencija „ustav oceana", odnosno pravni okvir unutar kojega se moraju provoditi sve aktivnosti na oceanima i morima. Stoga se ponekad ističe i da je Konvencija UN-a o pravu mora najvažniji multilateralni ugovor u suvremenoj međunarodnoj zajednici nakon Povelje Ujedinjenih naroda.[99]

Većina država koje su imale obale na Sredozemnom moru 1982. godine izjasnila se u prilog usvajanja nove konvencije – Alžir, Cipar, Egipat, Francuska, Grčka, Jugoslavija Libanon, Libija,

[98] U tome morskom prostoru obalne države stekle su širok opseg suverenih prava radi istraživanja i iskorištavanja, očuvanja i gospodarenja živim i neživim prirodnim bogatstvima voda nad morskim dnom i onih morskog dna i njegova podzemlja. Uzimajući u obzir i jurisdikcijska ovlaštenja u tom prostoru – podizanje i upotrebu umjetnih otoka, uređaja i naprava, znanstveno istraživanje mora te zaštitu i očuvanje morskog okoliša, može se zaključiti da su obalne države Konvencijom iz 1982. dobile mogućnost znatnog povećanja svojih gospodarskih potencijala. Više v. M. VOKIĆ ŽUŽUL, 2003, 34–68.

[99] O povijesnoj važnosti usvajanja Konvencije iz 1982. pisali su brojni autori, v. primjerice B. VUKAS, 2004, 13–24; T. T. B. KOH, 1984, 761–762, 768–784; D. RUDOLF, 2012, 327–333; J. HARRISON, 2011, 48 i d.; V. Đ. DEGAN 2002, 17–22, 26–28; T. SCOVAZZI, 2002, 35–38; V. IBLER, 2001, 37–43.

tion. Over the course of nine years of exhausting negotiations, they have finally succeeded in regulating relations concerning almost all forms of use of the entire expanses of the sea and submarine areas, by a single multilateral international agreement.[96]

The 1982 UN Convention on the Law of the Sea is a comprehensive international instrument comprised of 320 articles, by which the coastal states are authorized to expand their territorial sea up to 12 miles, the contiguous zone up to 24 miles, and the exclusive economic zone up to 200 miles from the baselines, from which the breadth of the territorial sea is measured.[97] The characteristics of the new regime of the exclusive economic zone, in which coastal states gained far-reaching economic rights and jurisdictional authorities, are described in detail.[98] Since economically the most profitable marine resources are located in this wide zone, the introduction of this new legal regime laid the foundations for a completely new type of management of the world's ocean resources.

A number of regulations of the 1982 Convention thus represented a progressive development of general customary law, reaffirming the extension of sovereignty, sovereign rights and jurisdiction of coastal states in the areas that once were under the regime of the high seas. Regulations concerning the

[96] Some parts of the 1982 Convention on the Law of the Sea had the effect of codifying preexisting rules of customary international law, since many of the Convention's provisions are a restatement or codification of existing conventional or customary international law and state practice. Some parts of Convention incorporate provisions found in the 1958 Geneva Conventions on the Law of the Sea without substantial change. This is particularly true of provisions relating to the territorial sea and the high seas. See J. HARRISON, 2011, 53.

[97] Convention provisions also regulate the new institutes of archipelagic waters and transit passage through all straits used in international navigation. The seaward limit of the continental shelf was moved, which can under certain conditions extend up to 360 nautical miles from baselines. More in Y. TANAKA, 2012, 132−142. About the reflection of these great changes in the Law of the Sea on the Mediterranean marine spaces see B. VUKAS, 1977, 57−78.

[98] In this marine space, the coastal states gained a wide range of sovereign rights for the purpose of exploring and exploiting, conserving and managing of natural resources, whether living and non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil. Considering the jurisdiction in this zone − the establishment and use of artificial islands, installations and structures, marine scientific research, the protection and preservation of the marine environment, it may be concluded that by the 1982 Convention, the coastal states gained the possibility of greatly increasing their economic potential. More in M. VOKIĆ ŽUŽUL, 2003, 34−68.

Malta, Maroko, Monako, Sirija i Tunis. Protiv njezina prihvaćanja glasovale su samo dvije države iz tog područja – Izrael koji nije bio zadovoljan statusom što ga je na Konferenciji imala Palestinska oslobodilačka organizacija te Turska koja je izrazila rezerve prema odredbama o razgraničenju. Albanija nije ni sudjelovala u glasovanju, a četiri sredozemne države – Bugarska, Italija, Španjolska i Ukrajina (tadašnja Ukrajinska SSR), suzdržale su se od glasovanja. Tekst Konvencije UN-a o pravu mora usvojen je u New Yorku posljednjeg dana jedanaestog zasjedanja (30. travnja 1982. godine) sa 130 glasova – 4 države glasovale su protiv, 17 država se suzdržalo od glasovanja, a 4 države nisu glasovale.[100] Usvajanje te konvencije označilo je početak potpuno novog doba u razvoju međunarodnog prava mora.

5. ZAKLJUČNA RAZMATRANJA

Iz istraživanja koje je sažeto izloženo na prethodnim stranicama razvidno je da je dug razvojni put prava mora svoje polazište imao u Sredozemlju. Za razumijevanje nastanka i početaka razvoja te grane međunarodnog prava nezaobilazno je poznavanje prakse država na obalama Sredozemnog mora, prvenstveno tijekom kasnog srednjeg i novog vijeka. Prvi akti o uređenju odnosa u dijelovima mora pred njihovim obalama, posebice o određivanju granica dosega njihove vlasti na moru, mogu se smatrati temeljima izgradnje opsežnog pravnog sustava kojim su stoljećima kasnije uređene aktivnosti na svim oceanima i morima.

U praksi pomorskih država uz jednostrane akte značajni su bili i dvostrani ugovori o uzajamnom priznavanju određenih prava, a tek potkraj 19. stoljeća neke su pojedinosti uređene međunarodnim ugovorima. Dotada se pravo mora stoljećima razvijalo putem običajnog prava. Za prerastanje određene prakse u svijest o njezinoj pravnoj obveznosti bila su važna i učenja istaknutih pravnika, pogotovo ako su odgovarala interesima najjačih pomorskih država. Nakon dugotrajnih sukoba gledišta oko pitanja protezanja državne vlasti na moru

[100] Opširan prikaz rada toga zasjedanja v. R. J. DUPUY – D. VIGNES, 1991, 239–242; D. RUDOLF, 1985, 14–15. Iscrpno o izjašnjavanju obalnih država Sredozemlja o Konvenciji v. C. GIORGI, 1987, 253–256.

jurisdiction of a coastal state over particular parts of the sea, as well as those related to the right of navigation and passage, are formulated as regulations of a general nature, applicable to all states worldwide. Therefore, the text submitted to states by the Third UN Conference on the Law of the Sea for signing in 1982, truly reflects the awareness that the Law of the Sea must be a universal system that comprises the entire international community. Taking into account the number of states which have adopted the UN Convention on the Law of the Sea, as well as the long-term procedure and the manner in which its rules were formulated, in the international law literature is often stated that this convention is the "constitution for the oceans", providing the legal framework within which all activities in the oceans and seas must be carried out. Hence, the UN Convention on the Law of the Sea is sometimes considered to be the most important multilateral agreement in contemporary international community after the United Nations Charter.[99] The majority of states that had coasts on the Mediterranean Sea in 1982, voted in favor of the adoption of the new convention − Algeria, Cyprus, Egypt, France, Greece, Lebanon, Libya, Malta, Monaco, Morocco, Syria, Tunisia and Yugoslavia. Only two states from the Mediterranean area voted against passage of the Convention − Israel, which was unsatisfied with the status of the Palestine Liberation Organization at the Conference, and Turkey, which expressed reservations concerning delimitation provisions. Albania did not take part in the vote, and four Mediterranean states − Bulgaria, Italy, Spain and Ukraine (at the time the Ukrainian Soviet Socialist Republic) abstained from voting. The text of the UN Convention on the Law of the Sea was adopted in New York, on the last day of the eleventh session, (April 30th 1982), with 130 votes − 4 states voted against it, 17 states abstained from voting and 4 refused to vote.[100]

[99] A number of authors wrote about the historical importance of adoption of the 1982 Convention, e.g. B. VUKAS, 2004, 13−24; T. T. B. KOH, 1984, 761−762, 768−784; D. RUDOLF, 2012, 327−333; J. HARRISON, 2011, 48 ff.;V. Đ. DEGAN 2002, 17−22, 26−28; T. SCOVAZZI, 2002, 35−38; V. IBLER, 2001, 37−43.

[100] For a comprehensive overview of the work of this session see R. J. DUPUY − D. VIGNES, 1991, 239−242; D. RUDOLF, 1985, 14−15. More details about the votes of Mediterranean coastal states at the Convention in C. GIORGI, 1987, 253−256.

i očuvanja slobode mora, tendencije proširenja morskih granica na sve veće udaljenosti od obale u 20. stoljeću su pobijedile, ali je i sloboda mora ipak uspjela ostati sačuvana.

Nastojanja država da zahvate što više mora i podmorja ispred svojih obala, osobito su osnažena nakon Drugog svjetskog rata. Iako su svi morski prostori još tijekom 19. i na početku 20. stoljeća bili pod samo tri pravna režima (unutarnjim morskim vodama, teritorijalnim i otvorenim morem – pod kojim je bio sav preostali dio morskih prostranstava), Konvencija iz 1982. razlikuje ih već osam – unutarnje morske vode, arhipelaške vode oceanskih arhipelaških država, teritorijalno more, vanjski pojas, isključivi gospodarski pojas, epikontinentski pojas, otvoreno more te Međunarodnu zonu dna mora i oceana.

Taj proces nezaustavljivog umanjivanja prostora otvorenog mora započeo je uspostavljanjem prvih zona pod režimom epikontinentskog i isključivog gospodarskog pojasa. Pravo mora otada sve više postaje predmet kompromisa između različitih interesa država. Vrhunac toga razvoja predstavljala je Treća konferencija UN-a o pravu mora. U dugotrajnim pregovorima predstavnici zemalja sudionica, među kojima su bile i sve tadašnje sredozemne države, strpljivo su nastojali iznaći pravni poredak koji će zajamčiti upotrebu mora u svrhu dobrobiti svih država u svijetu. Iako je po svome temeljnom cilju i načinu rada ta konferencija bila prije svega politička, Konvencija koja je 1982. godine usvojena ipak je u tome povijesnom trenutku bila važno sredstvo za ostvarenje pravičnijih odnosa na svim svjetskim morima.

The adoption of the UN Convention on the Law of the Sea marked the beginning of a quite new era in the development of the international law of the sea.

5. CONCLUDING REMARKS

The research summarized on the preceding pages has shown that the long path of development of the Law of the Sea had its starting point in the Mediterranean. The knowledge of the practice of the Mediterranean coastal states, primarily in the late Middle Ages and the Modern Age, is indispensable for the comprehension of the origins and beginnings of the development of this branch of international law. The first acts concerning the regulation of relations in parts of the sea along their shores, especially those related to defining the limits of the extent of their authority at sea, may be considered the bases of the establishment of a comprehensive legal system, by which all the activities in the oceans and seas are regulated centuries later.

Apart from unilateral acts, bilateral agreements on the mutual recognition of certain rights were also significant in the practice of maritime states, and some details were settled by the international agreements only at the end of the 19th century. Until that time, the Law of the Sea had been developing for centuries as customary law. The opinions of prominent jurists, especially those favorable to the interests of the strongest maritime states, had an important role in transformation of practice into awareness of its legal obligatoriness. After the long-term conflicts of viewpoints regarding the extent of state authority at sea and the preservation of the freedom of the sea, the tendency to expand maritime boundaries to the increasing distances from the coast finally triumphed in the 20th century, but the freedom of the sea still remained preserved.

The attempts of states to seize the largest possible area of the sea and subsoil along their coasts, intensified especially after the World War II. Although all the marine spaces were still under only three legal regimes (internal waters, territorial waters and high seas − under which were the remaining expanses of the sea) during the 19th and early 20th century, the 1982 Convention distinguishes eight of them − internal waters, archipelagic waters of oceanic archipelagic states, territorial sea, contiguous zone, exclusive eco-

nomic zone, continental shelf, high seas, and international seabed and ocean floor zone.

This process of unrestrainable reduction of the area of high seas has begun by the establishment of the first zones under the regimes of continental shelf and exclusive economic zone. Since that time, the Law of the Sea is increasingly becoming a matter of compromise between differing state interests. The Third UN Convention on the Law of the Sea represented the highlight of that development. Over the course of lengthy negotiations, the representatives of participating countries, including all contemporary Mediterranean states, have patiently attempted to come up with a legal order guaranteeing the use of the sea beneficial to all countries worldwide. Although that conference was, according to its main purpose and the mode of operation, primarily a political one, the Convention adopted in 1982 was at that historical moment, an important instrument for the realization of more equitable relations in all the world's seas.

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