MARITIME AREAS OF THE REPUBLIC OF CROATIA IN ITS 1994 MARITIME CODE

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A review of the laws of the former Yugoslav Federation related to its maritime areas since 1948 is followed by a presentation of the content of the Part Two of the Croatian Maritime Code of 1994, concerning: internal waters, territorial sea, exclusive economic zone, continental shelf and the right of hot pursuit. An analysis of these provisions is made in the light of Croatian obligations, especially these arising from the 1982 UN Law of the Sea Convention. Restrictive regulations on innocent passage of foreign warships through Croatian territorial sea are considered in terms of respective provisions in codification conventions, State practice and leading doctrinal views.

Key words: *law of the sea, internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, right of hot pursuit.*

I. INTRODUCTION

Next to Italy Croatia has the longest coast in the Adriatic Sea. This is a result of some historic developments. Although from the early 12th century onwards Croatia had been in feudal order under foreign monarchs, and then divided into several States,[1] Croatian people has a long maritime tradition. Due to some unhappy historic events Croats are with

1 In 1102 Croatia entered into personal union with Hungarian kings. In early 16th century Croatian lands happened to be divided between Habsbourgs as nominal Croatian kings, the Republic of Venice (until its end in 1797), and the Ottoman Empire. At the southern part of its coast existed the Republic of Dubrovnik which was abolished by Napoleon in 1808.

Greeks the only genuine maritime nation in the Balkan peninsula.[2] Consequently, unlike other Slavic peoples, Croats have terminology in their own language for all words relating to the sea, fishery, shipping and shipbuilding.

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The former Yugoslav Federation did not have its maritime code. Its maritime legislation was divided into several laws. Some domains of minor importance were additionally regulated by laws of the coastal federal republics (mainly Croatia and Montenegro).

The most important was the Maritime and Inland Navigation Law with 1046 articles. It was adopted by the Federal Parliament on 15 March 1977,[3] after more than twenty years of being prepared at the Adriatic Institute in Zagreb.

That what is the topic of the present explanation was regulated by several consecutive federal laws. The first "Law on the Coastal Sea of the Federal People's Republic of Yugoslavia" was enacted on 1 December 1948.[4] It was under this Law that the first straight baselines for measuring the breadth of its territorial sea were traced. It took place before the 1951 Judgment of the Hague Court in the *Anglo-Norwegian Fisheries Case* and ten years before the 1958 Geneva Conventions on the Law of the Sea.

This Law determined the breadth of the territorial sea of Yugoslavia at 6 nautical miles. Besides, it determined a 4 mile "protection zone" reserved for its rights of customs control, public security and fishing interests. That was therefore not only a kind of contiguous zone, but also an exclusive fisheries zone.

Further legislation of the former Yugoslavia and amendments thereto, followed the trends in developing the positive international law of the sea. On 28 January 1966 the Socialist Federal Republic of Yugoslavia ("SFRY") became a party to all four 1958 Geneva Conventions on the Law of the Sea.

Prior to it, on 23 April 1965, a new "Law on the Coastal Sea, Contiguous Zone and Continental Shelf of Yugoslavia" was adopted,[5] which

2 After the defeat of its fleet at the battle of Lepanto (today Naupaktos in Greece) on 7 October 1571, the Ottoman Empire virtually ceased to be a maritime power. This in turn prevented all Balkan peoples under Ottoman rule except Greeks to develop their activities on the seas.

3 "Službeni list SFRJ" No.22/1977.

4 "Službeni list FNRJ" No.106.

5 "Službeni list SFRJ", No.22/1965.

was prepared at the Adriatic Institute in Zagreb and which at the time was in perfect accord with the 1958 Geneva Conventions. Under this Law straight baselines were moderately corrected in comparison with these from the 1948 Law, according to the criteria laid down in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone (hereinafter: "the 1958 Convention on the Territorial Sea"). These baselines joined the outermost points of the outermost islands and reefs of the Eastern Adriatic archipelago, from the western coast of Istria to the shore of Montenegro. Beyond these straight baselines were left aside the island of Vis and small islands of Jabuka, Svetac, Biševo, Sušac and Palagruža.

The breadth of the territorial sea was under that Law extended up to 10 miles, thus encompassing the former 4 mile protection zone. In addition, a 2 mile contiguous zone was provided for with the same jurisdiction as in the above 1958 Geneva Convention. That Law provided for the first time the continental shelf of Yugoslavia within the limits of "sovereign rights" under the respective 1958 Geneva Convention.

The continental shelf was delimited with Italy by the Agreement signed on 8 January 1968, and entered into force on 21 January 1970.[6] The territorial sea in the Gulf of Trieste was delimited with Italy by the Treaty of Osimo, signed on 10 November 1975 and entered into force on 2 April 1977.[7]

By an amendment to the Law of 1965, adopted on 27 March 1979,[8] Yugoslavia extended its territorial sea up to its full extent of 12 miles, thereby abrogating the provisions in that Law on the contiguous zone. Since then and until its dissolution in April 1992, the SFRY had no contiguous zone.

The SFRY ratified the 1982 UN Law of the Sea Convention (hereafter: "the 1982 Convention"), on 27 November 1985. By the time the Convention finally entered into force on 16 November 1994, SFRY no longer existed.

The last Yugoslav "Law on the Coastal Sea and Continental Shelf" was adopted on 23 July 1987.[9] Under this Law the straight baselines from the previous Law of 1965 were slightly corrected along the Montenegrin coast. A new baseline was established between the cap Mendra near the port of Bar (Antivari) and the cap Platamuni near Budva. This correction has no impact on future delimitations in relation

6 "Službeni list SFRJ, Međunarodni ugovori i drugi sporazumi", No.28/1970.

7 "Službeni list SFRJ, Međunarodni ugovori", No.1/1977.

8 "Službeni list SFRJ", No.13/1979.

9 "Službeni list SFRJ", No.49/1987.

to the opposite Italian coast. The legal experts from the Federal Army had at that time an increasing influence on maritime legislation, some provisions from that last Law were not in accordance with all Yugoslav obligations from the conventions on the law of the sea.

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II. THE 1994 CROATIAN MARITIME CODE

The independence of the Republic of Croatia was proclaimed by the Croatian Parliament (Sabor) on 25 June 1991, the same date as the independence of Slovenia. However, by the Brioni agreement of 7 July, the declarations of independence of both States were suspended for three months. Finally, on 8 October 1991, Croatia and Slovenia broke all links with the organs of what remained of the SFRY at that time. On that date both these former Yugoslav Republics became independent States.

On the basis of the existing legislation and practice, it was not difficult to prepare the Maritime Code of the Republic of Croatia in short time. It was adopted by the Croatian Parliament on 27 January 1994,[10] containing 1056 articles.

Part Two of the Maritime Code entitled: "Maritime and seabed areas of the Republic of Croatia" regulates all the matters of the former Yugoslav laws on the coastal sea. This term, meaning internal waters and territorial sea together, was abolished as inappropriate and unknown in the international law of the sea.

Following a general provision, this Part is divided into five chapters relating to: internal waters, territorial sea, exclusive economic zone, continental shelf and the right of hot pursuit.

The general provision (Article 6) provides that the sovereignty of the Republic of Croatia extends at seas on its internal waters and territorial seas, as well as to the air space over them and to their bed and subsoil. It is further provided that in its exclusive economic zone and continental shelf the Republic of Croatia has sovereign rights and jurisdiction for the purpose of exploring, exploiting, conserving and managing its natural resources, including the resources of the sea-bed and its subsoil, as well as for other economic activities. It was finally added, in terms of a general obligation, that the Republic of Croatia shall protect the sea from pollution and preserve the marine environment.

At the time of drafting the Maritime Code, by a notification of succession, Croatia became a party to the three 1958 Geneva conventions

10 "Narodne novine", No.17 of 17 March 1994.

on the law of the sea, i.e. all except the Convention on Fishing and Conservation of Living Resources of the High Seas, which became obsolete. At that time it did not yet notify its succession to the 1982 Convention, which then did not enter into force.[11] However, its drafters have taken into account all provisions from the latter Convention, especially those which have already been transformed into customary rules of general international law.

All the coastal States having merchant and fishing fleets and a considerable stake in the sea have in fact two different, but not mutually exclusive interests. Their prime interest are their national security and ensuring all rights of fishing, navigation and other uses of the sea as recognized by the general law of the sea.

On the other hand, these States have a strong interest in the access of foreign ships to their open commercial ports and in the traffic of goods from and to their ports, from and to neighbouring land-locked and other States. Their further interest lies in tourism and a large access to their seas of as many leisure ships and boats as possible. This discourages them from abusing their exclusive rights which are otherwise recognized to all coastal States by general international law.

Besides, municipal legislation which is in accordance with the rules of international law, are well known and recognizable to captains of foreign ships. This prevents or reduces possible misunderstandings and infringements of these laws.

These are in general the objectives of the drafters of this part of the Maritime Code.[12]

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III. INTERNAL WATERS

Internal waters are a part of the sea directly linked to the land territory of a State. There are still views according to which the coastal States enjoy sovereignty over their internal waters to the same extent as over their land territory.[13] Although this is not exactly true or at least not the whole truth, - because a State is concerned on its land territory with individuals and on the sea with ships which are com-

11 Notification of succession to the 1982 Convention was deposited at the UN Secretary-General on 5 April 1995.

12 Part Two of the Maritime Code was jointly drafted by Professor Davorin Rudolf, at present Ambassador of Croatia in Rome, and the author of this article.

13 *Cf.*, Oppenheim's *International Law*, Volume I, Ninth Edition, Edited by Sir Robert Jennings and Sir Arthur Watts, London 1992, Parts 2 to 4, p.572.

munities with their own life[14] - the truth is that this part of the sea has never been a subject of codification conventions.[15]

Article 7 of the Croatian Maritime Code defines as internal waters of the Republic of Croatia: 1) ports and bays on the seashore of its land territory and islands; and 2) parts of the sea between the low-water line along the coast and straight baselines as provided in this Code.[16]

Having defined the bays in accordance with Article 10 of the 1982 Convention, Article 7 gives a list of all open commercial ports of Croatia. These are: Umag, Novigrad, Poreč, Rovinj, Pula, Raša, Rijeka, Mali Lošinj, Senj, Maslenica, Zadar, Šibenik, Primošten, Split, Korčula, Ploče, Metković and Dubrovnik. It is further provided that the Croatian Government can decide to designate other open commercial ports.

Article 19 of the Maritime Code determines exactly the same straight baselines as the former Yugoslav Law on the Coastal Sea of 1965. That is because the first interest of Croatia is to proclaim its exclusive economic zone in the Adriatic Sea. Its interest is also that Italy, Federal Republic of Yugoslavia ("FRY") and Albania proclaim their own exclusive economic zones. Only upon these proclamations can these States negotiate in order to reach delimitation agreements on the basis of Article 74 of the 1982 Convention.

In further negotiations Italy cannot oppose the existing straight baselines because it has never done so since 1965. Slovenia, Bosnia-Herzegovina and FRY cannot oppose them either, simply because in 1965 they were constituent parts of the former SFRY.

In respect of the newly enclosed parts of internal waters by straight baselines, the effect of both Article 4 of the 1958 Convention on the Territorial Sea and Article 8(2) of the 1982 Convention, is that "a right of innocent passage... shall exist in these waters". Consequently, these waters are internal only by name, but they continue to be subject to the legal regime of the territorial sea.[17] On the other hand, Article 22 of the 1982 Convention entitles the coastal States to prescribe sea lanes and traffic separation schemes in their territorial sea, subject to certain conditions, including the newly enclosed parts of their internal waters.

The geographic configuration of islands in the Adriatic sea is such

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14 *Cf.* Charles Rousseau: *Droit international public*, tome IV, Paris 1980, p.341.

15 See V.D.Degan, "Internal Waters", *Netherlands Yearbook of International Law 1986*, (The Hague), pp.3-44.

16 Since all mouths of rivers on the Croatian coast are enclosed by these straight baselines, there was no need to mention them in this Code as a part of internal waters.

17 *Cf.*, V.D.Degan, *op.cit.*, pp.37-43.

that any ships when proceeding to or from Italian or Sloven ports have absolutely no need to enter the internal waters of Croatia. All routes in use are at the outer side of its straight baselines.

Having this in view, the respective provisions of the Croatian Maritime Code classify all foreign ships into three categories: (1) foreign merchant ships; (2) foreign warships, other foreign government ships operating for non-commercial purposes, foreign fishing boats and foreign ships assigned for maritime scientific research, as a separate category; and finally (3) foreign pleasure ships and boats.

(1) Any foreign commercial ships can pass through Croatian internal waters in order to enter an open commercial port or a port where a repair yard is situated. They can all navigate between several Croatian open commercial ports (for commercial purposes or for repair), "by the shortest routes in use" (Article 8(1). In order to protect the public security or safety of navigation the Minister of Maritime Affairs can specify other routes as obligatory. However, failing such special orders, the shortest routes in common use are obligatory for all foreign commercial ships. In this respect this Code does not make any discrimination in respect to the flag State of any ship.

The coastline shipping is reserved for Croatian ships only, with certain exceptions subject to a permission by the Ministry of Maritime Affairs. On the basis of reciprocity with the respective flag State, such permission can be granted for transportation of empty containers between the Croatian ports. But even without reciprocity, transport of goods and passengers between Croatian ports can be permitted to foreign ships if the economic interest of Croatia so requires.

(2) Ships from the second large category can enter and pass through the internal waters of Croatia also only in order to enter an open commercial port or a port with a repair yard. However, for that purpose they need a previous permission.

In respect to foreign warships the permission can be issued by the Ministry of Defence. Another restriction is that in the Croatian ports cannot be simultaneously present more than three ships belonging to one State and that their sojourn cannot be longer than 10 days. In exceptional cases the Government can grant permissions overriding these conditions "if the State interests so require". Finally, during the visit of a foreign warship only her crew can be on board.

Permission for a fishing boat can be issued by the Ministry of Maritime Affairs. For foreign public ships and ships assigned for maritime scientific research the permission is issued by the same Ministry, subject to a consent by the Ministry of Interior.

(3) Foreign leisure ships and boats can navigate in all parts of the internal waters of Croatia with the exception of prohibited zones as determined by the Minister of Defence (in agreement with the Minister of Maritime affairs). However, upon the first visit of such a ship or boat to the internal waters, she is obliged to proceed to the nearest open commercial port in order to report its entry to the harbour master's office of the respective port and to obtain a permission of navigation.

Permissions for marine scientific research in the internal waters or territorial sea of the Republic of Croatia, including any exploration, prospecting, photographing or measuring of the sea, seabed and its subsoil by any domestic or foreign natural or juridical persons, can be issued by the Ministry of Maritime Affairs.

Permissions for archeological research of seabed and its subsoil can be issued by the Ministry of Culture and Education.

The Maritime Code contains special and restrictive rules for repairmen of foreign warships in the Croatian repair yards. These permissions are issued by the Ministry of Defence.

The Minister of Defence (in agreement with the Minister of Maritime Affairs) can proclaim some parts of the internal waters of Croatia as prohibited zones.

According to Article 17, any ship in distress can seek and obtain shelter in the internal waters of Croatia. Her only duty is to inform the nearest harbour master's office on its position.

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IV. TERRITORIAL SEA

According to Article 20 of the Maritime Code the breadth of the territorial sea of Croatia is 12 miles measured from baselines. Ships of all States enjoy the right of innocent passage through it (Article 21).

Articles 22 and 24 define the innocent passage in the same terms as Articles 18 and 19 of the 1982 Convention. In respect of foreign submarines and other underwater vehicles, Article 29 provides the same as Article 20 of the said Convention: in the territorial sea of Croatia they are required to navigate on the surface and to show their flag.

The Maritime Code of Croatia contains, however, some restrictive rules in respect of innocent passage of foreign warships through its territorial sea. Their flag State must announce such a passage to the Ministry of Foreign Affairs through diplomatic channels not latter than 24 hours before their entering the territorial sea of Croatia (Article 23). Not more

than three warships of one State can be present in its territorial sea at the same time (Article 27).

In this respect Croatia notified the UN Secretary-General as depository on its interpretative declaration on behalf of Article 310 of the 1982 Convention. It reads as follows:

> "The Republic of Croatia considers that, in accordance with article 53 of the Vienna Convention on the Law of Treaties of 29 May 1969, there is no peremptory norm of general international law, which would forbid a coastal state to request by its laws and regulations foreign warships to notify their intention of innocent passage through its territorial waters, and to limit the number of warships allowed to exercise the right of innocent passage at the same time (articles 17-32 of the Convention)."

For reasons of safety of navigation the Minister of Maritime Affairs can design sea lanes and traffic separation schemes in the internal waters and territorial sea of Croatia, in respect to all or some types of ships. They must be indicated on the chart "Adriatic sea" and published in due time in the "Notice to Mariners".

While navigating in internal waters or during an innocent passage through territorial sea, warships, tankers, nuclear powered ships and ships carrying dangerous or noxious substances or materials are obliged to confine their passage to such sea lanes and traffic separation schemes. They must obey other rules in respect to safety of navigation and prevention of marine pollution.

If any foreign warship or other public ship fails to comply with Croatian laws and regulations on innocent passage, or with generally accepted international regulations on prevention of collision at sea, and if such a ship disregards a request for compliance sent to her, a Croatian police ship, warship or other ship or aircraft on government service, or other State authority, may require it to leave the territorial sea of Croatia immediately.

Article 21(1) of the 1982 Convention provides that the coastal State may adopt laws and regulations relating to innocent passage and in respect *inter alia* of "e) the prevention of infringement of the fisheries laws and regulations of the coastal State".

On behalf of that competence, Article 26 of the Croatian Maritime Code prescribes standard rules on prohibition of fishing and catch of other living resources of the sea and seabed during the innocent passage. The passage of fishing boats must be continuous and expeditious, without stopping and anchoring except in case of *force majeure* or distress. Such a boat must navigate at a speed not less than six knots

and must bear the external marks of a fishing boat.

The above restrictions do not apply when such a boat has a permission for fishing in the territorial sea of Croatia as long as situated in an area where fishing is allowed.

The Minister of Maritime Affaire can, as a measure of public security, define specified areas of the territorial sea of Croatia in which the passage of foreign ships is temporarily suspended. The same areas can be specified by the Minister of Defence for exercising of weapons. Orders to this effect must be duly published in the "Notice to Mariners".

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V. THE QUESTION OF CONTIGUOUS ZONE

So far Croatia has not proclaimed its contiguous zone and its Maritime Code contains no rule on it. As pointed out above, its first interest is to proclaim its exclusive economic zone and to reach agreements on its delimitation, first of all with Italy. Only after such an agreement there will be room to consider proclaiming the contiguous zone, which overlaps with some areas of the exclusive economic zone. The agreement on delimitation of the second can serve all other purposes in the same area.

It is a known fact that the contiguous zone is not a zone of "sovereign rights" of the coastal State, but that of its control in which it may prevent or punish infringements of its customs, fiscal, immigration or sanitary laws within its territory or territorial sea.

Pursuant to Article 33 of the 1982 Convention, this zone, which is contiguous to the territorial sea, may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. This means that a coastal State which has its territorial sea of 12 miles, is entitled to another 12 miles of contiguous zone.[18]

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18 If, like in Albania in 1997, as a result of breakdown of State authorities a state of disorder emerges, the existence of the contiguous zone may prove a necessity for neighbouring States. In the Albanian situation, failing a UN Security Council resolution on the basis of Chapter VII of the Charter, all acts of Italian navy and other public ships committed to the prevention of infringements of Italian immigration laws at the high seas, and in particular in the Albanian territorial sea and ports, were acts *ultra vires*. Because of inhumane consequences of some of these measures they can hardly be justified as acts undertaken in state of necessity.

VI. EXCLUSIVE ECONOMIC ZONE

Article 1042, which is one of the final provisions of the Maritime Code, provides that the Croatian Parliament (Sabor) will decide on the proclamation of the exclusive economic zone of the Republic of Croatia. Only upon that proclamation will Articles 33 to 42 of that Code relating to this zone become applicable.

The Maritime Code already contains the necessary rules on Croatian exclusive economic zone to be formally proclaimed in due time. Croatia is thus determined to have this zone. Because this institute has already transformed into the general customary law of the sea, the right to proclaim this zone is the right of all coastal States with comparable geographic positions. It is in particular the right of the States parties to the 1982 Convention.

Article 33 of the Maritime Code provides that the exclusive economic zone of the Republic of Croatia is an area beyond the limits of its territorial sea, which extends to its outer limit as permitted by general international law.

According to Article 34, the Republic of Croatia has sovereign rights in its exclusive economic zone for the purpose of: a) exploring, exploiting, conserving and managing the living and non-living natural resources; and b) the production of energy from water, currents and winds.

Pursuant to Article 35, the competent organs of the Republic of Croatia have the right and duty to take any necessary measures in order to exercise sovereign rights for the purpose of exploring, exploiting, conserving and managing the living natural resources of this zone, including the investigation, inspection and arrest of foreign vessels and judicial proceedings. Any seizure or arrest and penalties adjudicated, are immediately notified to the flag State of the ship through diplomatic channels.

This provision applies first of all to foreign fishing boats because it is hardly imaginable that a foreign commercial ship or another kind of vessel is engaged in illegal fishing activities.

Article 42 of the Maritime Code provides that during navigation through the exclusive economic zone of Croatia, ships are obliged to respect generally accepted international rules and standards,[19] as well as Croatian regulations on prevention of pollution of the sea from vessels and by dumping.

On the same account during the overflight of this zone, the aircraft are obliged to observe all internationally accepted rules and Croatian

19 For the legal scope of these international rules and standards from the 1982 Convention, see - V.D.Degan: *Sources of International Law*, The Hague 1997, pp.6-7.

regulations on prevention of the pollution of the sea from and through the atmosphere. Croatian regulations to this effect will be issued by the Minister of Maritime Affairs, subject to an approval by the Minister of Construction and Protection of Environment.

Therefore, the Maritime Code of Croatia does not provide any specific enforcement measures against foreign ships acting in contravention of international and local rules on preservation of the marine environment in its future exclusive economic zone. This means that once this zone has been proclaimed, the jurisdiction will be exercised within the strict limits of the 1982 Convention, which is now the treaty in force for Croatia. The freedom of navigation in this zone will be fully respected, as is the case at present.

According to Article 41, foreign and domestic natural and juridical persons may conduct the marine scientific research in the exclusive economic zone of the Republic of Croatia upon the permission by the Ministry of Maritime Affairs. The condition is that such a research serves for peaceful purposes and promotes the knowledge of the marine environment.

It is further provided that the Minister of Maritime Affairs prescribes the conditions for issuing such permission. These conditions must observe Part XIII of the 1982 Convention. On behalf of Article 134 of the Croatian Constitution, international agreements in force are for Croatia a "part of the Republic's legal order, and in terms of legal effect shall be above laws".

Articles 36 to 40 of Chapter IV relating to artificial islands, installations and structures, are already in force because they also apply to continental shelf.

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VII. CONTINENTAL SHELF

Unlike the exclusive economic zone, all coastal States have their continental shelf *ipso facto* and without proclaiming it. Article 43 of the Maritime Code provides that the continental shelf of the Republic of Croatia comprises the seabed and subsoil of the submarine area extending beyond the limits of its territorial sea up to the boundaries with the continental shelves of neighbouring States.

It was expressly provided that the boundaries of this shelf between the Republic of Croatia and the Republic of Italy are fixed by the agreement between Italy and the former SFRY of 1968. In respect to the boundaries with Montenegro i.e. Federal Republic of Yugoslavia (Serbia

and Montenegro), it is provided that pending a delimitation agreement, the Republic of Croatia will exercise its sovereign rights in this shelf up to the median line continuous from the outer limit of the territorial sea in Boka Kotorska in direction to the high seas.

Article 44 provides that the Republic of Croatia exercises sovereign rights over its continental shelf for the purpose of exploring and exploiting its natural resources. The natural resources consist of the mineral and other non-living resources of the seabed and subsoil, together with living organisms which at the harvestable stage, are either immovable on or under the seabed or unable to move except in constant physical contact with the seabed or its subsoil.

According to Article 45, the exercise of the rights from Article 44(1) of this Code must not infringe on or result in any unjustified interference with navigation, fishing, protection of living resources of the sea, or oceanographic or other scientific research of public character.

The exploitation of natural resources in the continental shelf and the erection, start-up and maintenance of movable installations and structures for the purpose of exploration or exploitation, can be undertaken subject to conditions prescribed by Croatian laws and regulations based on law.

As already noted, Articles 36 to 40, which are parts of Chapter IV, are already applicable to activities in the continental shelf. What is provided here is that in this shelf (and in the exclusive economic zone upon its proclamation), the Republic of Croatia has the exclusive right to construct or allow and regulate construction, operation and use of artificial islands, installations and structures on the sea, seabed and subsoil. The license in this respect is issued by the Ministry of Maritime Affairs.

Special obligations of natural and juridical persons, authorized to construct these objects, are prescribed in Article 37, including their duty to remove any installations or structures abandoned or disused.

The safety zones around these facilities up to 500 meters, in which navigation is not allowed, can be established by the Minister of Maritime Affairs. The data on these zones must be published in due time in the "Notice to Mariners".

Article 39 prescribes that artificial islands, installations, structures and safety zones may not be established where they may interfere with the use of recognized sea lanes essential to international navigation.

Article 40 provides that on all artificial islands, installations and structures on the continental shelf (i.e. in the exclusive economic zone) of the Republic of Croatia, Croatian customs, fiscal, health, safety, immigration and penal laws and regulations will apply.

Finally, Article 46(3) provides that the Ministry of Maritime Affairs allows and controls the laying and maintenance of those submarine cables and pipelines on Croatia's continental shelf which enter its territorial sea. For other submarine cables and pipelines on Croatia's continental shelf, this Ministry only approves their course delineation.

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VIII. RIGHT OF HOT PURSUIT

Article 47, which forms Chapter VII of the Part Two of the Maritime Code, relates to the hot pursuit. Like most other provisions of Part Two, this one is couched strictly in terms of the 1982 Convention, i.e. of its Article 111.

The hot pursuit of a foreign ship will be undertaken if the competent authorities have good reasons to believe that the foreign ship or one of its boats has violated this Maritime Code, other regulations of the Republic of Croatia or generally recognized rules of international law.

Such pursuit of a foreign ship may be commenced only if the foreign ship or one of its boats is within the internal waters, the territorial sea, the exclusive economic zone (upon its proclamation) or on the continental shelf of the Republic of Croatia, and may only be continued if the ship does not stop after a visual or auditory signal sent to the ship at a distance which enables it to be seen or heard by the foreign ship.

The hot pursuit of a foreign ship can be continued in the high seas, in the exclusive economic zone and the contiguous zone of a foreign State if it has not been interrupted, until its entering into its own territorial sea or the territorial sea of a third State.

The hot pursuit can be exercised only by the Croatian police boats or warships or aircraft, or other ships or aircraft authorized to this effect.

In the exclusive economic zone and on the continental shelf the hot pursuit of a foreign ship may be commenced only if the regulations applicable in these areas have been violated.

An arrested foreign ship will be escorted to the harbour master's office competent for the port in which the ship was previously situated. In case of arrest of a foreign ship which was only in passage through Croatia's internal waters or the territorial sea, it will be proceeded to the nearest harbour master's office.

The last paragraph of Article 47 provides that its provisions do not

apply to foreign warships and foreign public ships which enjoy the immunity.

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IX. CONCLUSION

As was shown, provisions of Part Two of the Maritime Code of Croatia are for their most part couched in the same terms as the relevant provisions of the 1982 Convention. In this respect the Maritime Code is probably one of the most advanced in the world.

In view of the fact that so far internal waters have not been the subject of codification efforts by conventions, the solutions adopted in this Code in relation to these waters can perhaps be of some doctrinal interest.

Croatia's sovereignty, sovereign rights and jurisdiction in other parts of the sea are determined within the limits of the 1982 Convention. What is important, as pointed out, is that this Convention as a treaty in force has for Croatia according to Article 134 of its Constitution, legal effects stronger than laws, including the Maritime Code itself.

Important in this connection is Article 42 of this Code. As explained above, it does not provide any specific enforcement measures against foreign ships acting in violation of international and domestic rules on the preservation of marine environment in Croatia's exclusive economic zone. This means that after the proclamation of this zone only such measures will apply as provided in the 1982 Convention. That is a kind of guarantee that even after the proclamation the freedom of navigation in this zone will be observed as it was before.

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Some restrictive provisions on previous notification of foreign warship for innocent passage through Croatia's territorial sea, and restriction to only three such ships, need some more elaboration.

To quote an author: "The question of the right of warships to innocent passage has long been one of the most controversial aspects of the law of the sea".[20]

20 *Cf.*, R.R.Churchill and A.V.Lowe: *The Law of the Sea*, Second Edition, Manchester University Press 1988, p.74. See along the same lines - Dupuy-Vignes (Ed.): *Traité du nouveau droit de la mer*, Paris-Bruxelles 1985, p.770. A succinct review of treaty provisions, attitudes of States and national legislation, as well as of doctrinal views on this matter was given in - Davorin Rudolf: *Međunarodno pravo mora* (The International Law of the Sea), Zagreb 1985, pp.92-104.

Over the history some important maritime powers have radically modified their attitude in this respect. Thus before World War II an opinion prevailed in the United States that the sovereignty of a coastal State is restricted by the right of innocent passage in order to recognize the freedom of the seas for the purpose of free trade between all States. There were, however, no reasons for recognition of this right to warships.[21]

The former Soviet Union for a long time strongly advocated the right of any coastal State to deny the passage of foreign warships in its territorial waters without its previous permission.

However, after World War II the United States, and the former Soviet Union towards the end of the Third UN Law of the Sea Conference, both became champions of the right of innocent passage of all warships without any restrictions imposed by the coastal State. The result of this evolution was the Joint Statement of the United States and the former USSR of 23 September 1989 on "Uniform Interpretation of Rules of International Law Governing Innocent Passage". Its paragraph 2 reads:

> "All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required."[22]

The codification instruments do not provide a clear answer to this delicate question, although one can notice a certain evolution in their written rules.

Hence, Article 12 of the text on the Legal Status of the Territorial Sea, annexed to the Final Act of the 1930 Conference for the Codification of International Law, contained a permissive provision to this end:

> "As a general rule, a Coastal State will not forbid the passage of foreign warships in its territorial sea and will not require a previous authorization or notification.
>
> The Coastal State has the right to regulate the conditions of such passage.
>
> Submarines shall navigate on the surface."[23]

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21 *Cf.*, comment on Article 14 of the Harvard Draft Convention on Territorial Waters, *American Journal of International Law 1929*, Supplement, p.295. In addition, Elihu Root, former Secretary of State, declared in his capacity of counsel of the United States in the *North Atlantic Fisheries* arbitration in 1910, the following: "Warships may not pass without consent into this zone, because they threaten. Merchant ships may pass and repass because they do not threaten." *Cf.*, Churchill-Lowe, *op.cit.*, p.74.

22 *Cf., International Legal Materials 1989*, No.6, p.1446.

23 Quoted L. Pfankuchen: *A Documentary Textbook in International Law*, New York 1940, pp.226-227.

The 1958 Geneva Convention on the Territorial Sea contains no express provision on the right of innocent passage of warships. Its Article 14(1), however, stipulates:

> "Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea."

As Article 14 appears in sub-section A of Section III, entitled "Rules applicable to all ships", this encourages some arguments that all kinds of ships, including warships, enjoy the right. Nevertheless, a number of States have added declarations to their ratification instruments of this Convention, claiming the right to request authorization for innocent passage of foreign warships. One can conclude that the matter has remained unregulated.[24]

A certain progress was made in the 1982 Convention, although most authors still feel that it also leaves the matter of warships ambiguous.[25] Its Article 19(2) gives a long list of acts prejudicial to the peace, good order or security of the coastal State. Almost all these prohibited acts are mostly related to the passage of warships. This may mean that the innocent passage of foreign warships is permitted subject to the specific conditions in the above provision making it non-innocent.

Article 24(1) further provides that:

> "The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention, or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:
>
> (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
>
> (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State."

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24 That is a view advocated *inter alia* by - Dupuy-Vignes (Ed.): *op.cit.*, pp.770-772; Churchill-Lowe, *op.cit.*, p.75. In addition, the International Law Commission proposed in its draft article 24 that: "The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally it shall grant innocent passage...". *Cf., Yearbook of the International Law Commission 1956*, Vol.II, pp.276-277. The fact that this provision was not adopted at the 1958 Geneva Conference was not a conclusive evidence that such a right did not exist in customary law.

25 *Cf.*, Dupuy-Vignes (Ed.), *op.cit.*, pp.777-778; Churchill-Lowe, *op. cit.*, p.76; Ian Brownlie: *Principles of Public International Law*, Fourth Edition, Oxford 1990, p.198; Oppenheim's *International Law*, Volume I, Ninth Edition, Edited by Sir Robert Jennings and Sir Arthur Watts, London 1992, Parts 2 to 4, p.618.

However, this part of the Convention was adopted without voting only after the President of the Third Law of the Sea Conference T.B. Koh publicly read a joint letter of a group of participating States reserving the right to adopt measures in order to protect their security interests in accordance with Article 19 to 25 of the Convention.

It follows from the above that neither the submission of innocent passage of foreign warships to previous permission or notification, nor the limitation of the number of these ships in innocent passage, are expressly regulated in the 1958 and 1982 Conventions.

Nevertheless, the requirement by a coastal State for previous notification of such a passage is not tantamount to its denial, especially if its disrespect does not make the passage non-innocent only for that reason. However, if that is true, this requirement remains without sanction.

Neither does the limitation of the number of foreign warships mean denying this right, but it is a restriction to its exercise. It seems therefore that mostly out of step with Article 24(1) of the 1982 Convention is probably the requirement by the coastal State for a previous permission of innocent passage.

On the other hand, it must be stressed that a considerable number of coastal States have never renounced their right to impose such specific requirements on foreign warships. These restrictions are provided in their laws and these States have reiterated the right to impose them in their interpretative declarations both to the 1958 and 1982 Conventions.

At the same time, an equally important group of coastal States, among them the United States and the Russian Federation, persistently advocate unrestricted right of warships of all flags to innocent passage through the territorial sea of any other States. It is exactly in this light that the above quoted provisions in the codification conventions are construed by them.

In a situation like this, one cannot but conclude that there is no general and uniform practice confirmed by the *communis opinio juris*, proving the existence of any customary rule of general international law on this subject-matter. Still less can one prove, on the basis of such a disparate practice, the existence of a peremptory norm (*jus cogens*) in this domain, prohibiting the coastal States to impose certain requirements of innocent passage of foreign warships through their territorial sea.

The foregoing conclusion does not, however, relate to the passage through the straits used for international navigation. What applies to these straits is the peremptory norm as defined by the International Court of Justice in its 1949 Judgment in the *Corfu Channel case* (merits). It reads as follows:

"It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high sea without the previous authorization of a coastal State, provided that the passage is *innocent*. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace."[26]

In the same context, Article 16(4) of the 1958 Geneva Convention on the Territorial Sea and Article 45(2) of the 1982 Convention, both stipulate that there will be no suspension of innocent passage through these straits.

26 Judgment of 9 April 1949, *I.C.J. Reports 1949*, p.28.

Sažetak

MORSKI PROSTORI REPUBLIKE HRVATSKE U NJEZINU POMORSKOM ZAKONIKU IZ 1994.

U ovoj raspravi izloženi su propisi Dijela drugog Pomorskog zakonika Republike Hrvatske koji se odnose na morske i podmorske prostore Republike Hrvatske, napose oni o unutrašnjim morskim vodama, teritorijalnom moru, gospodarskom pojasu, epikontinentskom pojasu, te o pravu progona. Izvršena je usporedba tih propisa s obvezama Republike Hrvatske prema međunarodnim konvencijama i običajnom pravu mora.

U zaključku je navedeno da je najveći dio tih propisa sročen istim riječima kao i oni u Konvenciji UN o pravu mora iz 1982. Zbog toga je taj dio Pomorskog zakonika Hrvatske vjerojatno jedan od najmodernijih u svijetu.

Istaknuta je činjenica da u Glavi IV, o gospodarskom pojasu, članak 42(1). izrijekom ne propisuje provedbene mjere protiv stranog broda koji djeluje u kršenju međunarodnih i domaćih propisa o zaštiti i očuvanju morskog okoliša u gospodarskom pojasu Hrvatske. Konvencija iz 1982. za Hrvatsku je ugovor na snazi, a po članku 134. njezina Ustava takvi ugovori čine dio unutarnjeg pravnog poretka Republike i po pravnoj su snazi iznad zakona. To znači da i nakon što Hrvatski sabor proglasi gospodarski pojas, u njemu će se protiv stranih brodova poduzimati samo one provedbene mjere koje predviđa ta Konvencija. To je dopunska garancija da će se u gospodarskom pojasu Republike Hrvatske i dalje poštivati sloboda plovidbe kao i prije njegova proglašenja.

Na koncu ove rasprave razmotreni su propisi Pomorskog zakonika koji neškodljiv prolazak stranih ratnih brodova teritorijalnim morem Republike Hrvatske uvjetuju prethodnom notifikacijom (članak 23), i ograničuju taj prolazak na tri strana ratna broda iste državne pripadnosti (članak 27).

S time u vezi razmotrena su vladajuća gledišta znanosti i međunarodni ugovorni propisi koji se odnose na neškodljivi prolazak stranih ratnih brodova. Unatoč određenom razvoju ugovornih propisa iz te oblasti, ostale su dvojbe o dozvoljenosti ili nedozvoljenosti propisivanja posebnih uvjeta za taj prolazak od strane obalnih država. Proturječna praksa država i nepostojanje communis opinio juris *spriječili su nastanak bilo kakvog običajnog pravila o tome. Sve to opravdava tekst interpretativne izjave koju je Republika Hrvatska uložila Glavnom tajniku UN kao depozitaru Konvencije iz 1982. na temelju njezina članka 310, a koja glasi:*

> *"Republika Hrvatska smatra da u smislu članka 53. Bečke konvencije o pravu ugovora od 23. svibnja 1969, ne postoji imperativna norma općeg međunarodnog prava koja bi obalnoj državi zabranjivala da svojim zakonima i propisima zahtijeva notifikaciju namjere neškodljivog prolaska stranih ratnih brodova kroz njezino teritorijalno more i da ograniči broj brodova kojima je dopušteno istovremeno vršenje prava neškodljivog prolaska (članci 17-32. Konvencije)."*

To se, međutim, ne odnosi na neškodljivi prolazak stranih ratnih brodova tjesnacima koji služe međunarodnoj plovidbi. Po mišljenju Međunarodnog suda izloženog u presudi u sporu o Krfskom tjesnacu (meritum) iz 1949, općenito je prihvaćeno i u skladu s međunarodnim običajem da države u doba mira imaju pravo da šalju svoje ratne brodove da prolaze kroz međunarodne tjesnace između dva dijela otvorenog mora, bez prethodnog odobrenja obalne države, pod uvjetom da je taj prolazak neškodljiv.

Ključne riječi: *pravo mora, unutrašnje vode, teritorijalno more, vanjski morski pojas, gospodarski pojas, epikontinentski pojas, pravo progona.*