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“Actualité du Droit des Mers Fermées et Semi-Fermées”

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“Actualité du Droit des Mers Fermées et Semi-Fermées”

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Actualité du droit des mers fermées et semi-fermées collects contributions that were presented during a workshop co-organized by the *Centre de droit International de Nanterre* and the Romanian branch of the International Law Associations, in Bucharest, on 30 and 31 May 2016; the working language of the event was French. The participants to the workshop and contributors to the collection are both leading and younger scholars and practitioners (mainly from France and Romania, but including representatives of other countries as well), reflecting a variety of backgrounds.

As to the structure of the book, the articles could be divided in two main groupings. One category of contributions deals with specific seas, and describe the particular legal regimes, in terms of the establishment of maritime boundaries by agreement or by recourse to international jurisdiction, as well as in terms of specificities of governance. The second group of articles are those that analyse horizontal issues that are common to all enclosed or semi-enclosed seas.

The introductory article by Jean-Marc Thouvenin and François Andia starts from the definition of „enclosed and semi-enclosed sea” as provided in Article 122 of the United Nations Convention on the Law of the Sea of 1982 (the Montego Bay Convention), and presents the main issues that the definition entails, in particular in respect to the application to the Caspian Sea.

Pierre Boussarque and Alexandra Bellayer-Roille focus on the legal effects entailed by the qualification of a sea as closed or semi-closed. They also raise the question whether such qualification could have legal effects not expressly provided in the Montego Bay Convention; the answer seems to be in the negative – the authors review in this respect the treatment of the Black

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Sea by the International Court of Justice in the judgment in the *Maritime Delimitation in Black Sea (Romania v. Ukraine)* case, the argument put forward by the Philippines in respect of the South China Sea in the arbitral procedures initiated against China, as well as the French conventional practice in the Mediterranean and the Caribbean seas.

Cosmin Dinescu has provided two contributions. The first presents the delimitation by treaties in the Baltic Sea, realizing an overview of the historical process of maritime delimitation in the region. The author identifies the main common features, as well as the most important factors that have influenced this process. A second contribution by the same writer focuses on the *Maritime Delimitation in Black Sea (Romania v. Ukraine)* case, decided by the International Court of Justice, describing in detail the geographical, historical and legal background of the case, as well as the reasoning of the Court. The writer also queries whether we are to witness a jurisdictional practice in the Black Sea, as several maritime boundaries are still not settled, and argues the seizing of the ICJ by Romania may serve as a model.

Bogdan Aurescu has reviewed in his article the agreements concerning maritime delimitation already concluded in the Black Sea. The author starts by going over the various geographical, legal and political specificities that distinguish the Black Sea. He proceeds with a description of background and main provisions of the treaties concerning the establishment of maritime boundaries between the riparian States, namely the several agreements between Turkey and the Soviet Union (in force between Turkey and the successor States) as well as the Agreement between Turkey and Bulgaria. The author identifies several characteristics of these agreements, such as the primacy of equidistance, the lack of relevance of the non-geographical factors, and the concern with preserving the interests of third countries. A final part of the contribution is dedicated to prospective agreements, noting the challenges that confront the riparian countries that have not yet settled their boundaries.

Alina Orosan covers the area of the Red Sea. The article describes in detail the conventional system of protection of the Red Sea and the Gulf of Aden, which has at its center the Regional Convention for the Conservation of the Red Sea and the Gulf of Aden Environment (1982) and its various protocols. The author concludes that the institutional framework for the protection of environment is rather clear and well-developed, but it would benefit from making operational the three Protocols to the Regional Convention, the ratification of which has been pending for more than a decade.

Hadi Azari describes in his contribution the legal regime of the Persian Gulf. The author describes the characteristics of the region that have impacted the legal regime – such as the fact, that, since World War II, the Persian Gulf and the surrounding countries have provided an important part of the fossil fuel production. He overviews the attempts by the riparian to establish a governance system, and notes that they have been only partially successful, but have nevertheless resulted in the conclusion of the Kuwait Regional Convention for Co-operation on the Protection of the Environment against Pollution (1978). In a second part of the contribution Azari gives an account of the maritime delimitation practice in the Persian Gulf, analysing such factors as the use of equidistance as the preferred method, the influence of the presence of islands and of the hydrocarbon resources.

Nathalie Ros' article is dedicated to the governance of the Mediterranean, and it explains comprehensively, how the regional cooperation between the riparian States works. It describes in details the system created by the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (1976) and its Protocols. The author argues that this framework forms a legal system that is global and integrated, and that has incorporated the modern environmental principles, such as the „polluter pays principle” and the „precautionary principle”. Ros acknowledges nevertheless certain limits of the system, both of a legal and of political nature, such as the lack of unanimity – not all the Mediterranean States are parties to the Barcelona convention and its seven protocols. Another issue dealt with is the stakes of the fisheries regulation – the writer discusses the role played by such actors as the General Fisheries Commission for the Mediterranean, or the European Union.

Radu Şerbanescu highlights in his contribution on the subject of the governance in the Black Sea the role played by the Convention on the Protection of the Black Sea against Pollution (the „Bucharest Convention”) a legal instrument that establishes the regional framework for the Protection of the environment in the Black Sea. He describes the provisions of the Convention and its relationship with the Protocol of 2009 on the Protection of the Maritime Environment of the Black Sea from Land Based Sources and Activities. Şerbanescu presents in the final section of the article most recent developments in the cooperation of the riparian States and of the activities of the Black Sea Commission, a body created by the Bucharest Convention.

The topic dealt with by Carmen Achimescu is the governance of the Caspian Sea. She introduces the reader to the specific historical background, stemming from the Cold War realities, when a practice of unilateral

exploitation of the resources was started, at the initiative of the USSR. The author notes that the issue of the delimitation of has only arisen after the dissolution of the USSR, when the new independent states were keen to consolidate their economic independence by the conclusion of bilateral agreements allowing for the division of the economic resources of the Caspian. She presents the provisions of these bilateral agreements, arguing that the issues particular to the Caspian could be solved only by agreements between the five riparian States – which was eventually achieved with the conclusion of Convention on the Legal Status of the Caspian Sea, following the conference in Aktau in 2018.

Elena Lazăr has submitted a contribution concerning the governance of the Baltic Sea. She starts from reviewing the historic context as well as the geographical and morphological characteristics of the Baltic. The writer presents how the institutional governance is organized, the centerpiece of which is represented by the Baltic Marine Environment Protection Commission, otherwise known as the Helsinki Commission (HELCOM), an intergovernmental organization reuniting the riparian States. Other topics dealt with are the institutional and administrative structures created by each State to deal with Baltic matters, as well as the opportunities presented by the „Three Seas Initiative”, which includes the 12 EU Member States located between the Adriatic, the Baltic and the Black Seas.

This reviewer has also submitted a paper on the subject of the delimitation by way of agreement in the Caspian Sea.

Adrien Foulatier has two contributions; one titled *La délimitation en mer Méditerranée entre négociations and unilatéralisme* analyses the practice of States riparian to the Mediterranean, concluding that it is placed midway between two methods: one is the classic method, namely the establishment of maritime boundaries by way of the conclusion of delimitation agreements; the other consists in the unilateral proclamation of *ad hoc* maritime areas, which are not directly recognized by the Montego Bay Convention, but regulate competences recognized by it. The second article written by Adrien Foulatier reviews the decisions rendered by international courts concerning maritime delimitation in the Mediterranean.

Nabil Hajjami’s topic is the institutional governance in the enclosed and semi-enclosed seas. The author identifies geographical proximity and complexity of navigation among the main factors that make necessary a special regime for these maritime spaces. The principle of good-neighbourliness is particularly important in these areas, due to their restricted dimensions and the interconnectedness of activities conducted by States. Another characteristic identified by the author is the vulnerability of

these seas, due to the specific environmental factors, such as a low rate of renewal of waters; this results in an imperative for the riparian States to closely coordinate their activities. In the view of the author, the conservation of the maritime environment is a horizontal issue common to all enclosed and semi-enclosed seas. A final part reviews the structures involved and the instruments used for the governance of these maritime spaces.

Alina Miron focuses on the requests made by States to the International Court of Justice to be permitted to intervene in maritime delimitation cases involving in enclosed or semi-enclosed seas. She notes from the outset that, unlike the jurisprudence concerning maritime delimitation, the one concerning requests from intervention resists any attempt at systematization. The author argues that one of the most challenging issues in relation to such requests is to determine whether the jurisdiction of Court is founded on the agreement of the parties. She explains the evolution in the assessment by the Court of its competence and of the interests of the third States in such cases. A very useful table compiling the cases when third States have made requests to intervene is appended to the article.

The contribution by Ion Gâlea is concerned with security in the enclosed and semi-enclosed seas. The article focuses on recent developments in relation to the issue of fighting the illegal traffic of people in the Mediterranean, in particular the EUNAVFORMED Sophia naval operation and the challenges related to its legal basis. A second part of the contribution concerns the situation in Eastern Mediterranean created by the refusal of Turkey to recognize the government of Cyprus and the establishment of the so-called „Turkish Republic of North Cyprus”; the article analyses the implication from the perspective of the establishment of maritime boundaries; a second sub-section is dedicated to the legal complexities, from the international law of the sea perspective, created in the Black Sea by the annexation of Crimea and Sevastopol by the Russian Federation.

The book does a lot to advance the research on a topic of international law that is in full development. Its added value lies in the detailed case studies of treaties, jurisprudence of the international courts and of various governance structures and instruments in place for coordinating the management of enclosed and semi-enclosed seas. The authors, who are first-hand practitioners, with outstanding experience, draw on a large field of state practice and jurisprudence of international courts to support their findings. In particular for the practitioners of Law of the Sea the book is a useful read as it provides a cartography of the main issues raised by legal regime of these maritime space.