

JURIDICAL ASPECTS OF THE SEA BORDERS TERRITORIES OF LATVIA

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ABSTRACT

The article is devoted to the exploration of problems of the regulatory framework and legal practices of the sea territories of the Republic of Latvia in the international, European Union and national aspects. The activities of the state administration, in particular law enforcement agencies, require specific understanding of the definition of the territory of the country, taking into consideration the differentiation of the sovereignty of the state in the territories of the sea and airspace arising from modern international and European Union laws, and which would not conflict with the most generally defined meaning of the territory Latvia as in Article 3 of the Satversme (the Constitution). The term “national territory” is often encountered in international, EU and national regulatory enactments, including the Law on National Armed Forces, the Law on the State Border of the Republic of Latvia, the Law on Aviation, etc. The territory of Latvia is land, subterranean depths, inland waters, territorial sea surrounded by the state border of the Republic of Latvia, and air space above them 100 km above sea level. In this area, the Republic of Latvia is sovereign and executes its jurisdiction in accordance with international and national laws. Within the boundaries of its territory (in sea territories, also outside the territorial sea), the state exercises its territorial superiority, which is one of the elements of sovereignty. The territory of a country is not only a national border as demarcated land and space segment of the earth and the atmosphere in which the State exercises its leading role, but also the nature with its components - land, water, sky and the depths of the earth, and all the natural resources that are used in the economy and make the country territories material basis. Within the territory of the country the country may use all compulsory powers over their citizens (also for Latvian non-citizens), foreign nationals and stateless persons, unless international agreements define otherwise.

Keywords: European Union, Sea territories, State Border, international and national laws.

INTRODUCTION

The author of this research highlights existing problems encountered concerning the legislation on the sea territories of the Republic of Latvia in the international, European Union and national context. This research is essential since the activities of the state administration, specifically law enforcement agencies involved in border guarding require specific understanding of the legal concepts of the territory of the country. Taking into consideration the different

interpretation of the legal concepts there is a need to have precise understanding of the concepts regarding the regulatory framework of the sea borders territories and practical suggestions for specific solutions.

RESEARCH METHODS

1. Historical method - studying the development of the regulatory framework in the historical context, examining the evolution of the international, the EU, the Schengen acquis and the national regulatory framework.

2. Analytical method - analysing the international, European Union, Schengen acquis and national regulatory enactments (external and internal normative acts), jurisprudence, practice of the Latvian State Border Guard, analysing the essence of several concepts in the legal aspect of sea territories.

3. Comparative method - comparing the concepts of national, European Union, international and neighbouring sea territories, the legal framework for the legal status of the sea territories and the provision of the regime.

Sea border of Latvia is 498 km long and according to the Schengen acquis it is the external border of the European Union. According to their juridical status sea territories are divided into: 1) certain sea territories of the country - territorial sea; sea territories subject to limited national jurisdiction under the rules of international law - contiguous zone, Exclusive Economic Zone, continental shelf; 2) sea territories which are not subject to any national jurisdiction - the high seas.[1].

Under the jurisdiction of Latvia are included **not only internal waters but also territorial sea**, which is also the territory of Latvia [2], including Exclusive Economic Zone [3] in the Baltic sea which is not the territory of Latvia but it has the priority right to use natural resources and it can stretch up to 200 nautical miles. The Exclusive Economic Zone is an area adjacent to the territorial sea, in which, under the United Nations Convention on the Law of the Sea, there is a coastal state's right and jurisdiction [4] and the right to explore, obtain, preserve and use living and non-living natural resources, both at sea and on the seabed and in the subterranean depths, to explore and use the Exclusive Economic Zone according to European Union legislation. The State Environmental Service or other the issuer of a permit (license) in cooperation with the State Border Guard and the National Armed Forces control the use of the sea and the protection of the marine environment. Although Article 3 of the Marine Environment and Protection Management Law envisages rights for Latvia within the continental shelf and the Exclusive Economic Zone the, the control mechanism for the provision of such rights and the delimitation of the competence of the institutions in the Latvian legislation, neither the National Armed Forces law nor the Border Guard Law, where the tasks specific for this field or in another the regulatory framework is still not clearly defined [1].

The United Nations Convention on the Law of the Sea defines exclusive rights for coastal state on the continental shelf (up to 350 nautical miles from the

baseline) [4] for exploration and the use of its natural resources, while stipulating that other states have no rights without explicit consent of coastal State to explore the continental shelf and use its natural resources if the coastal state does not do it. However this does not affect the legal status of the waters and airspace over these waters. The United Nations Convention on the Law of the Sea prohibits coastal states from exercising their right to the continental shelf to interfere with the freedom of navigation of other countries [1].

In 2010, the Marine Environment and Protection Management Law came into force. Before the adoption of this law, discussions about deleting the term “continental shelf” from the text of the law were discussed, based on the argument that Latvia does not have a continental shelf within the meaning of the United Nations Convention on the Law of the Sea [3]. However, the term “continental shelf” is retained in the text of the law, although not in the list of terms in Article 1 of the Law, but in Article 3 the definition of the continental shelf is given: “The continental shelf of Latvia..... is the surface of the seabed and the subsoil in the submarine, which is the natural continuation of the terrestrial territory lies immediately after the borders of the territorial sea of Latvia and extends along the border of the continental shelf of Latvia and the Exclusive Economic Zone with Estonia, Lithuania and Sweden [3]. In this wording, this provision is incorrect, as Latvia’s right to the continental shelf is extended to the seabed and subterranean depths located outside the territorial sea of Latvia and therefore does not define the right of Latvia to the part of the continental shelf under the territorial sea, although Latvia should have there even wider rights to explore the continental shelf and to use its natural resources also under the territorial sea, as evidenced by the United Nations Convention on the Law of the Sea, the continental shelf of the coastal state is the seabed and its subterranean divisions located beyond its territorial sea boundaries **throughout the natural continuation of its land area up to the subterranean boundary of the continent or 200 nautical miles from the baselines** from which the breadth of the territorial sea is measured [4]. In addition, the natural resources of the continental shelf are the property of Latvia [3]. In the case of the continental shelf, the judgment of the International Court of Justice in the dispute between Denmark and Germany in 1967, which determined not only the main principles for determining the boundaries of the continental shelf of the countries, but also touched on important issues such as the protection of the environment of the oceans and seas, is important [5]. Moreover, Latvia as the European Union Member State must assume responsibility for the implementation of such jurisdiction and can be justified by relevant judicial decisions, such as the Prodest and Aldewereld cases, which emphasize the special relationship of employment law with the legal system of the respective Member State. According to Advocate General P. C. VILLALÓN, the continental shelf, as an area of European Union Member States’ sovereignty, has to be regarded as “the territory of the Union”. The applicability of Community law in the area of competence granted by the Member States to the exploitation of the resources of the continental shelf and the legal position of employed workers cannot be different from that of *stricto sensu* workers in the territory of the country [6] under Regulation No 1408/71 [7].

Dr. A. Fogels believes that the continental shelf is the seabed and subsoil of the adjacent submarine seabed (including the islands) to the depths of up to 200 meters beyond the territorial seas, or beyond that limit to the point where the depth of the waters permits the extract of natural resources. He further explains that the starting line for measuring the continental shelf is the external border of the territorial sea of the coastal State [2], however such definition is not precise with regard to the first paragraph of Article 76 of the United Nations Convention on the Law of the Sea. A.Fogel's reference to a depth of 200 meters apparently follows from the 1958 Geneva Convention on the Continental Shelf [8], to which Latvia had acceded in 1991 [1]. However, in the United Nations Convention on the Law of the Sea, this criterion is no longer used, but it is stated that the **continental shelf does not exceed 350 nautical miles** of the baselines from which the breadth of the territorial sea is measured or does not exceed 100 nautical miles of 2500 m of the isobath (line connecting depths of 2,500 meters) [4]. Consequently, the depth criterion of 200 m is no longer relevant for determining the boundaries of the continental shelf [9]. The 1952 Convention on the Continental Shelf (1958) was replaced by the United Nations Convention on the Law of the Sea where the principle of equal distance (equidistance) is not emphasized as to the delimitation of the continental shelf border, but the United Nations Convention on the Law of the Sea stipulates that states should proceed from all possible sources of international law spectrum, without distinguishing one of them in particular. This does not mean that the principle of equidistance should not be applied by delimiting the boundaries of the continental shelf, but this means that the parties can also rely on other possible arguments [10].

A similar situation is encountered in Latvia's dispute with Lithuania regarding the delimitation of maritime borders. All neighbouring countries, except Lithuania, have concluded agreements on territorial sea borders and the Exclusive Economic Zone. The agreement with Lithuania on the definition of maritime borders, despite long-term negotiations and harmonization of draft agreements, is still not concluded. Prof. J. Bojārs points out that the possible solutions would be, firstly, ratification of the current border treaty by Latvia, while at the same time reaching an agreement on the joint use of oil fields; secondly, resumption of negotiations on the sea border or ad hoc settlement of disputes, as the boundaries of the Latvian and Lithuanian Exclusive Economic Zone and the continental shelf never existed, however, they were set at the level of interdepartmental level in the USSR and have never been challenged [9]. The United Nations Convention on the Law of the Sea states that if the two countries' rivers are opposite or adjacent to each other, then neither country nor the other has the right, unless there is another agreement between them, to extend its territorial sea beyond the median line drawn so that each of its points is equidistant from the nearest points of the baseline, from which each country begins to measure the latitude of the territorial sea. However, the abovementioned provisions do not apply if, due to historically established legal bases or other special circumstances, the territorial sea of both countries needs to be demarcated other than that specified in this Convention [4].

In the author's view, the use of the **Equal Distance Method** is not objective. Each country baseline consists of straight sections, the length of which is not limited to the United Nations Convention on the Law of the Sea. M.Lejnieks points out that the principle of equidistance (equal distance) for the delimitation of the continental shelf (including the Exclusive Economic Zone) has not been applied in the current formulation of border agreement [10]. In case of referring to the UN International Court of Justice or Arbitration, Latvia's arguments for fair dispute resolution would be arguments about the historical maritime borders, although they were only up to 4 nautical miles from the coasts, fishing areas, oil and other deep-sea minerals and fish resources explored by Latvia during the Soviet era and as J.Bergholz notes, taking into account historical, geological, geographical and other factors [1].

With regard to the monitoring of the state border, the tasks of the State Border Guard are to protect the state border, border signs and other border structures, to prevent any attempt to unlawfully change the location of the state border in the area; in cooperation with the National Armed Forces [11], **to prevent and repel armed attacks** in the territory of Latvia, in territorial and inland waters, to prevent armed provocations on the state border; to observe land borders, waters and airspace adjacent to the state border [12]. Foreign vessels have the right to cross the state border and enter the territorial sea, observing **the principle of peaceful passage** in accordance with the United Nations Convention on the Law of the Sea, [13] but the coastal State has the right to determine the shipping regime, customs and sanitary arrangements, organization of transshipment operations, tax arrangements and legal regime in inland waters, as well as enforcing criminal jurisdiction. However, the issue of the collision of two jurisdictions is more complicated in the Exclusive Economic Zone and on the continental shelf, since it is not explicitly regulated in international maritime legislation [1].

The peculiarity of the territorial sea border surveillance, which is very different from land border surveillance, is the possibility of legally crossing the sea border without border checks, that is, if the Latvian sea border is crossed with the aim of crossing the territorial sea of Latvia, observing the principles of peaceful passage. This means that, in fact, the state border is crossed, but border checks are not carried out if a ship sails from the territorial sea of Latvia without calling any port of Latvia. Unlike the land border, where border crossing points are located mostly in the immediate vicinity of the state border, sea borders and border crossing points never coincide, and the ship is present relatively long time in the territory of Latvia, before it is subject to border checks. This further proves the necessity to develop amendments to the Border Guard Law and to give the State Border Guard specific powers in the supervision of sea territories and inland waters under the jurisdiction of Latvia [1].

The **regulations of the Cabinet of Ministers on port formalities** (2012), in contrast to the Regulations on formalities related to the entry and exit of ships from the port (2005), have become a significant consolidating normative act (in total consisting of 121 articles) also regarding the competence of the State Border Guard in ports - port formalities. These regulations define the field of maritime

surveillance inside and outside ports, imposes an obligation to inform the State Border Guard about unauthorized persons on board, however it does not determine the rules for staying, moving and operating in the territorial sea and in the Exclusive Economic Zone. Unlike the neighbouring country of Lithuania, which determines the border area (including regime) on the land in the country 5 km from the sea coast, with a sea border much shorter than Latvia, the Law on the State Border (2009) merely states in general terms that the state border regime includes the procedures by which vessels cross the state border, as well as enter and stay in the territorial seas, inland waters and ports [1].

The **Convention on the Facilitation of Maritime Traffic** (FAL-65) [14] is essential for the surveillance of the maritime border. However, with the accession of Latvia to the Schengen Convention, the Latvian sea border has become the external border of the Schengen area, for which more stringent border control is required. Under the supervision of the Territorial Sea [15], special attention might be paid to the legal regime of the contiguous zone [4], which has little attention paid not only in the work of Latvian law scientists but also to the national regulatory framework, without foreseeing this zone or the respective competences and responsibilities of the institutions [1].

CONCLUSION

After the research the author puts forward the following conclusions and suggestions.

1. Agreements on the territorial sea border, which is the EU's external border and exclusive economic zone, have been signed with all neighbouring countries, except for Lithuania. The method of equidistance i.e. as the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each of the two states is measured or equal distance is not a priority of maritime borders delimitation since the base line of each state is determined by each state individually, and, if the base line is formed of straight sections subjectivity increases since the length straight line is not limited by UNCLOS. The Parliament should reject the Latvian and Lithuanian sea border project as inappropriate to Latvian interests.

2. Convention on Facilitation of International Maritime Traffic (FAL) defines the facilitation of movement of people and cargoes, however according to its main goal it is in conflict with the Schengen Acquis, which requires enhanced border controls at the external borders and strengthening of borders status. If an EU Member State establishes its international legal obligations incompatibility with EU law, it must take all necessary steps to eliminate the incompatibilities.

3. In United Nations Convention on the Law of the Sea exists definition as “contiguous zone” which may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured” unfortunately such definition is not included regulatory framework of Latvia. It is necessary to include in law on the state Border of Latvia the term “*contiguous zone*” in the

following formulation – *“the waters of the Baltic Sea in the exclusive economic zone of Latvia within 24 nautical miles from the baseline, where Latvia has the right to the customs, fiscal, immigration and sanitary controls.*

4. The definition of the continental shelf in the Marine Environment Protection and Management Law is unclear, as the rights of Latvia over the continental shelf is applicable to the seabed and subsoil outside the territorial sea border of Latvia therefore there have not been specified any rights of Latvia over a part of the continental shelf beneath the territorial sea. The third article of Marine Environment Protection and Management Law of Latvia needs to be amended as follows *“Latvian continental shelf is the seabed and subsoil in underwater areas as a natural continuation of the territory which is situated in Latvian territorial sea and exclusive economic zone.”* Continental shelf should be regarded as the territory of the EU resources and legal position of workers being employed and it should not differ from employees' *stricto sensu* working in the inland territory of country.

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