A QUARTER OF A CENTURY AFTER UNCLOS III:
A PERSONAL RECOLLECTION

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1 INTRODUCTION

I heard a lot about Lucius Caflisch from my Professor, Vladimir Ibler, before the commencement of the Third United Nations Conference on the Law of the Sea (UNCLOS III). They spent a year together in Washington at the beginning of the seventies, and this marked the beginning of the friendship of Professor Caflisch and the members of the Chair of Public International Law of the Zagreb Faculty of Law.

It is now exactly thirty years that I met Professor Caflisch for the first time. It was in Geneva, in spring 1975, at the Third Session of UNCLOS III. Both of us were mostly in the Second Committee, dealing with the classical issues of the law of the sea. Although he was representing a land-locked country, and I was coming from an Adriatic coastal State, I cannot recall any misunderstanding between the two of us. One of the reasons for our good relationship and collegiality was the fact that we were young, and law of the sea was not the main topic we used to discuss.

Be that as it may, after the closure of UNCLOS III, Lucius Caflisch continued his brilliant career, mostly at the Graduate Institute of International Studies, the Swiss Ministry of Foreign Affairs, and afterwards the European Court of Human Rights. Contrary to myself, he has not remained enslaved by the law of the sea: after UNCLOS III he has been active in several important fields of international law.

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This comparison between the two of us brings me back to UNCLOS III, and the topics on which I was mostly concentrated during the long years of the Conference. Now, a quarter of century after the long and exhausting discussions of these topics, unfortunately I must conclude that the results of the efforts in which we participated cannot be considered as a significant contribution to the development of the law of the sea.

In this brief contribution to the Liber Amicorum Lucius Caflisch I will deal with some of the rules which are the result of the work of the informal groups, the Negotiating Groups and the Main Committee (Second), in which I participated in UNCLOS III.

2 SEA BOUNDARY DELIMITATIONS

The Judgment of the International Court of Justice (ICJ), in the North Sea Continental Shelf cases in 1969 eroded the dominance of the median/equidistance line in respect of the delimitations of maritime areas between States with opposite or adjacent coasts.1 At the First United Nations Conference on the Law of the Sea (UNCLOS I), this dominance was established in respect of the delimitation of the territorial sea,2 the contiguous zone,3 and the continental shelf.4 In addition to the problems caused by the mentioned ICJ Judgment, UNCLOS III was confronted with the duty to formulate delimitation rules for a new regime – the exclusive economic zone (EEZ).

Altogether, delimitation proved to be one of the hard-core issues of this Conference. Informal negotiations and the work of the Second Committee were not sufficient for resolving these problems; the issue was discussed in intersessional meetings and in a special Negotiating Group (No. 7). All these efforts produced really poor results.

A. Territorial sea

Notwithstanding the desire of many States to eliminate the median line principle even from the rule on the delimitation of the territorial sea, in essence Article 15 of the United Nations Convention on the Law of the Sea (LOS Convention) has kept the text of Article 12, paragraph 1, of the 1958 Convention

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1 ICJ Reports 1969, p. 4.
2 Convention on the Territorial Sea and the Contiguous Zone, Art. 12.
3 Ibid., Art. 24, para. 3.
4 Convention on the Continental Shelf, Art. 6.